

# Review on the System of Share Repurchase of Listed Companies under the Background of the New Company Law Amendment

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**ABSTRACT.** *As the operating mode of the company's capital market, share repurchase plays an important role in optimizing the company structure and promoting the scale benefit. In 2018, the company law amended Article 142 of the share repurchase system, mainly focusing on the situation of increasing the share repurchase of listed companies, perfecting the decision-making procedure of share repurchase, establishing the stock system and so on. However, under the current company law, there are still some defects, such as the lack of creditor protection mechanism, the lack of detailed legal responsibility for illegal share repurchases, and the unclear boundary between illegal share repurchases and market manipulation. Therefore, based on the legal basis of share repurchase of listed companies, and drawing on the institutional norms of overseas share repurchase of listed companies, put forward to establish the "safe harbor" system, strengthen the supervision of stock, clear information disclosure requirements and introduce directors' debt-paying ability statement and other perfect measures, in the hope that the share repurchase system can truly become listed companies to improve the quality of development, promote the building of corporate governance system and corporate governance capacity of the modernization of the firm.*

**KEYWORDS:** *Listed Company; Share Repurchase; Company law; Perfection Path*

## 1. Introduction

Listed company share repurchase is an indispensable means for internationally-accepted companies to implement mergers and acquisitions, optimize governance structures, and stabilize stock prices. It is now a basic institutional arrangement in the capital market. For 2019, which is known as "the strongest year of repurchase in history", the total amount of share repurchase for the whole year reached 167.772 billion yuan, a year-on-year increase of 42.8%. In July 2019 alone, the repurchase amount was as high as 35.674 billion yuan, and the repurchase

amount in a single month and during the year reached a record high.

As an important financial activity in mature capital markets, the important reason for the explosive growth of listed companies' share repurchases is the consistent support of state regulators for repurchases. As early as August 2015, the four ministries and commissions of the China Securities Regulatory Commission, the Ministry of Finance, the State-owned Assets Supervision and Administration Commission, and the China Banking Regulatory Commission jointly issued the "Notice on Encouraging the Merger and Reorganization of Listed Companies, Cash Dividends, and Share Repurchase" to encourage listed companies to actively repurchase shares in various forms. . In 2018, support policies for repurchase were issued intensively. In July of that year, the Shanghai and Shenzhen Stock Exchanges successively issued documents to support qualified listed companies to repurchase shares in accordance with the law. On November 9, the same year, the CSRC, the Ministry of Finance, and the SASAC jointly issued Opinions on Supporting Listed Companies to Buy Back Shares. The opinion pointed out that it is necessary to further broaden the source of repurchase funds, simplify the implementation of repurchase procedures, guide the improvement of corporate governance arrangements, encourage listed companies to repurchase shares for the implementation of equity incentives or employee stock ownership plans, improve the risk management capabilities of listed companies, and further improve listing Company quality.

The revision of the company law in 2018 is of great significance to the share repurchase system of listed companies. Although the company law previously in force set up content related to share repurchase in the legal provisions, there are some situations that allow share repurchase in a narrow scope, it is difficult for the company to implement stock incentives to stabilize the actual needs of the Stock Price, the implementation of stock repurchase procedures more complex and other issues. On October 26 of that year, the amendment of the company law was passed after deliberation by the Standing Committee of the National People's Congress to increase the situation of share repurchase of listed companies, improve the decision-making procedures for share repurchase, and establish an inventory system. The revision of Article 142 of the company law on share repurchase system plays an important role in giving full play to the role of share repurchase system and improving the investment value of the company. But in the context of the revision of the company law in 2018, how does the value of share repurchase of listed companies reflect? How can the share repurchase of listed companies be distinguished from the important illegal act of market manipulation? What are the deficiencies and how to perfect the modified share repurchase for listed companies? These are all the problems that need to be studied urgently after the new revision of the company law. Careful analysis of the implementation effect of the share repurchase system after modification is of great significance to the continuous optimization of the system.

## **2. The concept and motivation of share repurchase in listed companies**

### ***2.1 The concept of share repurchase of listed companies***

A listed company refers to a Joint Stock Limited Company whose publicly issued stocks have been approved by the State Council or the Securities Regulatory Authority authorized by the State Council to be listed and traded on a stock exchange. According to the Fourth Chapter of the company law, listed companies generally have the following characteristics: (1) the company shares have been approved by the Securities Regulatory Agency under the State Council and have been issued to the public; (2) the total share capital of the company shall not be less than thirty million RMB; (3) the company has been in operation for more than three years and has made profits continuously in the recent three years; (4) the number of shareholders holding shares with a face value of RMB 1,000 or more shall not be less than 1,000, the shares publicly issued to the public shall amount to more than twenty-five per cent of the total number of shares of the company; where the total amount of the company's share capital exceeds 400 million yuan, the proportion of shares publicly issued to the public shall be more than 10 per cent; (5) the company has not committed any major illegal act in the past three years and there are no false records in its financial and accounting reports.

Share Repurchase means that a listed company repurchases some of the shares it has already issued. Specifically, it repurchases a certain amount of the shares it has already issued, this is the international common return on investors, stabilize the stock price, optimize the governance structure and other means of purpose<sup>[1]</sup>. By means of issuing securities, the listed companies can increase the value of their companies by attracting investors to buy their shares. But when the stock price of the listed company falls, the Stock Repurchase can keep the stock price of the listed company stable and maintain the company image when the stock price is undervalued, thus seeking the maximum of the listed company. Therefore, buying back shares at an appropriate time will help the listed companies to improve their ability to adjust their ownership structure and manage risks, and improve the overall quality and investment value of the listed companies, promote the construction of corporate governance system and the modernization of corporate governance capability.

### ***2.2 The motivation of share repurchase of listed company***

Share repurchase system is of great significance to the development of listed companies, and it is because of its unique value that listed companies choose to apply it for different purposes. The listed companies are in different motives when they choose share repurchase, and share repurchase is gradually becoming a common way of corporate finance in its development, but finance is only one of the many motives. As mentioned by Associate Professor Wen Liping in his book the motivation analysis and suggestions for improvement of stock repurchase in listed companies, stock Repurchase of listed companies is mainly motivated by stock

financing, stock reform, reducing the registered capital of the company, raising the company's share price and so on. In 2019, the most important reason for stock repurchase was the stock pledge financing, which accounted for 66.28% of the total share repurchase in the Shanghai Stock Exchange<sup>[2]</sup>. At the same time, some companies use stock buybacks as part of a dividend policy: this is suitable for companies with more cash flow and freedom to use excess cash to buy shares to distribute to shareholders when there are no better investment options, it's also a way for shareholders to get a return on their capital. Some companies buy back shares because it can be used as an anti takeover measure: In foreign capital markets, share buybacks are often seen as an important anti takeover measure because they raise the price of a company's shares, can also reduce the market circulation of shares, increase acquisition costs, thus creating greater barriers to acquisition. Sometimes share repurchase can also play a role in reducing the cost of financing. These benefits of share buybacks are the driving force behind listed companies choosing to implement their plans.

### **3. Analysis on the advantages and disadvantages of share repurchase of listed companies**

The "Company Law" of 2018 amended the share repurchase part, and further broadened the application of share repurchase by relaxing the conditions of share repurchase and improving the procedures for share repurchase, in the hope that the share repurchase can promote the development of the company. Although the promotion effect of share repurchase on listed companies is obvious, a company operating system is bound to have two sides, that is, the share repurchase has certain adverse effects. For listed companies, a company with a complex structure and capital intensive, there must be some risks. Therefore, it is necessary to analyze the positive and negative effects of share repurchase of listed companies, and to balance the benefits on this basis, so as to maximize the positive effect of share repurchase on the growth and strength of listed companies.

#### ***3.1 The beneficial effects of share repurchase of listed companies***

Firstly, the Stock Repurchase System of listed companies is helpful to maintain the moderate scale of listed companies and realize the maximization of scale economy. The biggest and most important goal for a company to set up and run is to make money. If listed companies want to make profits, they must keep a moderate scale according to their own business performance and industry development trend. The early enlargement of the scale of the listed company will lead to the increase of the management cost and the decrease of the net profit, and the small scale of the listed company will lead to the bankruptcy of the company or the merger of the company by other companies, which is not good for the long-term development of the listed company. With the development of the company, the listed company must keep the moderate scale and realize the scale economy according to its long-term development strategy. The share repurchase system of listed companies is one of the

important measures for listed companies to adjust the scale of operation in time.

Secondly, share Repurchase of listed companies can help listed companies adjust the total capital in time and optimize the company's asset structure. Listed companies in the course of operation, due to a variety of reasons, capital changes may occur. Therefore, listed companies may have too much capital, resulting in idle or waste of funds. The result is not conducive to protecting the interests of social investors and counterparties. The problem can be solved by reducing the capital of listed companies through share repurchase<sup>[3]</sup>. On the other hand, repurchase of own shares can also optimize the financing of listed companies. This is because the listed company's balance sheet ratio should be maintained at a certain level, otherwise the listed company can not fully enjoy the benefits of debt. By buying back shares, the listed companies can improve the ratio of assets and liabilities and optimize the assets structure of the listed companies.

Thirdly, the share repurchase of listed companies is beneficial to share the operating results and realize the incentive mechanism. The common problem in reality is that the behavior of the staff and managers of the listed company may violate the duty of loyalty. In order to solve this problem, the internal constraints of listed companies' governance structure and the external constraints such as capital market, product market and labor market are far from enough, relate the efforts of staff and managers to the company's increased wealth. Employee stock ownership plan (ESOP) and equity incentive are institutional innovations to meet this need. However, one of the problems in implementing such incentive mechanisms is the source of the shares. If new shares are issued, on the one hand, the procedures are complicated, the procedures are complicated and the costs are high; on the other hand, the new issue of shares will increase the total number of shares on the market and thus reduce the earnings per share. Share repurchase mechanism can effectively avoid these problems and solve the problem of stock source.

Fourthly, stock Repurchase of listed companies can strengthen the protection of the interests of minority shareholders of listed companies at low cost and avoid the improper loss of the interests of listed companies objectively. Modern listed companies tend to follow the "majority capital" principle. In fact, the major shareholders of listed companies often use this means to maximize their own interests, to the detriment of the interests of minority shareholders. When the interests of minority shareholders are harmed, although the law provides them with judicial relief, the judicial procedure is time-consuming and the cost of implementation is high. It has the disadvantage of untimely and inconvenient protection for minority shareholders. In other cases, although minority shareholders have obtained judicial relief, they have lost the practical economic significance of holding on to the shares of listed companies. At this point, giving small and medium-sized shareholders the right to request the listed company to buy back their own shares can not only fully avoid the possibility that the interests of small and medium-sized shareholders will continue to be infringed upon, but also fully protect the rights and interests of small and medium-sized shareholders, moreover, it can reduce the coordination cost between the middle and small shareholders and the company, and protect the company's interests from the loss caused by the continuous friction between the shareholders and the company.

### ***3.2 The adverse effects of share repurchase of listed companies***

Firstly, share Repurchase of listed companies is not conducive to the steady development of the securities market. Share Repurchase will affect the company's capital structure, solvency, business development strategy, and so on, so it will also affect the performance of the company's stock market. If large shareholders and senior managers of listed companies use their inside information to buy back shares maliciously and manipulate the company's share prices, not only will the interests of small and medium-sized shareholders be harmed, moreover, it will arouse the suspicion and influence of the public to the "three public" principle of the securities market, and then affect the public investment enthusiasm and the healthy development of the securities market.

Secondly, share Repurchase of listed companies is not conducive to the protection of the interests of creditors. In order to encourage investment to stimulate the development of the Commodity, the Modern Limited Company system requires shareholders to be responsible to the company within the limits of the subscription or subscription of shares, and the company shall use all its assets to assume the debts of the company. Therefore, listed companies must maintain assets corresponding to their registered capital to protect the interests of creditors. Where a listed company makes use of its assets to repurchase its shares, it may return the capital to the shareholders in disguised form, violating the three principles of capital. Even if listed companies use profits to buy back shares, it may also shake the financial security of listed companies and endanger the interests of creditors.

Thirdly, share Repurchase of listed companies is not conducive to the fair transaction of shares, and is prone to infringe the interests of the company's illegal acts. Share Repurchase of listed companies means that the listed companies become their shareholders. One is the possibility of artificial manipulation of the stock market, leading to speculation in the market, disrupting the securities market. Second, it may lead to insider trading, that is, the use of insider information to buy and sell the company's shares<sup>[4]</sup>. At the same time, listed companies use their own money to buy their own shares, with the result that listed companies become their own members. Listed companies and shareholders mixed together, resulting in rights and obligations are not clear. In essence, the person in charge of the company reduces shareholder value and takes control of the company. Therefore, the share repurchase is very easy to appear the listed company's person-in-charge encroaches upon the company and the shareholder's benefit the illegal behavior.

### **4. The relationship between stock repurchase and market manipulation of listed companies and its regulation**

The revision of the company law in 2018 has injected new vitality into the share repurchase system and made it more effective in the operation of the capital market. As for the listed companies, share repurchase can concentrate huge amounts of funds to buy their own stocks in a short period of time, which constitutes a significant benefit to the promotion of the company's stock price. It has always been regarded as a sharp weapon to stabilize and promote individual stocks and the whole

capital market, the company itself, shareholders and creditors, public investors and capital markets have a prominent impact. But it raises questions about whether share buybacks constitute market manipulation. Does the listed company manipulate the market by passing the information of undervaluation through share repurchase and even influencing its own share price through the actual buying operation?

After the amendment of the new "Company Law", one item is added to the situation of allowing repurchase: "The listed company is necessary to safeguard the company's value and shareholders' rights and interests". In order to protect the company's value and shareholders' rights and interests, it is easy to dissimilate the share repurchase into market manipulation. Share buybacks and market manipulation are very similar in their trading principles. According to article 22 of the "guidelines for the identification of manipulation in the Securities Market (for trial implementation)" issued by the CSRC in 2007, trading behavior in line with "concentration of capital advantage, stock holding advantage or the use of information advantage to jointly or continuously buy and sell securities, manipulate securities trading prices or securities trading volume" should be considered as "continuous market manipulation behavior", share repurchase undoubtedly meets the above-mentioned constitutive requirements. However, at the same time, Article 48 of the "guidelines for the identification of manipulation in the Securities Market (for trial implementation)" makes additional provisions for the identification of market manipulation, namely, listed companies, controlling shareholders of listed companies or other market participants, buying back shares in accordance with the provisions of laws, administrative regulations and rules shall not constitute an act of manipulation<sup>[5]</sup>. Although the CSRC has solved the issue of whether share repurchase constitutes market manipulation through the exception system of market manipulation, it can not be considered that all repurchase shares can constitute an exception to the recognition of market manipulation. According to section 48 of the above guidelines, a repurchase that does not constitute market manipulation should have a clear standard of legality, that is, compliance with the provisions of laws, administrative regulations and rules. However, China has not directly stipulated what can be used as the legal source of share repurchase here, which makes the "legal" repurchase still can not be carried out.

Therefore, it is necessary to strengthen the regulation of share repurchase from the level of legal system and draw a clear distinction between it and market manipulation, this will not make the original development of listed companies of great significance to the operation of the capital become a hindrance to the company's growth and strength of the negative factors. Because share repurchase is similar to the transaction principle of market manipulation, share repurchase sometimes constitutes illegal market manipulation, and sometimes it can be the exception of market manipulation. Based on this situation, judging from the perspective of market manipulation, share repurchase has legal and illegal points, in practice it is usually called the white zone and the black zone. The White Zone has little to do with market manipulation and is exempt from market manipulation scrutiny, so it meets the law. However, in the black zone, this market manipulation belongs to the illegal securities acts, itself is punishable. Beyond the white zone and the black zone, there are grey areas that intersect. This means that the listed

company's share repurchase, although its form is in line with the law, but its purpose is to achieve covert manipulation of the stock price effect through repurchase behavior. Accordingly, three kinds of situations of stock repurchase and market manipulation of listed companies should be targeted regulation. First, the white zone for share buybacks, through the establishment of "safe harbor" can deftly resolve which may be hidden risks<sup>[6]</sup>. Specifying that share buybacks in "safe havens" will be exempt from market manipulation liability will help investors buy shares with greater confidence and contribute to the development of the share repurchase system. Secondly, in view of the gray area of share repurchase, it is necessary to strengthen information disclosure to ensure that the procedure and essential elements of share repurchase of listed companies are in line with the law, and to ensure that its share repurchase has been operating in the sunshine. Third, for the Black Zone of share repurchase, strengthening the identification and legal responsibility of illegal repurchase can effectively combat the market manipulation in share repurchase of listed companies. Through the negative evaluation of this behavior and some punitive measures, the listed company's share repurchase can be more cautious to stop and prevent the occurrence of such incidents from the source.

## **5. Defects in the system of share repurchase of listed companies under the new "Company Law" amendment**

The revision of the Company Law in 2018 further optimized the capital structure, stabilized the company's control, and increased the value of the company's investment by increasing the repurchase of shares by listed companies, improving the procedures for repurchasing shares, and establishing a treasury stock system. It can be said that the current revision of the share repurchase system conforms to the important role of China's listed companies in the operation of the capital market and is also conducive to the development and prosperity of China's market economy. However, the current "Company Law" system and regulation of share repurchase still faces some defects. Examining and analyzing the existing system and constructively demonstrating the shortcomings of the system will have long-term significance for the implementation of share repurchases of listed companies.

### ***5.1 The current share repurchase system lacks the mechanism of creditor protection***

Article One hundred and forty-two of the new companies act removed restrictions on the source of capital for share buybacks. According to the "implementation rules of share repurchase of listed companies", listed companies buy back shares of a wide range of sources of funds, even including loans from financial institutions. Under this kind of loose financial resources control, there is no corresponding creditor protection mechanism, which results in the dilemma that the source of repurchase funds violates the current capital preservation principle and conflicts with the Authorized capital system. Therefore, it is necessary to explore new ways to protect creditors and improve the protection system of creditors.



***5.2 The current share repurchase system lacks the right to request a share repurchase, restrictions under special circumstances, and provisions on legal liability for illegal repurchase of shares.***

The essence of share repurchase is to reduce the total assets of the company, reduce the solvency of the company and increase the credit risk of the company's creditors. Therefore, in the case of possible damage to the interests of creditors, the company's share repurchase should be invalid or to balance the interests of shareholders and creditors to determine the effectiveness of the company's share repurchase. Although the company Law of China adopts the legislative mode of "principle prohibition, exception permitted" in the share repurchase system, some companies inevitably face the risk of illegal repurchase under the drive of market interests<sup>[7]</sup>. China's "Company Law" has no clear provisions.

***5.3 The current share repurchase system may endanger the principle of shareholders' rights and interests***

The new added "necessary to safeguard the company's value and shareholders' equity" repurchase may have an impact on the principle of shareholders' equity. In the process of share repurchase, the controlling shareholders or the management, based on their own information superiority, are easy to manipulate the market, insider trading, "buy low, sell high" and other illegal acts, which seriously infringe the legitimate rights and interests of other shareholders. In order to prevent insider trading, market manipulation and other behaviors that harm the interests of shareholders, it is necessary to establish corresponding legal regulations.

***5.4 There are some drawbacks in the stock system of stock repurchase***

The new company law amends the stock-in-hand system, stipulating that under certain circumstances where share buybacks are permitted, "The total number of the company's shares held by the company shall not exceed 10 percent of the total amount of the company's issued shares, and shall be transferred or written off within three years." On the one hand, the substantial extension of the term of "stock" and the flexible setting of the disposal methods have undoubtedly greatly strengthened the protective disk effect of this kind of repurchase, but at the same time, they have also magnified the risks contained therein, in particular, the reduction of "stock" has a great impact on the capital market, and special regulation is needed<sup>[8]</sup>. On the other hand, the "stock" system is easy to give listed companies room for arbitrage in the market, and if the supervision is not careful, it will easily lead to market risks, to the people that we're dealing with. Therefore, how to clear the stock of stock and how to write off the stock of stock that has not gone has become an urgent problem to be solved in the stock repurchase system. However, it is a pity that the company law has not been restricted in the process of amendment, so there are some deficiencies.

## **6. The regulation of share repurchase of listed companies from the perspective of Comparative Law and its reference**

The law of the state of Ohio in the 1851 provides for the regulation of share repurchase, which is also called the birth of the share repurchase system. Since the 1990s, under the background of the reform of the global corporate capital system, share repurchase has mushroomed all over the world, and North America, Europe, Asia and other countries began to allow companies to buy back shares. It is because share repurchase is an important means of capital operation and enhancing the value of a company that the system is adopted by many countries such as the United States, the United Kingdom, Germany, and combined with the reality of the country, create a share repurchase system with local characteristics. By studying the stock repurchase of other countries, it is instructive to solve the defects of stock repurchase of listed companies under the current company law.

The common law countries such as the United States and the United Kingdom have relatively loose legislation and regulations on share repurchase, which has promoted the positive development of share repurchase market. In 1982, the Securities and Exchange Commission of the United States issued the 10b-18 rule, which adopted the method of "reasonable exception", and established a "safe harbor" for the company's share repurchase from the aspects of repurchase method, repurchase time, repurchase price, repurchase quantity, etc. , prevent the existence of insider trading; the British share repurchase system is a gradually open process.<sup>[9]</sup> The relaxation of the system is mainly due to the provisions of the European Community that "a company may under any circumstances purchase its own shares" .

The civil law countries, represented by Germany, have adopted a more strict system of share repurchase. Listed companies can only carry out buybacks under specific conditions and are subject to strict supervision by regulators. In Germany, the purchase of less than 10 per cent of shares is permitted only under certain exceptional circumstances; in France, when there are four "exceptions" to the offer of shares to practitioners, inheritance of shares, court decisions and capital reduction, to allow share buybacks in Russia, where share buybacks have been liberalized, there are still tighter restrictions on share buybacks by listed companies.

As the most developed country of securities market and the origin of share repurchase, the supervision of share repurchase in America is more perfect than other countries after long-term development. In the United States, a dual regulatory model of government regulation and self-regulation has been formed, and the Securities and Exchange Commission of the United States has established a "safe harbor" system for the repurchase of shares by issuers and their affiliated institutions<sup>[10]</sup>. Under the "safe harbor" system, a listed company can not buy back shares until all material information has been publicly disclosed, and the conditions of the buy-back are strictly limited. In view of the defects of the new "Company Law" concerning the lack of the right of share repurchase and the legal consequences of illegal share repurchase, the American and European share repurchase system can solve this problem. In accordance with the practice of

European countries and the United States, shares bought back in violation of the law must be transferred or written off during the legal period, which is conducive to the perfection of the market economic order and the maturity of the market subject. On the basis of reference, China should take ex post punishment measures to make the board members and senior managers of the company who illegally carry out share repurchase bear the civil liability for compensation to the company and the interested parties, and take the appropriate administrative penalty. And Canada's Commercial Companies Act also clearly stipulates that, the company shall not make payment to the objecting shareholders when the company is unable to discharge its debts at present or after payment, or when the realizable value of the company's assets will be less than the total amount of its debts after payment. Therefore, China can learn from and innovate, increase the scope of application of the right of share repurchase, and better strengthen the protection of creditors.

## **7. The ways to perfect the share repurchase system of listed companies**

The revision of the company law in 2018 adds new vitality to the share repurchase system, and makes the listed companies operate more flexibly. The regulation of Share Repurchase System in company law can promote the capitalization of listed companies to a great extent, but it should be noted that there are still some deficiencies in the current legal system. Although these shortcomings do not overshadow the flaws of the share repurchase system, by reflecting on the legal basis of the share repurchase of listed companies, and by comparing the feasibility of learning from foreign countries, can make the share repurchase system with Chinese characteristics icing on the cake, and better promote the development of the market economy.

### ***7.1 Setting up the "safe harbor" system***

The earliest establishment of "safe harbor" system is the United States, which is embodied in the "rules" 10b-18 of the Securities and Exchange Act of 1934. According to this article, under the "safe harbor" system, the method, time, price and quantity must be met simultaneously. Although in 2008, China Securities Regulatory Commission (CSRC) issued the "Supplementary Provisions on listed companies' share repurchase by means of centralized bidding transaction", it imposed time and price restrictions on the bidding repurchase in share repurchase, however, there is no complete implementation of the provisions to be explicitly applied. Therefore, China's company law needs to further clarify the existing conditions under the circumstances of allowing repurchase, by drawing on the more comprehensive and detailed four-factor rules, can be more conducive to the creation of China's listed companies share repurchase "white zone.". In view of the black zone of share repurchase which does not conform to the "safe harbor" system, it is necessary to strengthen the supervision of market manipulation in share repurchase of listed companies<sup>[11]</sup>. If the listed company intentionally manipulates the market in the share repurchase, and the consequences are serious, the corresponding liability

should be pursued strictly according to law. As for the buy-back activities in the "white zone" and "black zone" of the inclusion and share repurchase, it needs the accurate and comprehensive legal cognizance of the Regulatory Authority for the share repurchase of the listed company, to judge whether its repurchase behavior is legal, whether it will constitute market manipulation, so as to deal with it pertinently. It can regulate effectively the "grey zone" of share repurchase by distinguishing share repurchase from bond-to-share Repurchase and share-to-share repurchase, and adding the period of separation between large shareholders and insiders.

### ***7.2 Clear disclosure requirements***

For Investors and small and medium-sized shareholders, to strengthen the information disclosure of related behaviors in stock repurchase of listed companies can ensure that the repurchase behavior is legitimate and legal, so that the situation of causing damage to the interests of investors and small and medium-sized shareholders will not happen. In view of the stock repurchase behavior of listed companies under the current company law, first of all, we need to improve the information disclosure of the source of repurchase funds, and protect the interests of investors by improving the authenticity of information disclosure. Since the revised "company law" expands the sources of share repurchase funds, strengthening the overall supervision of the whole process of share repurchase and fund raising will help regulate the behaviors of share repurchase of listed companies and prevent them from transferring risks to investors. Secondly, we need to regulate market behavior, improve the accuracy of disclosure. Through fair, open, comprehensive transfer of market information, is conducive to the capital market to protect the interests of minority shareholders. The timeliness and integrity of information greatly affect the investment interests of minority shareholders, so the listed companies must disclose to minority shareholders in time after the share repurchase scheme is made clear. When there is a real need to change the repurchase scheme, investors should also be informed of the arrangements and progress in the first place. Finally, we need to strengthen the requirements of publicity, and constantly improve the timeliness of disclosure. Although the implementation of the share repurchase of the listed company is public to all shareholders, in the agreement repurchase, it is only the majority shareholders of the listed company and the company through the Agreement Explicit Repurchase program, which will harm their own interests to other shareholders. Therefore, it is necessary to improve the timeliness of disclosure by strengthening the continuous disclosure of information in stock repurchase of listed companies, so as to truly realize the transparency and fairness of repurchase.

### ***7.3 Strengthen the share repurchase supervision system***

Legal supervision plays an important role in the implementation of legal norms. As for the newly revised share repurchase system, by improving the supervision of share repurchase of listed companies, it can ensure the healthy and sustainable function of share repurchase and further improve the company's operating norms.

First of all, we need to improve the listed companies in the share repurchase violations identified. It is in the interest of the regulator and its staff to better perform their duties by further clarifying the concept of illegality applied by the regulator and interpreting the legal content of the share repurchase system with unclear intent. Secondly, we need to further expand the regulatory body of share repurchase. Since legal norms can not cover all the situations that may be involved, that is, the existing legal norms on share repurchase can not specify all the situations that may occur in the share repurchase of listed companies, however, the associations of different industries in which the listed companies are located can use the function of supervising the development to guide the industry to develop better. All personnel of the media and the listed company may supervise the illegal acts in the share repurchase of the listed company through information disclosure or information disclosure, through the timely disclosure of relevant information to investors to avoid the aggravation of investors' losses, better protect private interests. Finally, for the new perfect "stock system, we need to strengthen the supervision of its whereabouts, for no clear direction of stock needs to be written off. "

#### ***7.4 Introduction of directors' solvency statement***

In order to further protect the interests of creditors and small and medium-sized shareholders, we can learn from the system of director's solvency declaration used in English law. Under British company law, directors make a statement that there are no circumstances in which the company can not pay or discharge its debts; if the company is liquidated within 12 days from the date of the statement, within 12 days from the commencement of the liquidation the company is able to discharge its debts in full; In any other case, the company is able to discharge its debts that fall due within one year from that date<sup>[12]</sup>. Article 6 of the implementing rules of share repurchase of listed companies in China stipulates: "All directors shall undertake to repurchase shares without prejudice to the listed company's ability to fulfill debts and to continue operation. " This can be regarded as the embryonic form of the system of directors' ability to repay debts, but the specific content of directors' declaration and the legal consequences that directors should bear when the content of the declaration is violated are not clearly stipulated in China's legal norms. Therefore, on the basis of the declaration of directors' ability to pay debts, we can learn from the directors' duty of loyalty and diligence in company law and the directors' joint and several liability for compensation in securities law, and stipulate that the directors shall bear joint and several liability for creditors' losses when the contents of the declaration of directors' ability to pay debts are violated.

#### **8. Conclusion**

As the basic means of capital market, share repurchase plays an important role in optimizing the governance structure and stabilizing the stock price of listed companies. In order to follow the development trend of the market economy and further relax the restrictions on share repurchase, the newly revised company law in

2018 injects new vitality into stock repurchase by increasing the situation of stock repurchase by listed companies, perfecting the decision-making procedure of stock repurchase, and establishing stock inventory system. Through the analysis of the concept and motivation of share repurchase of listed companies, we can better grasp the positive and negative factors of share repurchase for the development of companies, in order to better analyze the current "company law" under the norms of the listed companies in the stock repurchase deficiencies. By analyzing the legal basis of share repurchase of listed companies, and the system design of share repurchase in common law system and continental law system, it can be concluded that there are still some defects in the stock repurchase system of China's listed companies, such as the lack of protection mechanism for creditors, the lack of detailed legal liability for illegal share repurchase, and the unclear boundary between illegal share repurchase and market manipulation. Based on this, the author proposes to establish the "safe harbor" system, strengthen the supervision of the stock, clarify the information disclosure requirements and introduce the directors' debt-paying ability statement, etc. , in the hope that the share repurchase system can truly become listed companies to improve the quality of development, promote the building of corporate governance system and corporate governance capacity of the modernization of the firm.

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