

控制權溢價之意涵及其歸屬

黃朝琮*

摘 要

本文觀察美國法上所討論之控制權溢價的內涵，認為可以將之解析為綜效價值、徵用價值及純粹控制價值三者。除公開收購的場合，控制權溢價在美國法上原則歸屬於控制權人，但允許其將之與少數股東分享，並透過受託義務審查及股份收買請求權等機制，使少數股東有機會分享控制權溢價。換言之，控制權溢價之歸屬並非只有一個答案，其分配亦非全有全無。我國關於控制權溢價的概念係在股份收買請求權的脈絡中展開，其中定義雖屬完整，然未完整架構控制權溢價歸屬之完整體系，且有以全有全無方式，作單一配置的傾向，本文觀察相關學說實務見解，試圖提出控制權溢價歸屬的整體架構。

關鍵詞：控制權溢價、少數股權折價、流通性折價、控制股權出售、股份收買請求權、受託義務審查、公開收購

DOI：10.3966/252302982017120002003

* 宏鑑法律事務所律師；美國賓州大學法學碩士。

投稿日：2017 年 6 月 4 日；採用日：2017 年 8 月 11 日

Cite as: 2 NCTU L. REV., Dec. 2017, at 127.

Components of Control Premium and Its Allocation

Chao-Tsung Huang *

Abstract

This article analyzes the components of control premium by observing the discussion under the U.S. law and argues that control premium consists of synergistic value, expropriation value and pure control value. Except for tender offer, the controller of a company is entitled to receive the control premium by default, but the controller could share the control premium with the minority shareholders under the U.S. law. Therefore, there is no single answer with respect to allocation of the control premium. Under Taiwan law, the concept of control premium is developed in the context of appraisal right. Although the control premium is soundly developed, the allocation of the control premium has not been adequately explored and Taiwan court seems to be inclined to give a one-size-fits-all answer in this regard. This article reviews the academic discussions and cases, and provides a global structure with respect to the allocation of the control premium.

Keywords: Control Premium, Minority Discount, Marketability Discount, Sale of Controlling Shares, Appraisal, Review of Fiduciary Duty, Tender Offer

* Attorney, Chen & Lin Attorneys-at-Law; LL.M., University of Pennsylvania.