

The Golden Parachute Mechanism of Listed Businesses' Bad Faith Takeover Defense

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Abstract: As the wave of mergers and acquisitions spreads in China, incidents of hostile takeovers in the capital market are becoming more frequent. More Chinese companies are revising their articles of association and adding anti-hostile takeover clauses, including the Golden Parachute clause, to protect their interests. Most research on Golden Parachute has focused on the U.S. market, but China's capitalist market environment and corporate governance structure differ greatly from the U.S., and there are blank spaces in the value judgment of the Golden Parachute in American studies. When introducing it in China, legislative bodies and corporate rules should not copy blindly; rather, they should extract its essence while discarding the dross. This article summarizes current research literature on the Golden Parachute clause by Chinese and American academia, uses empirical research to analyze how the clause was applied in the Musk-Twitter acquisition case, and presents personal insights on how Chinese companies can write the Golden Parachute clause into their articles of association and localize it based on actual mergers and acquisitions scenarios. Efforts must be made at the institutional, legal, and ethical levels to address the challenges faced by the Golden Parachute clause in practice, thereby opening up greater possibilities for their application in China.

Keywords: Golden Parachute clause, M&A, anti-hostile takeover, articles of incorporation

1. Introduction

The conflict between Baoneng and Vanke has been causing the idea of hostile M&A in the capital market to spread since 2015. Companies with dispersed shareholdings, like China Baoan Group, Do-Fluoride New Materials, and Youhao Group, have altered their articles of association to include anti-malicious M&A measures in response to this case to prevent the control from evaporating. The Golden Parachute clause, which provides firm executives with significant severance pay, has also gained notoriety in China as a strategy for preventing hostile M&A. Golden Parachute clause were first studied in the United States in the 1980s, and China followed suit in the late 20th and early 21st centuries. The number of American businesses using anti-takeover measures, such as Golden Parachute clause, substantially surged in the 1980s. Most significant US publicly traded companies had established golden parachute arrangements for their top executives by the end of the 1980s[1]. Golden parachute arrangements for top executives were commonplace in large U.S. public businesses by the late 1980s; but, when corporate acquisition activity slowed off in the 1990s, it began to flatten out.

Golden Parachute clause, according to Philip L. Cochran and Steven L. Wartick, are unethical and an unjustifiable transfer of wealth. They are also of little value from a shareholder's perspective [2]. In addition to maximizing shareholder value, clause can raise the share price of a corporation. Eliezer M. Fich et al. claimed that Golden Parachute agreements help reduce the moral hazard of the acquired company's executives during the acquisition process to the advantage of the target shareholders by looking over 850 acquisitions made between 1999 and 2007 [3]. The author considers both of their studies to be very informative. Miroslava Strask and H. Gregory Waller conducted a study of over 1,900 academic articles published in journals from 1980 to 2011 on anti-takeover clause, and they found that, overall, the costs of such clause outweighed the benefits [4].

In addition, it appears that since *the Dodd-Frank Act* was passed in the United States in 2010, the Golden Parachute clause's scope of application has been growing. The existence of Golden Parachute clause, according to Nacasius U. Ujah and Collins E. Okafor, has enhanced companies' inclination to manage their earnings, and these companies are more likely to do successfully [5]. It has also been argued that Golden Parachute clause, which provide high compensation to management in the event of a transfer of control, could theoretically provide an incentive for managers to sell their companies and are a solution to a company's operational difficulties and to manage management conflicts [6].

In Chinese academia, not much research has been undertaken on the rule strategy of the Golden Parachute clause, which is typically employed as part of the research on the regulation of anti-takeover measures. Fan Jian feels that there is nothing wrong with having a Golden Parachute language in the articles of association, but that particular attention should be made to the exact scope of those who are entitled to severance benefits. The company management's duty of loyalty and diligence may be violated if the range of individuals eligible for compensation is too broad and the compensation payment standard is too high. This could also affect the company's regular business operations and place an undue financial burden on the business [7]. At the same time, China has conducted some research into the value of Golden Parachute clause. According to Huang Zhongsu, Golden Parachute clause can protect the interests of existing company management and other employees [8]. Tang Xin believes that a reasonable Golden Parachute clause should be beneficial to the shareholders of the target company to avoid a hostile takeover bid by a management that has no way out and uses the company's resources to resist [9]. In Jinsheng's opinion, the presence of a Golden Parachute clause can encourage the management of the acquired business to be more patient in negotiations with the acquirer in the case of a hostile acquisition, thereby maximizing shareholder interests [10].

The implementation of the golden parachute system is a critical step in safeguarding management's interests and succeeding in the capital game in China. The US market has been the focus of studies on Golden Parachute clause, however the capitalist market environment and corporate governance structure in China are very different from those in the US, and American research is lacking in the field of valuing Golden Parachute clause. When it is applied in China, the legislature should not copy the legislative clause and the clause of the company but should remove the dross and take the essence. In this paper, the author uses literature research to summarise the current literature on Golden Parachute clause in Chinese and American academia, adopts an empirical approach to analyze the Musk acquisition of Twitter, uses comparative analysis to compare the practical application of Golden Parachute clause in Chinese and American legislation and corporate charters, and offers personal insights into how Chinese companies can incorporate Golden Parachute clause into their corporate charters and localize them.

2. Case Study

Musk's significant acquisition of Twitter was the most talked-about event in the global internet sector in 2022. Being the richest man in the world, Elon Reeve Musk's takeover of one of the biggest social

media companies is a significant enough event to media attention. However, what makes this takeover particularly intriguing is that it is a "barbarian at the door" type of hostile takeover.

The incident stems from Elon Reeve Musk, who is a loyal Twitter user, being dissatisfied with the various platform rules set by Twitter and wants to privatize it to create a free speech online social platform. According to Musk, "Freedom of speech is the cornerstone of a well-operating democratic society, and Twitter is a digital town square where all topics critical to the future of humanity can be discussed."

The incident started on April 4, 2022, when the SEC made known to the public that Musk was already the largest individual stakeholder of Twitter with a 9.2% stake. According to SEC rules, the purchase of more than 5% of the shares of a publicly traded business must be declared to the SEC, but before that, Musk had been buying shares covertly and had not made this information public. Musk was invited to join the board by Twitter under the understanding that his ownership of the company could not exceed 14.9%. Musk turned it down and declared that he wanted to acquire 100% of Twitter instead. In response to Musk's forceful and hostile takeover, Twitter has diluted its shareholding holdings to protect its interests, and some shareholders have banded together to start a poison pill plan. Twitter also implemented a Golden Parachute plan, offering extremely high compensation to executives and middle managers in order to increase the acquirer's costs and reduce their willingness to acquire. If Musk maliciously acquired Twitter and wanted to demote or dismiss personnel from the original management team, he would have to pay a huge amount of compensation at once. This undoubtedly increases the management cost after acquisition, and theoretically makes potential buyers hesitate. However, in this case, the Golden Parachute clause only provides relatively more compensation for Twitter's original managers, which is ineffective against acquirers like Musk who are not short of money. Meanwhile, for Twitter, it is essentially impossible to be acquired without changing the original management team in such a situation. Like a poison pill plan, the Golden Parachute Clause is a commonly used tool to resist hostile takeovers, which is a tactic of fighting to the death with one's enemy at the cost of sacrificing oneself when a company is powerless to defend itself against barbarian threats. In this case, after Twitter announced the adoption of a poison pill plan, Musk, and Twitter reached an agreement within a week. After careful investigation by the board of directors, it was found that Musk was indeed ready to purchase Twitter with enough funds, and someone like Musk was needed to rectify Twitter's operating status. So the board agreed to the acquisition, and the original hostile takeover became a friendly one. Musk fired three high-level executives of Twitter immediately after taking office and paid a high price for this. Parag Agrawal (Twitter CEO) received a compensation of 6 million dollars, Ned Segal (Twitter CFO) received a compensation of 67 million dollars, and Vijaya Gadde (Twitter Chief Legal Officer) received a compensation of 75 million dollars, which is the role played by the golden parachute. Although this did not stop Musk's acquisition behavior in this case, not every acquirer is as wealthy as Musk, which brings many inspirations to listed companies and enterprises in various countries around the world: the directors and executives of the acquired party are extremely vulnerable to the acquirer's rejection, so to ensure a safe landing for these directors and executives, companies can adopt the golden parachute model to protect the high executives from getting a hefty severance pay in the event of an acquisition or merger.

However, some localization issues need to be addressed when introducing a Golden Parachute clause for Chinese companies -- The Application of Labor Law of the People's Republic of China and regulations to company executives is a major theoretical and practical problem, and neither Chinese legislation nor judicial interpretations have responded to this. Currently, when companies apply for listing in China, they are unlikely to include the Golden Parachute clause in their articles of association, which may result in the invalidation or revocation of the clause. In my opinion, these factors are obstacles to the widespread use of the Golden Parachute mechanism in China.

3. Overview of the Golden Parachute Clause

3.1. Concept Exploration

The term Golden Parachute originated in the U.S. The term "golden" means that the compensation is generous, and the term "parachute" means that the executive can make a smooth transition through the changes in the merger. The golden parachute clause is typically used in mergers and acquisitions to provide senior executives with severance pay, bonuses, stock options, and combinations thereof. This allows senior executives to receive relatively generous compensation even if they are fired soon after the company is acquired [11].

The Golden Parachute clause takes the form of a clause in the company's articles of incorporation or in the employment contract between the company's directors, supervisors, or officers and the company that states that "in the event of a change of control of the company, the directors, supervisors or officers of the company are discharged from their positions, they shall be entitled to substantial severance pay" [12]. This often happens only when the company undergoes a merger, acquisition, or other change in control. One-time cash payout, typically several times the annual fixed salary, accelerated exercise or vesting of equity holdings, and the addition of further equity awards are all common features of Golden Parachute programs.

Specific components of a Golden Parachute clause include a change of control clause and a termination clause. While the change of control clause is a prerequisite to the implementation of the Golden Parachute clause, the termination clause focuses on the actual termination of a company's executive position or significant reduction in job responsibilities following a change of control, and while at first glance the termination clause may seem innocuous, it is often the cause of litigation.

3.2. Comparison of The Clause of The Golden Parachute Clause Between the United States and China

3.2.1. U.S. Regulations for Golden Parachute Clause

The Golden Parachute clause was utilized for the first time by TWA in 1961, and as a result of a wave of competitive M&A in the U.S. in the 1980s, it was extensively used. The internal motivation was to encourage business executives to examine M&A deals objectively and to continue to act in the best interests of shareholders, supporting the company's continuous expansion. The shareholders of the company use the extremely large severance payments necessary in the event of a successful M&A as a deterrent to hostile M&A, which is the external cause for the growth of the Golden Parachute clause. In the wave of hostile takeovers, about one-third of the 250 largest companies in the U.S. had adopted the Golden Parachute clause, which gives executives a variety of benefits to compensate them in the event of a change in control of the company. But the varied and overly generous rewards set in place have led investors and the public to question the essence of the Golden Parachute clause as perverse incentives for company executives to snipe failed hostile takeovers, and to view them as unreasonably excessive compensation.

The United States has clear legal clause for Golden Parachute clause: Congress first established formal rules for this type of severance arrangement in 1984 with the enactment of *The Deficit Reduction Act*. Under the Act, any golden parachute payment that exceeds three times the base compensation (i.e., the average of the most recent five years of taxable compensation) of the acquired company's executives is considered excessive and is not deductible on a pre-tax basis, making 2.99 times the annual base compensation of the executives the standard Golden Parachute payment amount. At the same time, the beneficiary of the Golden Parachute clause must pay an additional 20% excise tax on top of the normal income tax.

Sections 280G and 4999 of the IRC provide that for the Golden Parachute clause to be triggered, there must be a change in the beneficial control of the corporation or the ownership of a substantial portion of its assets; and, as a result of the transfer of control or ownership, the executive is terminated without cause or assumes substantially less managerial responsibility.

The Internal Revenue Code limits the Golden Parachute amount to the average of the grantee's wages for each of the five years preceding the "contingency". If this limit is exceeded, a 20% tax is imposed on the excess, and the company loses the tax deduction for the excess amount of the grant. This clause is known as the "162(m) limitation" and was added to the U.S. tax code in 1993. This limitation was designed to prevent companies from giving overly generous Golden Parachutes upon the departure of executives, which could result in financial losses to the company. This restriction protects taxpayers' interests and encourages companies to be more careful in handling executive departures.

Recent U.S. legislation addressing the Golden Parachute clause is reflected in the *Dodd-Frank Wall Street Reform and Consumer Protection Act* of 2010, which was introduced on July 21, 2010, and Section 951 amends Section 14 of the *Securities Exchange Act* of 1934 by adding Section 14A. Section 14A was added. Section 14A requires an advisory vote by shareholders of a public company on reports relating to executive compensation, including the Golden Parachute clause, and requires a public company to disclose briefly and clearly to its shareholders all agreements or understandings with senior executives based on a merger, acquisition or other disposition of all or substantially all of the issuer's assets under which all compensation is to be paid to the executive.

3.2.2. China's Regulations for Golden Parachute Clause

On the one hand, Golden Parachutes make sense in China. There isn't currently any legislation in China that specifically allows businesses to implement takeover-prevention strategies like Golden Parachute clause. *Labor Law of the People's Republic of China* mandates that companies execute labor contracts with employees in compliance with the law and compensate employees for lost wages and social insurance premiums when those agreements are terminated. Yet, the legality or illegality of the golden parachute method is not explicitly stated in the labor legislation, necessitating a case-by-case study.

The regulator's position on the Golden Parachute clause is unclear. The CSI Small and Medium Investors Service Center, a public interest organization created by the SFC in 2014 to safeguard and assist small and medium-sized investors, has repeatedly published articles disputing the legality of the Golden Parachute clause, contending that it is unlawful and invalid for listed companies to set Golden Parachute clause in their articles of incorporation or employment agreements for directors. However, its report *Investment Service Research*, which was released and disseminated in 2018, contends that although shareholders have the authority to remove directors, supervisors, and other senior management staff through shareholders' meetings, doing so violates the reliance interests or expectations interests of the removed directors, supervisors, and other senior management staff and should be prohibited. It is important to provide the fired individuals with fair financial compensation and to utilize the shareholders' authority to dismiss them in a reasonable manner that takes into account their legal rights and interests. This is a covert endorsement of the application of the Golden Parachute clause. Hence, there is a multifaceted feasibility rather than a fundamental barrier to the adoption of the Golden Parachute clause in China.

First, Chinese listed companies with fragmented stakes are frequently lifted. For barbarians who want to invade a company with a fragmented shareholding, it becomes easy to gain control of the company, and if the bid is successful, the company will face the risk of having its management sacked, which is a major blow to the continuity of the target company's operations. The Golden Parachute clause, on the other hand, significantly raises the acquisition threshold and serves as a protection to a

certain extent. At the same time, in the event of a benign acquirer, the Golden Parachute clause reduces the conflict of interest between shareholders and management, allowing management to seek a higher premium for shareholders in the event of a takeover.

Table 1: Precedent for Chinese companies to create the Golden Parachute clause in their charters.

Name of Articles of Incorporation	Specific contents
<i>The Articles of Association of China Baoan Group Co., Ltd.</i>	In the event of a company being acquired and taken over, if it is necessary to terminate or relieve a director, supervisor, CEO, or another senior management member from their position before the end of their term, their consent must be obtained and the company must pay them an economic compensation equal to at least 10 times their annual salary and benefits in a lump sum payment. For directors, supervisors, CEOs, and other senior management members who have signed labor contracts with the company, the company should also pay additional severance or compensation according to the "Labor Contract Law" of the People's Republic of China upon the termination of their labor contract.
<i>Articles of Association of Guangdong Haiyin Group Co., Ltd</i>	In the event of a company being acquired or taken over, if it is necessary to terminate or dismiss the terms of office of the directors, supervisors, president, and other senior executives before their term expires, their consent must be obtained, and the company must pay them economic compensation equivalent to ten times or more the total annual salary and benefits for the previous year as a one-time payment (excluding normal job changes or dismissals).
<i>The Articles of Association of DuPont Far-East Inc.</i>	In the event of a malicious takeover of the company, unless proposed by the original nominating shareholder, any director who is not removed from their directorship during their term of office due to illegal or criminal behavior, or a lack of qualifications and abilities to serve as a company director, or a violation of the company's articles of association, the company shall compensate that director with an amount equal to five times the total pre-tax remuneration received during their tenure as a director.
<i>Articles of Association of Lanzhou Yellow River Enterprise Co., Ltd</i>	In the event of a merger or acquisition of the company, if it is necessary to terminate or dismiss the directors, supervisors, CEO, and other senior management personnel before the expiration of their term, their consent must be obtained, and the company must pay them economic compensation equivalent to at least ten times their total annual salary from the previous year in a lump sum (excluding normal job changes or terminations).
<i>Articles of Association of Xinjiang Friend Group Co., Ltd.</i>	In the event of a company acquisition and takeover, if the term of office for the company's directors, supervisors, or senior management personnel has not yet expired but they need to be terminated or dismissed for reasons other than their own, the company must pay them economic compensation equivalent to ten times their total annual salary from the previous year in a lump sum.

On the other hand, there are certain obstacles to the current Golden Parachute clause being applied in China. The Golden Parachute clause has been contested in China, which is comparable to the circumstance in the US. The main defense against its legality is that the Golden Parachute clause restricts shareholders' freedom to fire executives and provides excessive and unfair compensation to company executives, harming both the company's and shareholders' financial interests and possibly constituting an exemption from the law's requirement of fidelity to directors and supervisors. In both theory and practice, it is extremely difficult to apply labor law regulations to business CEOs, and

neither Chinese legislation nor judicial interpretation have addressed this issue [13]. The contract clause would probably be considered illegal if the aforementioned viewpoint is accepted because it harms the interests of third parties or violates the mandatory clause of laws and administrative regulations. In order to make it lawful and reasonable, the corporation should pay great attention to both the substance and the procedure while putting up this clause.

Unlike the U.S. bill, which directly introduces targeted clause related to the Golden Parachute system, the Chinese legal approach is a civil law "normative choice" approach to law application, where judges tend to look for the only correct answer to a case based on the literal meaning of the law, rather than looking into the spirit of the law to interpret the rules of corporate law [14]. Moreover, since *Labor Contract Law of the People's Republic of China* has strict regulations on remuneration when the company signs a contract with its internal staff, adding a Golden Parachute clause will conflict with the existing law.

It is premature to create and apply particular regulations linked to the Golden Parachute clause, as in the United States, as there is little experience with mergers and acquisitions and court adjudication in China. The incorporation of the clause of the normative legal documents on corporate takeover and anti-takeover activities, as well as the introduction of specific anti-takeover legal norms based on the pertinent norms of China's corporate takeover market, will inevitably lead to companies adding unnecessary anti-takeover clause in their articles of association, making intermediaries, listed companies, and other parties involved in the takeover process more difficult [15]. Therefore, when current companies apply for listing in China, to achieve the goal of a smooth listing, it is probable that they will not agree on the Golden Parachute clause and other clause in their articles of incorporation that may lead to the articles of incorporation being deemed invalid or revoked but rather take the form of amending the articles of incorporation to achieve this.

4. Suggestions for the Future Implementation of Golden Parachute Clause in China

4.1. The Role of the Golden Parachute Clause

The Golden Parachute clause is a double-edged sword. While the Golden Parachute system can be an effective defense against hostile takeovers, it can also become a tool for management to profit at the expense of the company and increase the moral hazard for professional managers. In the face of a potential acquisition, blind decision-making and malicious selling of the company for personal gain could result in huge compensation payments that undermine the rationality of compensation systems. The Golden Parachute clause should be used to its full potential when applied:

First, the Golden Parachute clause helps to counteract hostile takeovers and is an ex-ante defense strategy against hostile takeovers. Once the parachute is triggered, the acquirer will have to pay compensation to management in addition to the purchase price, and the acquisition costs will then rise, and the acquirer may abandon the takeover attempt as a result. In addition, if the acquirer wishes to retain management, the fact that management has the right to leave the company under the parachute covenant has a deterrent effect. The golden parachute is commonly used in the U.S. in large part because of this anti-takeover effect.

Secondly, the Golden Parachute clause can serve to retain the current management and reduce the risk of management resistance to acquisition. With potential conflicts of interest eliminated, the objectivity and independence of the management team in facing the takeover offer are enhanced, enabling them to better evaluate the impact of the acquisition on the target company and its shareholders, maximize benefits for the company, and make decisions that are most favorable to the company and its shareholders. Therefore, the parachute agreement protects the interests of the leaders of the acquired company, promotes the stability of the target company during the acquisition process, and is objectively conducive to the steady promotion of M&A activities.

Thirdly, if this plan could be proposed at the founding of the company regardless of the acquisition, it would be more attractive and effective in retaining and attracting excellent workers. Only when pay is proportional to reward, can these highly-paid managers dedicate themselves wholeheartedly to the company. The Golden Parachute clause is one of the modern corporate treasures for retaining talent.

In summary, the Golden Parachute clause has a positive effect in maintaining the interests of the acquired company's management team, ensuring the stability of the target company, improving the objectivity of management decision-making, and also has a certain role in resisting hostile takeovers.

4.2. Proposed Regulations on China's Golden Parachute Clause

4.2.1. Perspective of Institution

Firstly, increase disclosure requirements for executive compensation. China's disclosure of executive compensation, including Golden Parachute clause, is very opaque, and it is difficult for ordinary investors to access. Strengthening the information disclosure requirements for executive compensation of listed companies can not only deter and curb illegal behavior, and reduce the degree of information asymmetry among stakeholders but also lower the market's expectation for intermediary institutions and regulatory authorities' guarantee or endorsement of potential risks in listed companies, increase market participants' risk awareness and provide more extensive market space for law-abiding and innovative companies.

Secondly, Establish a system of voting rights on executive compensation. The system of voting rights on executive compensation is, in fact, the specific embodiment of shareholders exercising their voting rights [16]. Shareholders exercising their voting rights are exercising their fundamental and inherent rights to express their will and participate in major corporate decision-making. The establishment of a compensation voting system, the improvement of the decision-making mechanism for small and medium-sized shareholders, and the protection of the exercise of voting rights are of great significance in preventing Golden Parachute clause from becoming a tool for the board of directors, supervisors or senior management to infringe on small and medium-sized shareholders' interests and seize private gains. With the advent of the Internet era, timely and effective communication between shareholders and between shareholders and companies has become a reality. Small and medium-sized shareholders can discuss the inclusion of Golden Parachute clause in the company's articles of the association through online media.

Thirdly, Maintain the decision-making power of the shareholders' meeting on the implementation of Golden Parachute clause in the company's articles of association. From the perspective of the development trend of mature capital markets in developed countries, the governance structure of listed companies has shifted from a shareholder-oriented model to a board-oriented model. Mergers and acquisitions are essentially market transactions for corporate control and an important way to achieve corporate governance. As listed companies are efficient and profit-oriented economic entities, widely granting shareholders decision-making power will inevitably affect the efficiency and effectiveness of the company's management, and violate the principle of modern separation of ownership and management rights. However, currently, in China, the decision-making power over Golden Parachute clause is generally held by the shareholders' meeting. There is a fierce conflict between management interests and shareholder interests in dealing with executive compensation issues, including golden parachute payments, especially when the company's control is threatened, such clause may bring huge returns to internal directors and executives. Therefore, the author believes that China can prescribe that judicial and regulatory authorities can review the procedure for setting up Golden Parachute clause, and the board of directors shall not set up such clause without the approval of the shareholders' meeting.

4.2.2. Perspective of Legislation

Currently, in the context of *The Company Law of the People's Republic of China* and *Labor Law of the People's Republic of China*, the status of company executives has a dual nature. If Golden Parachute clause are to be implemented, they may conflict with *Labor Law of the People's Republic of China*. According to the legal clause of China and the United States, corporate executives are laborers at the management level of the enterprise. Some scholars believe that compared to ordinary employees, executives are employers, but compared to business owners, their identity becomes an employee. Under the system of civil and commercial integration in China, the adjusters of *The Company Law of the People's Republic of China* have equality, while *Labor Law of the People's Republic of China* belongs to social law, and the adjusters have inequality [17]. The dual nature of executive status poses certain obstacles to the implementation of Golden Parachute clause.

The contradiction lies in what kind of contract should be signed between the enterprise and the executives. Article 47 of *Labor Contract Law of the People's Republic of China* stipulates the calculation rules for economic compensation: "If the monthly salary of the worker is higher than three times the monthly average wage of workers in the local area announced by the people's government at or above the municipal level where the employer is located in the previous year, the standard for paying economic compensation shall be three times the monthly average wage of workers, and the maximum period for paying economic compensation shall not exceed twelve years." Therefore, if a labor contract is signed, the Golden Parachute clause will not be protected under the *Labor Law of the People's Republic of China*, because if it is unlawfully terminated, the executive can only receive compensation up to three times; if the enterprise and the executives sign a civil contract, the labor rights and interests of the executives will not be guaranteed. The author believes that executives have the autonomy to choose whether to specify the Golden Parachute clause in civil contracts. If they choose to sign a civil contract, after being dismissed following the acquired enterprise, the executive will be entitled to compensation under the Golden Parachute clause, subject to approval by the shareholder meeting.

4.2.3. Perspective of Morality

The Golden Parachute clause can easily raise public opinion and moral risks, so the company needs to consider ways to address these risks and ensure that the Golden Parachute clause does not have a negative impact on the company's image and reputation.

The compensation amount set in the Golden Parachute clause should be commensurate with the manager's abilities, length of service, business scale and complexity, level of responsibility, achievements, business performance, company operations, improvement in business scale or quality, and other relevant facts and circumstances. The company should consider whether paying a large economic compensation may have a serious adverse effect on its normal business activities when setting the Golden Parachute clause. The company should fully protect the interests of small and medium investors, control public opinion, and avoid moral risks.

5. Conclusion

At present, China lacks sufficient experience in mergers and acquisitions and judicial decision-making, so blindly copying the legal clause of the Golden Parachute from the United States would create high decision-making costs if China were to enact specialized laws and regulations related to anti-takeover measures such as the Golden Parachute clause. Chinese companies should extract the essence and avoid the dregs when setting up their corporate bylaws, combined with the practical situations of Chinese mergers and acquisitions, to avoid the difficulties faced by the Golden Parachute

clause in practice. Efforts should be made at the institutional, legal, and moral levels to expand the possibility of the application of the Golden Parachute clause in China.

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