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法学论坛

股东协议与公司章程若干法律问题比较研究

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摘要:

公司成立前发起人签订的设立公司股东协议具有合同的法律性质,公司成立后认缴注册资本的股东签署的公司章程具有法律规范的性质。股东协议拘束缔约人,公司章程拘束签署股东和公司以及未曾签署的董事、监事等。公司成立之后,股东协议并不被公司章程取代,在没有被修改、变更、解除之前,股东协议的效力并不自然终止。在个案诉讼中,股东协议与公司章程具有不同的证明对象,不存在以哪个为准的问题。

关键词: 股东协议 公司章程 规范说 证明对象

A Comparative Research on Some Legal Issues of Shareholders Agreement and Articles of Incorporation

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Abstract:

The shareholder agreements signed by promoters before the establishment of incorporation are preincorporation contracts which only bind promoters, while articles of incorporation signed by shareholders who have paid the registered capital after the establishment work the same as legal norm, binding the company, signed shareholders, the unsigned boards and supervisors, etc. When a company is formed and registered under law, shareholder agreements will not be replaced by articles of incorporation, and their effectiveness will not certainly cease without amendment, change or termination of shareholder agreements. In a case of lawsuit, there does not exist a final confirmation between shareholder agreements and articles of incorporation, depending on different objects of proof.

Keywords: shareholder agreements articles of incorporation normative theory object of proof

收稿日期 2011-04-14 修回日期 网络版发布日期

DOI:

基金项目:

教育部研究基地重点研究课题资助项目(07JJD820170)

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7-217-676

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Article by Chen, J. R.

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