# SPC Guiding Case No. 10: Li Jianjun v. Shanghai Jiadongli Environmental Protection Technology Co., Ltd. (Company Resolution Revocation Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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## Keywords

Civil / revocation of company resolutions / scope of judicial review

## Holding

In adjudicating a dispute over the revocation of a company resolution, the people's court shall review: whether the convening procedure and voting method violate laws, administrative regulations, or the company's articles of association, and whether the content of the resolution violates the company's articles of association. Provided the above provisions are not violated, whether the facts on which the resolution dismissing the general manager is based are true and whether the reasons are established do not fall within the scope of judicial review.

## Basic Facts

The plaintiff, Li Jianjun, alleged that the facts and reasons on which the defendant, Shanghai Jiadongli Environmental Protection Technology Co., Ltd. ("Jiadongli Company"), based its resolution removing him from the post of general manager were not established, and that the board of directors' convening procedure, voting method, and resolution content all violated the provisions of the Company Law, and requested that the court revoke the board resolution in accordance with the law.

The defendant, Jiadongli Company, argued that the board of directors' convening procedure, voting method, and resolution content all complied with the provisions of law and the articles of association, and therefore the board resolution was valid.

Upon trial, the court found that the plaintiff Li Jianjun was a shareholder of the defendant Jiadongli Company and served as its general manager. The equity structure of Jiadongli Company was: Ge Yongle held 40%, Li Jianjun held 46%, and Wang Taisheng held 14%. The three shareholders jointly formed the board of directors, with Ge Yongle serving as chairman and the other two as directors. The articles of association provided that the board of directors exercised powers including appointing or dismissing the company's manager; that a board meeting was valid only if attended by more than two-thirds of the directors; and that a decision on a matter under discussion was valid only if voted through by directors representing more than two-thirds of all shareholders. On July 18, 2009, Ge Yongle, the chairman of Jiadongli Company, convened and presided over a board meeting attended by all three directors. The meeting formed a resolution stating: "In view of the fact that the general manager Li Jianjun, without the approval of the board of directors, privately used company funds to speculate in stocks in the secondary market, causing huge losses, his post of general manager is hereby removed, effective immediately." The resolution was signed by Ge Yongle, Wang Taisheng, and the supervisor, but Li Jianjun did not sign the resolution.

## Judgment

On February 5, 2010, the Huangpu District People's Court of Shanghai rendered Civil Judgment (2009) Huang Min Er (Shang) Chu Zi No. 4569, revoking the board resolution formed by the defendant Jiadongli Company on July 18, 2009. After the judgment was pronounced, Jiadongli Company appealed. On June 4,



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2010, the Shanghai No. 2 Intermediate People's Court rendered Civil Judgment (2010) Hu Er Zhong Min Si (Shang) Zhong Zi No. 436: (1) revoking Civil Judgment (2009) Huang Min Er (Shang) Chu Zi No. 4569 of the Huangpu District People's Court of Shanghai; and (2) dismissing Li Jianjun's claims.

## Reasoning

The effective judgment of the court held as follows. Under Article 22, paragraph 2 of the Company Law of the People's Republic of China, the grounds for revocation of a board resolution include: (1) the convening procedure violates laws, administrative regulations, or the articles of association; (2) the voting method violates laws, administrative regulations, or the articles of association; and (3) the content of the resolution violates the articles of association. As to the convening procedure, the board meeting of Jiadongli Company held on July 18, 2009 was convened by the chairman Ge Yongle, and all three directors attended the board meeting; the convening procedure of the board meeting did not violate the provisions of laws, administrative regulations, or the articles of association. As to the voting method, under the articles of association of Jiadongli Company, a decision on a matter under discussion was valid only if voted through by directors representing more than two-thirds of all shareholders, and the above board resolution was voted through by two of the three shareholders (who also served as directors); therefore, the voting method did not violate the provisions of laws, administrative regulations, or the articles of association. As to the content of the resolution, the articles of association of Jiadongli Company provided that the board of directors had the authority to dismiss the company's manager. The statement in the board resolution that "the general manager Li Jianjun, without the approval of the board of directors, privately used company funds to speculate in stocks in the secondary market, causing huge losses" was merely the reason for the board's dismissal of Li Jianjun from the post of general manager, while the content of the resolution dismissing Li Jianjun from the post of general manager itself did not violate the articles of association.

If the reasons for the board's dismissal of Li Jianjun from the post of general manager did not exist, this would not lead to revocation of the board resolution. First, the Company Law respects corporate autonomy, and internal legal relationships of a company are in principle regulated by the company's autonomy mechanism, with judicial organs in principle not intervening in the company's internal affairs. Second, the articles of association of Jiadongli Company did not impose restrictions on the board's authority to dismiss the company's manager and did not require that the board's dismissal of the manager must have a certain reason; the content of the articles of association did not violate the mandatory provisions of the Company Law and should be found valid. Therefore, the board of directors of Jiadongli Company could exercise the authority conferred by the articles of association to make the decision to dismiss the company's manager. Accordingly, the court should respect corporate autonomy and had no need to review whether the reasons for Jiadongli Company's board dismissing the manager existed, that is, no need to review whether the facts on which the resolution was based were true and whether the reasons were established. In summary, the plaintiff Li Jianjun's claim to revoke the board resolution could not be established and was dismissed in accordance with the law.

## Relevant Legal Provisions

Article 22, paragraph 2 of the Company Law of the People's Republic of China.

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