Poison Pill Plans: Research on Legal Regulation, Market Effects, and Localization Paths

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ABSTRACT

As a key defense mechanism against hostile takeovers in mature capital markets, poison pill plans have significantly influenced the market for corporate control. This paper reviews the theoretical foundations, international regulatory practice, and governance implications of such plans. Against the backdrop of China's registration-based reform and increasing ownership dispersion among listed companies, it examines the growing demand for effective anti-takeover mechanisms and the limitations of existing tools. Drawing on international experience and representative cases, the study explores the feasibility and localization of this approach in China. The findings indicate that China has both the practical need and institutional basis for introducing poison pill plans. A localized framework should be established through improved legislation, stronger supervision, enhanced corporate governance, and effective risk-control mechanisms. Such a framework can balance takeover efficiency with investor protection while supporting the modernization of corporate governance.

Keywords: Poison Pill Plan; Hostile Takeover; Anti-Takeover; Corporate Governance; Localization

1. INTRODUCTION

1.1 Background and Significance

With the integration of global capital markets and the advancement of China's registration-based reform, ownership dispersion among listed companies has increased, raising the risk of hostile takeovers. Hostile TOB may make better use of resources in market rules, but short-term money may undermine the long-term strategy of enterprises and the interests of minority shareholders.

Since the advent of poison pill plan in 1982, especially in the mature capital market, such as United States, it has become one of the most commonly used anti-theft mechanisms. Poisson Pillplan increases the acquisition cost by diluting the stock, thus increasing the ability to negotiate with companies that may be acquired and the time to consider the acquisition proposal.

In China, events such as the Sina-Shanda takeover war in 2005 and the Vanke stock dispute in 2015 happened. It was obvious that effective anti-takeover tools were needed, but it was found that the system support was not enough. The existing defense policies are often high in cost, weak in effectiveness and high in risk of violating rules. Therefore, it is very important to know the theory and practice of poison pill plan, which is suitable for China, to improve the anti-theft measures in China, to protect the long-term value of enterprises and to maintain the stability of the capital market.

1.2 Literature Review

The research of poison pill plan in developed countries has a perfect framework including legal, economic and governance viewpoints. On the legal side, U.S.' s Delaware case law has formulated influential judicial review standards, especially Unocal standards [1]. In the aspect of economic, the research has evolved from managerial entrenchment hypothesis to shareholder value maximization hypothesis [2]. Recent research shows that poison pill plan may improve take over premium [3]. The research of governance mainly focuses on the structure of poison pill plan and board, and the relationship between institutional investor [4][5].

China's research started late, focusing on case study and institutional analysis. In the initial research, we investigated the case of Sina's poison pill and the applicability of offshore structure [6]. Recent research explores the topic of legal through a case like Vanke [1]. However, there is little empirical evidence, and opinions on the best design of poison pill system suitable for local needs are not unified. Therefore, there are not many useful suggestions in the actual use of the current research.

1.3 Research Design

This paper combines the examination of whether it is in accordance with the law, the comparison of the study of countries and countries, and the examination of actual cases. In line with the framework of "Theoretical delicacies - World experience - Challenges in China - Creating ways of doing things tailored to China," we will first examine the way poison pill plans are conceived and how they operate. Next, we compare the ways of making the rules of the main countries and regions, analyze the current environment of China's anti-takeover, and find the obstacles when doing it actually. Finally, the paper proposes a regionally tailored framework of rules in line with Chinese laws and market conditions.

2. THEORETICAL FRAMEWORK

2.1 Concept and Types

Poison pill plan (formally called shareholder rights plan) is a protection mechanism to prevent hostile takeover. A major feature is the unfair distribution of power. While protecting other shareholders, it increases the cost to hostile acquirers [7]. Created by American lawyer Martin Lipton in 1982 [8], in the case of Moran v. Household International in 1985, if the court in Delaware admits [9], poison pill is a growing capital market and will soon become.

Poisson pillplan can be roughly divided into traditional and special.

The most common traditional mechanism is flip-in poison pill. If the acquirer's shareholding exceeds the prescribed proportion, the existing shareholders can buy new shares at a cheap price, so that the acquirer's shareholding ratio will become lower [7]. Another traditional form is flip-over poison pill. After the merger, shareholders can buy the shares of the acquired company at a low price, which has the effect of preventing the two-stage acquisition [7].

The special forms are dead-hand poison pill, no-hand poison pill and NOL poison pill. The first two are almost no longer recognized because of the strength of management [10][11]. In contrast, NOL poison pill is made to protect the assets lost by taxes, and the proportion of launching is always low [12].

This paper will focus on plug-ins. Because this has the most direct relationship with the dilution of stocks and anti-takeover.

2.2 Mechanism and Debates

The important role of poison pill plan is to run the previously decided mechanism for increasing stocks after the hostile takeover reaches a specified proportion (usually 10% to 20%) [7]. In this way, the money needed for the acquisition will increase substantially, and those who want to acquire can only discuss with the target company or give up the transaction. Therefore, poison pill plan not only has the function of preventing harassment, but also is beneficial to negotiation.

The great discussion around poison pill plan centers on two opposite ideas.

shareholder value maximization hypothesis holds that poison pill plan strengthens the negotiation position of the board of directors, prevents too cheap acquisitions, increases the money available at the time of acquisition, and ultimately benefits shareholders [2][3]. According to this idea, this mechanism helps the company to have a dialogue from a strong position and protect the long-term value.

On the contrary, according to the viewpoint of managerial entrenchment hypothesis, poison pill plan will weaken the role of market rules to protect current operators from being fired [13]. Critics say that operators often use poison pill to protect their position, instead of maximizing shareholders' money, which will reduce the efficiency of governance.

The contradiction between these two ideas has made the legal rules of poison pill plan in various countries and regions, and it has always been the central topic in today's governance discussion [1][9].

2.3 International Practice

The international rules of poison pill plan can be roughly divided into two modes. Both aim to balance the authority of board and the rights of shareholder.

The model of United States is a board-centered thinking method. Although poison pill plan is considered to be within the scope of the board's authority, it will be strictly inspected by the court. In the trial review standards formulated in Unocal, Revlon, Unitrin and other cases, supervisors must prove that "there is a threat of acquisition" and "the defensive measures are balanced" [14]. This model provides great flexibility for board, and at the same time imposes legal restrictions on excessive defense [10][11]. Recent actions further limit the long-term persistence of poison pill plan [15].

On the other hand, the models of European Union and United Kingdom attach importance to the rights of shareholder. If someone proposes a takeover, board must be basically neutral, and shareholder's approval is needed to take major defensive actions [16][17]. This method gives priority to shareholder's judgment in the case of acquisition and limits the free judgment of management.

Although these models are different, they also have some common principles. Attach importance to necessity, balance, transparency, and the limitation of extreme defensive measures. These principles will provide useful clues for making poison pill plan conform to domestic practices in China in the future.

3. NECESSITY IN CHINA

3.1 Hostile Takeover Trends

The registration-based reform in China has accelerated the development of market-oriented and increased the number of holders of listed companies. Therefore, hostile takeovers are becoming more and more common and complex [1]. The acquirer includes not only the original industrial investors, but also private equity funds and asset management institutions, and the acquisition method becomes more difficult.

At the same time, the acquisition target focuses on companies with many owners, low market capitalization and high-quality assets, especially technology companies. The acquisition method is not only to buy stocks on the secondary market, but also to increase the agreement transfers and voting-rights protocol [18]. Due to these changes, the acquisition of hostile has become more difficult to see and it is more difficult for the company to respond as soon as possible. Therefore, everyone feels the need for a more effective anti-takeover mechanism.

3.2 Limitations of Current Tools

At present, China's listed companies use traditional guarding methods such as white knight strategies, scorched-earth tactics, charter amendments and private placements [1][19]. However, these methods have great weaknesses.

White knight strategies depends on whether external investor can join immediately, and negotiations are often very time-consuming. Scorched-earth tactics may temporarily protect permissions, but it will also destroy the value of the company. The compliance method of using charter is not only limited by rules, but also has little flexibility [19]. Private placements need complicated licensing procedures, which can't be dealt with immediately like poison pill plans.

As a whole, the structure of anti-takeover in China is very fragmented, which needs a lot of money. A complete framework that can cope with more and more complex hostile takeover attempts and conforms to market practices is not enough.

3.3 Rationale for Introduction

Because of these difficulties, it is becoming more and more important to introduce poison pill plan. China's legal framework neither explicitly recognizes nor prohibits poison pill plan. So that's in the regular gray area. On the other hand, with the increase of hostile takeover, the existing protection methods are insufficient, so a more flexible and effective structure is needed.

By increasing the money needed for acquisition and preventing arbitrary acquisition, Poisson Pillplan has increased its negotiation ability with the company. More importantly, it may protect the company's long-term strategy and the value of shareholder from short-term speculative money. Under the guidance of registration-based reform, and in the case of increasingly dispersed shareholders, the correct poison pill mechanism has been formulated, which is helpful to consolidate the company's management mode and stabilize the market. However, in practice, in order to balance the acquisition efficiency, the protection of shareholder and the responsibility of operators, a well-thought-out framework is needed.

4. DILEMMA AND CASES

4.1 Legal and Practical Barriers

The poison pill plan has some advantages, but there are some problems in China.

First of all, the asymmetric mechanism of the poison pill plan may not conform to the principle of equality of shareholders stipulated in China's company law [1][20]. Secondly, the current licensing and registration rules for listing are inconsistent with the immediate implementation required by poison pill mechanism [21].

In addition, regulators are still cautious about the anti-takeover clause in the company's terms, which limits the company's ability to establish a poison pill mechanism [19]. In addition, China lacks clear judicial review standards and effective remedies for minority shareholders in acquisition disputes [1]. The uncertainty of the law increases the risk of governance conflict and abuse by operators.

4.2 Case Analysis

4.2.1 Offshore Success Cases

The dispute between Sina and Shanda in 2005 was the most influential one among the poison pill incidents involving China company. After Shanda increased its shareholding to 19.5, Sina adopted the flip-in poison pill. This was launched when Shanda's shareholding reached 20 [22]. The threat (the value of the stock will decrease after dilution) stopped Shanda and successfully stopped the attempt of embezzlement.

The incident shows that the poison pill plan can run well in the offshore company mechanism supported by mature legal mechanisms. In addition, it is clear that it is very important to be recognized by law and be able to flexibly decide the mode of operation in order to protect yourself from encroachment.

In 2021, Luckin Coffee used the offshore mechanism to adopt the poison pill plan, and a similar example appeared [23]. Combined with these events, it can be seen that poison pill's mechanism can improve the negotiation ability in hijacking disputes and make it easier to act strategically.

4.2.2 Domestic Constrained Cases

Vanke's equity dispute in 2015-2017 shows the challenges faced by domestic listed companies [1]. During the acquisition dispute, Vanke tried to resist the acquisition trend by modifying the rules of third-party distribution and corporate governance. However, due to the uncertainty of the law, the intervention of the regulatory authorities and the opposition of shareholders, these means finally failed.

Vanke's incident revealed the great weakness of China's anti-takeover mechanism. Because the poison pill plan has no clear legal basis, enterprises have to rely on indirect defense means which are ineffective and often controversial [1][19]. The dispute also shows that the uncertainty of supervision intensifies the governance conflict and threatens the stability of enterprises.

Comparing the success of overseas cases with the constraints faced by domestic enterprises, we can see that China needs a standardized and legally permitted poison pill mechanism.

5. GOVERNANCE INSIGHTS

5.1 Empirical Findings

Through a large sample empirical study of American listed companies, it is found that poison pill plan has both short-term and long-term effects on shareholders' wealth. In the short term, the market tends to react negatively because of concerns about whether the management is too persistent. On average, companies have a statistically significant negative abnormal return around the release date [13].

However, the long-term results are better. Companies protected by poison pill plan often get higher acquisition premium and better negotiation results in acquisition negotiations [2]. Subsequent research found that poison pill would lead to the increase of bid amount or final premium without reducing the acquisition success rate [3]. These results generally support the hypothesis of maximizing shareholder value, indicating that the short-term market reaction can better reflect the anxiety about governance than the mechanism itself.

5.2 Core Governance Controversies

The main governance discussion is about the protection of manager and the balance of interests of shareholder. Critics say that with poison pill plan, managers can protect their position and avoid market rules. On the other hand, those in favor say it is important to improve negotiation ability and protect long-term value.

Mature capital market deals with these concerns through several mechanisms. United States limited excessive defense in judicial review [1]. On the other hand, the European system pays more attention to the approval of shareholder [16]. Other security measures include sunset clause, the strengthening of disclosure rules, and the monitoring of shareholder advisory institution [5][15]. These measures help to protect minority shareholder or reduce the risk of abuse.

By limiting extreme defense methods and seeking to perform their duties, mature markets try to balance the efficiency of takeover with the long-term value creation of the company.

5.3 Implications for China

International experience will give us some important lessons for China.

First of all, any localized poison pill mechanism should maximize the advantages of governance while controlling managerial entrenchment [13]. Compliance with rules should prevent abuse, at the same time improve the negotiation ability of enterprises and obtain higher takeover premium income [2].

Next, China should establish a governance mechanism that combines shareholder decision-making, board-led defense and judicial monitoring. Shareholder should continue to have the final authority, and the board should be given reasonable defense authority when taking over.

Third, we must better protect minority shareholder [16]. By strengthening the disclosure rules, going through the classfied voting procedures and formulating an easy-to-use relief mechanism, the risk of collusion between management and controlling shareholder can be reduced and the legitimacy of governance can be improved.

6. INSTITUTIONAL DESIGN & PROPOSALS

6.1 Basic Principles

Considering the situation of China’s capital market and overseas experience, the localization of poison pill plan needs to follow four important principles: necessity, balance, shareholder protection and transparency.

The first principle of necessity is that poison pill plan should be used only when there is real danger of hostile takeover. Let it become a common tool for the company to operate, and don’t disturb the market of corporate control unnecessarily.

The second principle of balance is that the method of protection should be in line with the actual danger. Extreme mechanisms such as dead-hand poison pill cannot be allowed. This can balance the efficiency of takeover and the protection of the company.

Third, we should adopt a shareholder-centered approach. The introduction, change and dissolution of poison pill plan need the approval of more than a certain number of shareholders. In addition, interested parties must decline to vote. According to this rule, the board of directors mainly has the right to suggest and implement, but has no right to decide freely.

Finally, the principle of transparency should be strengthened. The company must disclose all starting conditions, working mechanism and possible results to reduce information unfairness and protect shareholders’ right to know.

6.2 Institutional Framework

To establish the local system of poison pill, it is necessary to carry out cooperative reform on the level of legal regulation and corporate governance.

On the legal level, China should revise Company Law and relevant securities rules, and clarify the legal position of the poison pill project. In the relevant provisions, we should decide their legal nature, permissible forms and scope of application, and at the same time deal with the potential conflict with the principle of shareholder equality.

In addition, in the Measures for the Administration of Acquisitions of Listed Companies, special provisions should be added to restrict the poison pill plan. These provisions clearly stipulate the procedures for launching, the repayment mechanism and the reasonable trigger threshold, which can usually be in the range of 10% to 20% [7]. China can also refer to the U.S. Unocal standard, formulate local judicial review rules, and require the board of directors to prove that defensive behavior is reasonable and necessary [14].

At the regulatory level, stock exchange and regulators should formulate detailed implementation guidelines, including disclosure requirements, voting procedures, audit standards and rapid approval mechanisms. On-site supervision should be strengthened to make it abide by the rules and prevent misuse.

Regulatory rules should also require that poison pill plans contain mandatory sunset clauses with limited validity periods with renewal subject to fresh shareholder approval, and that classified voting procedures and related-party abstention mechanisms be adopted to ensure independent decision-making by non-related shareholders.

At the corporate governance level, listed companies should improve internal governance structures and establish clear anti-takeover procedures within their corporate charters. Independent directors and supervisory boards should actively review the necessity, proportionality, and fairness of poison pill plans throughout the implementation process.

A comprehensive risk-control system should also be established. Poison pill plans used solely for managerial self-protection should be treated as breaches of fiduciary duty. Minority shareholders should have access to effective remedies, while poison pill plans should be coordinated with broader governance reforms such as board optimization and incentive mechanisms.

6.3 Policy Recommendations

The framework outlined above cannot be established all at once; it should be built up in stages, moving from regulatory experimentation to formal legislation and eventually to judicial consolidation.

As a first step, stock exchanges should issue pilot guidelines specifying disclosure requirements, voting procedures, and review standards. Participation could be limited to companies with dispersed ownership and real takeover exposure, so that experience accumulates at limited risk. Regulators should monitor these cases and refine the rules in response to emerging problems such as disputes over trigger thresholds.

Building on pilot experience, the rules should then be written into law. The Measures for the Administration of Acquisitions of Listed Companies should be amended to set out the permissible forms of poison pill plans, their trigger thresholds, the shareholder approval required, and mandatory sunset clauses, while the Company Law should clarify how such plans fit with the principle of shareholder equality.

In the longer term, courts should develop localized review standards drawing on the U.S. Unocal doctrine, so that boards must show their defenses are proportionate to the actual threat.

Throughout this process, a periodic review mechanism should keep the system aligned with market conditions, and localization should go hand in hand with wider governance reforms, ensuring that poison pill plans protect shareholders rather than entrench managers.

7. CONCLUSION

7.1 Research Conclusions

This paper has examined the theoretical foundations, international practice, governance implications, and localization prospects of poison pill plans.

First, poison pill plans are a double-edged sword. When properly regulated, they can increase takeover premiums, strengthen bargaining power, and protect long-term corporate value. However, they may also create risks of managerial entrenchment and potential harm to minority shareholders. Their effectiveness therefore depends on an appropriate legal and governance framework.

Second, China already possesses both the practical demand and institutional basis for introducing poison pill plans. After the reform of the registration system, the number of shareholders has been increasing, and the danger of takeover has become higher. On the other hand, I found that the existing anti-takeover tools are limited and need more effective protection methods. The recent legal reform and the accumulated experience abroad tell us that this can be formulated according to our own country.

Third, in order to suit our own country, we must balance the interests of all stakeholders. Based on international experience, China should establish a mechanism based on “need”, “balance”, “protection of shareholders” and “transparency”. Lawmakers, supervisors and listed companies should work together to help each other-Lawmakers have made clear the legal position of poison pill plan and the standards of trial control, supervisors have given detailed implementation and publicity rules, and companies have given transparent anti-theft measures. On this basis, a legally perfect, practical, well-supervised poison pill system suitable for their own country can be established.

7.2 Future Research

With the continuous development of China’s capital market, the research on poison pill plans becomes more and more important.

Future research may focus on three areas. First, if there are examples of actual use in China, empirical research should be carried out to investigate the impact on market and governance. Second, scholars will investigate how poison pill plans can be used in new fields such as SPACs, digital assets and ESG-related investments. Third, explore how the poison pill rules of different countries and regions influence each other in cross-border mergers and acquisitions.

The ultimate value of poison pill plans is not to prevent acquisitions, but to create a fair, transparent and efficient market for the company’s control. Careful consideration of the system can be a good mechanism to protect the long-term value of the company while balancing the interests of shareholders, operators and other stakeholders.

REFERENCES

[1] Huang, R., Chen, J. (2019) The rise of hostile takeovers and defensive measures in China: Comparative and empirical perspectives. European Business Organization Law Review, 20(2): 363-398.

[2] Comment, R., Schwert, G.W. (1995) Poison or placebo? Evidence on the deterrence and wealth effects of modern antitakeover measures. Journal of Financial Economics, 39(1): 3-43.

[3] Heron, R., Lie, E. (2015) The effect of poison pill adoptions and court rulings on firm entrenchment. Journal of Corporate Finance, 35: 286–296.

[4] Brickley, J.A., Coles, J.L., Terry, R.L. (1994) Outside directors and the adoption of poison pills. Journal of Financial Economics, 35(3): 371-390.

[5] Giné, M., Moussawi, R., Sedunov, J. (2017) Governance mechanisms and effective activism: Evidence from shareholder proposals on poison pills. Journal of Empirical Finance, 43: 185-202.

[6] Tang, S. (2008) A study on the wealth effect of poison pill plans in hostile takeovers: A case study of Sina (Master’s thesis, in Chinese). Xiamen University, Xiamen.

[7] Barry, J.M., Hatfield, J.W. (2012) Pills and partisans: Understanding takeover defenses. University of Pennsylvania Law Review, 160(3): 633-713.

[8] Lipton M. (1979) Takeover Bids in the Target’s Boardroom. The Business Lawyer, 35: 101-134.

[9] Moran v. Household International, Inc., 500 A.2d 1346 (Del. 1985). https://law.justia.com/cases/delaware/supreme-court/1985/500-a-2d-1346-1.html

[10] Carmody v. Toll Brothers, Inc., 723 A.2d 1180 (Del. Ch. 1998). https://law.justia.com/cases/delaware/court-of-chancery/1998/15983-3.html

[11] Quickturn Design Systems, Inc. v. Shapiro, 721 A.2d 1281 (Del. 1998). https://law.justia.com/cases/delaware/supreme-court/1998/511-1998-3.html

[12] Fan, Z. (2021) Analysis of the First Triggered Case of Modern Poison Pill Plans: Enlightenment from Versata v. Selectica (in Chinese). Financial Law Series (Jinrong Fayuan), 107:163-183.

[13] Malatesta, P.H., Walkling, R.A. (1988). Poison pill securities: Stockholder wealth, profitability, and ownership structure. Journal of Financial Economics, 20: 347–376.

[14] Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 949 (Del. 1985). https://law.justia.com/cases/delaware/supreme-court/1985/493-a-2d-946-9.html

[15] Eldar, O., Wittry, M. (2020) The return of poison pills: A first look at “crisis” pills. Harvard Law School Forum on Corporate Governance, 6 May 2020. https://corpgov.law.harvard.edu/2020/05/06/the-return-of-poison-pills-a-first-look-at-crisis-pills/

[16] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ L 142, 30.4.2004, pp. 12-23.

[17] The Panel on Takeovers and Mergers. The City Code on Takeovers and Mergers, Rule 21.1 (Restrictions o n frustrating action). https://opencasebook.org/casebooks/12335-corporations/resources/8.9.1-the-city-code-on-takeovers-and-mergers-uk/
[18] Zhang, P., Yao, J., Guo, X., Ni, A. (2023) Anti-takeover measures for listed companies and key points in their application (in Chinese). JunHe Law Offices, 16 May 2023. https://www.junhe.com/legal-updates/2158
[19] Chen, K., Wan, Q., Yang, G., Kang, Y. (2023) Anti-takeover provisions in corporate charters: Value creation or private interest grabbing? (in Chinese) Journal of Management Sciences in China (Guanlikexue Xuebao), 26(2): 104-129.
[20] Standing Committee of the National People's Congress. (2023) Company Law of the People's Republic of China (as revised on 29 December 2023, effective 1 July 2024).
[21] CSRC. (2023) Administrative Measures for the Registration of Securities Issuance by Listed Companies (Order No. 206, 2023, as amended by CSRC Order No. 227, 27 March 2025).
[22] Sina Corporation. (2005) Sina Corporation adopts shareholder rights plan. Press release, 22 February 2005, Exhibit 99.1 to SEC Form 8-K. https://www.sec.gov/Archives/edgar/data/1094005/000095013405003717/f06142exv99w1.htm
[23] Luckin Coffee Inc. (2021) Luckin Coffee adopts shareholder rights plan. Press release, 14 October 2021, Exhibit 99.1 to SEC Form 6-K. https://www.sec.gov/Archives/edgar/data/1767582/000110465921126377/tm2129926d3_ex99-1.htm