

Journal of Law & Commerce

Vol. 43, No. 1 (2024) • ISSN: 2164-7984 (online)
DOI 10.5195/jlc.2024.297 • <http://jlc.law.pitt.edu>

CORPORATE GOVERNANCE IN CHINA: SHAREHOLDER PRIMACY
UNDER THE CHINESE COMMUNIST PARTY'S INFLUENCE

Jie Zeng



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.

Pitt | Open
Library
Publishing

This journal is published by [Pitt Open Library Publishing](http://pittopenlibrarypublishing.com).

CORPORATE GOVERNANCE IN CHINA: SHAREHOLDER PRIMACY
UNDER THE CHINESE COMMUNIST PARTY'S INFLUENCE

*Jie Zeng**

ABSTRACT

China, as a nominally socialist country, has a shareholder-primacy corporate governance model. Chinese company law grants shareholders strong rights, and Chinese companies have concentrated shareholding structures. As a result, shareholders can effectively dominate boards of directors and control companies. However, Chinese shareholders and companies are ultimately subject to the influence of the Chinese Communist Party (CCP). By drawing on empirical data, this Article argues that Chinese corporate governance is *sui generis*. Shareholder primacy and party influence merge in a party-centered governance model in State Owned Enterprises with party organizations (the CCP's grassroots branches) dominating major decision-making. In private companies, shareholder primacy is the norm, and stakeholders are vulnerable to management's exploitation and opportunism. The CCP sometimes intervenes to protect stakeholders, but sometimes sides with companies. Its stance depends on its policy goals, which might vary from case to case and from time to time.

* Lecturer, Essex Law School, University of Essex, United Kingdom.

TABLE OF CONTENTS

Introduction.....	37
I. Shareholder Primacy.....	45
A. Law in Books: Strong Shareholder Rights	45
B. Concentrated Shareholding Structures	51
C. Weak Labor Protection.....	54
II. Party Influence in Corporate Governance	59
A. SOEs: The Party-Centric Governance Structure	59
B. Party Building in Private Companies	65
C. The Party's Indirect Influence in the Private Sector.....	67
1. Laws and Regulations	68
2. The Administration	72
3. The Judiciary	75
D. The CCP's Intervention in Stakeholder Protection	77
III. Implications.....	81
Conclusion	85

INTRODUCTION

It may be surprising to some people that China, as a nominally socialist country, has a shareholder-primacy corporate governance model. Moreover, this model goes even further than that of the United Kingdom, which is widely perceived as the most shareholder-centric jurisdiction.¹ This Article proposes that Chinese corporate governance is a shareholder primacy model under the influence of the Chinese Communist Party (CCP).² Specifically, Chinese company law grants shareholders strong rights, and shareholding structures of Chinese companies are concentrated. As a result, shareholders of a company can effectively dominate the board of directors and control the company. However, both Chinese shareholders and companies are ultimately subject to the CCP's influence, whose priorities may vary from case to case. China's nuanced corporate governance system is a new type and differs from all other clusters, including the Anglo-American, Continental European, and Japanese, and does not fit neatly into existing theoretical frameworks, such as shareholder value, stakeholder value, managerialism, or sustainability.³

Shareholder primacy and the CCP's political influence exist in State-Owned Enterprises ("SOEs")⁴ and private companies in different ways.

¹ Paul L. Davies, *Shareholders in the United Kingdom* (Eur. Corp. Governance Inst., Working Paper No. 280, 2015). For a comprehensive discussion of the shareholder-centric foundation of UK corporate governance, see BUSINESS, INNOVATION AND SKILLS COMMITTEE, THE KAY REVIEW OF U.K. EQUITY MARKETS AND LONG-TERM DECISION MAKING, 2013–14, HC 603.

² For research on the CCP, see YASHENG HUANG, THE RISE AND FALL OF THE EAST: HOW EXAMS, AUTOCRACY, STABILITY, AND TECHNOLOGY BROUGHT CHINA SUCCESS, AND WHY THEY MIGHT LEAD TO ITS DECLINE (2023); DAVID DAOKUI LI, CHINA'S WORLD VIEW DEMYSTIFYING CHINA TO PREVENT GLOBAL CONFLICT (2024); YONGNIAN ZHENG, THE CHINESE COMMUNIST PARTY AS ORGANIZATIONAL EMPEROR: CULTURE, REPRODUCTION, AND TRANSFORMATION (2010).

³ For discussion of corporate governance models and theories, see BEATE SJAŦJELL & CHRISTOPHER M. BRUNER, THE CAMBRIDGE HANDBOOK OF CORPORATE LAW, CORPORATE GOVERNANCE AND SUSTAINABILITY (1st ed. 2020).

⁴ There is no unified definition of SOEs under Chinese law. Different laws and regulations give their own, with some wider and others narrower in scope. This Article adopts one of the latest and most comprehensive definitions of SOEs provided by art. 4 of *Qiye Guoyou Zichan Jiaoyi Jiandu Guanli Banfa* (企业国有资产交易监督管理办法) [Measures for the Supervision and Administration of the Transactions of State-Owned Assets of Enterprises] (promulgated by State-owned Assets Supervision & Admin. Comm'n of the State Council, effective June 24, 2016). According to this definition, SOEs include enterprises where the state (through various institutions such as government departments, government institutions, or public institutions) directly or indirectly holds a total of more than 50% of shares or holds less than 50% of shares, but, as the plurality shareholder, is able to actually control the decisions of the enterprise's board

Shareholder primacy and party influence merge in a party-centered governance model in SOEs. The CCP effectively leads and controls SOEs based on the state's controlling shareholder rights (through its control over the Chinese government) and its political supremacy. By monopolizing senior personnel selection and controlling major decision-making, the CCP influences SOEs' daily operations and big picture development strategies. From the early 2000s, the CCP started to shift the control over SOEs from the administrative system to the party system, with party organizations (grassroots branches of the CCP)⁵ as the de facto highest decision-making body, and this transition was largely completed by 2018.⁶ The latest amendment of *Company Law*⁷ sanctioned party organizations' leadership role in SOEs at the level of national law for the first time. As a result, SOEs are an effective tool of party policy, and profits are frequently not their top priority.⁸ This arrangement has both advantages and disadvantages for Chinese society. On the one hand, SOEs' autonomy is restricted, and their resources may be deployed to achieve policy goals. On the other hand, SOEs may join forces to contribute to public welfare as part of the CCP's effort to gain popularity and maintain legitimacy.

In private companies, shareholder primacy is the norm, but the CCP sometimes intervenes for political reasons. Private shareholders of a company can effectively dominate the board of directors and management thanks to strong shareholder rights and concentrated shareholding structures. The board and management can easily dominate employees due to weak stakeholder rights and ineffective labor protection. For most companies, especially small- and mid-sized enterprises, the CCP often turns a blind eye

of directors through a shareholders' agreement, articles of association, or any other scheme of arrangement.

⁵ According to *Zhongguo Gongchandang Zhangcheng* (中国共产党章程) [Constitution of the Chinese Communist Party] (promulgated by CCP Nat'l Cong., effective Oct. 22, 2022), art. 30, if there are three or more full party members in any enterprise, a grassroots party organization of the CCP shall be formed. Nowadays, all SOEs have established party organizations. *See infra* Section 2.

⁶ *See* Wendy Leutert & Sarah Eaton, *Deepening Not Departure: Xi Jinping's Governance of China's State-owned Economy*, 248 *THE CHINA Q.* 200, 207–10 (2021).

⁷ *Zhonghua Renmin Gongheguo Gongsifa* (中华人民共和国公司法) [Company Law of the People's Republic of China] (promulgated by Standing Comm. of the Nat'l's People's Cong., effective July 1, 2024) [hereinafter *Company Law*] art. 170.

⁸ Ronald J. Gilson & Curtis J. Milhaupt, *Shifting Influences on Corporate Governance: Capital Market Completeness and Policy Channeling*, 12 *HARV. BUS. L. REV.* 1, 11 (2022).

to their opportunism and exploitation of employees.⁹ However, the CCP may intervene to protect employees and other stakeholders if the exploitation poses political risks or exert influence on private companies to advance its policy goals. As scholars have pointed out, equity ownership by the Chinese state is not a reliable measure of its ability to influence companies to contribute to policy goals.¹⁰ As the supreme authority in China, the CCP controls the legislature, judiciary, and administration, which can coordinate to persuade or pressure private shareholders and management into considering stakeholder interests and private companies into contributing to policy goals. That is to say, the CCP can effectively mobilize private shareholders and companies to an extent that would be very difficult to achieve in Western countries.

Between SOEs and private companies, there are mixed-ownership companies, where the state is a non-controlling shareholder. There is great diversity in the roles played by party organizations in such companies, reflecting the CCP's flexible approach to balancing its conflicting aims, i.e., economic and technological advancement and influence over Chinese companies. Although shareholding structures are an important factor in determining how deeply the party organization can be embedded into corporate governance, the CCP's political leverage might help it exert greater influence than the state's shareholdings can achieve. Due to this diversity, this Article will not go into details of mixed-ownership companies.

Chinese *Company Law* grants shareholders broad authority. The latest amendment of *Company Law* created some flexibility for companies to customize their governance structures, but the shareholder-primacy model has remained intact. With such concentrated shareholding structures, Chinese shareholders can effectively control directors and managers. For SOEs, shareholder primacy has been used to establish the party-centric governance

⁹ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 9, Non-state company in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); Interview with Interviewee 30, Priv. entrepreneur, in Tianjin, China (Dec. 2020); also see Elaine Sio-ieng Hui, *The Labour Law System, Capitalist Hegemony and Class Politics in China*, 226 CHINA Q. 431 (2016); Wenjia Zhuang & Kinglun Ngok, *Labour Inspection in Contemporary China: Like the Anglo-Saxon Model, but Different*, 153 INT'L LAB. REV. 561 (2014).

¹⁰ Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firm*, 103 GEO. L.J. 665, 670–71 (2014).

structure under the CCP's political influence. Although there are mechanisms designed to protect minority shareholders in *Company Law* to make China investor-friendly and attract investment, such as independent directors, supervisory boards, and direct and derivative suits, their implementation is ineffective for various reasons. As a result, minority shareholders in Chinese companies face double agency problems posed by both the CCP and majority shareholders.

Stakeholders are weakly protected in the Chinese corporate governance system.¹¹ Even though the *Constitution of the People's Republic of China* grants the working class a leadership role,¹² they are vulnerable to companies' opportunism and exploitation. First, stakeholders have limited legal rights to influence the company's decision making. Second, implementation of labor law is compromised by weak legal awareness and the inefficient (and sometimes corrupt) supervisory administration and judiciary.¹³ Third, labor unions are under close supervision from the party-state,¹⁴ undermining their independence and ability to protect labor rights. Chinese workers face many obstacles in assemblies, demonstrations, and strikes which hinder their ability to attract public attention and generate social impact.¹⁵ Fourth, the heavy pressure to make a living and support families creates more opportunities for management to take advantage of workers.¹⁶

Stakeholders in the state sector are generally better off than their counterparts in the private sector because management is more concerned with the wider social implications of business activities and under less pressure to make profits. The CCP often turns a blind eye to private companies' exploitation of stakeholders to take advantage of their economic contributions. However, political concerns may incentivize the CCP to

¹¹ In this Article, two main groups of stakeholders are discussed: employees and local communities.

¹² Zhonghua Renmin Gongheguo Xianfa (中华人民共和国宪法) [Constitution of the People's Republic of China] (promulgated by the Nat'l's People's Cong., effective Mar. 11, 2018), art. 1.

¹³ SEAN COONEY ET AL., LAW AND FAIR WORK IN CHINA 123 (2013); Raymond Fisman & Yongxiang Wang, *The Mortality Cost of Political Connections*, 82 THE REVIEW OF ECONOMIC STUDIES 1346, 1376 (2015) [hereinafter Fisman & Wang, *The Mortality Cost of Political Connections*].

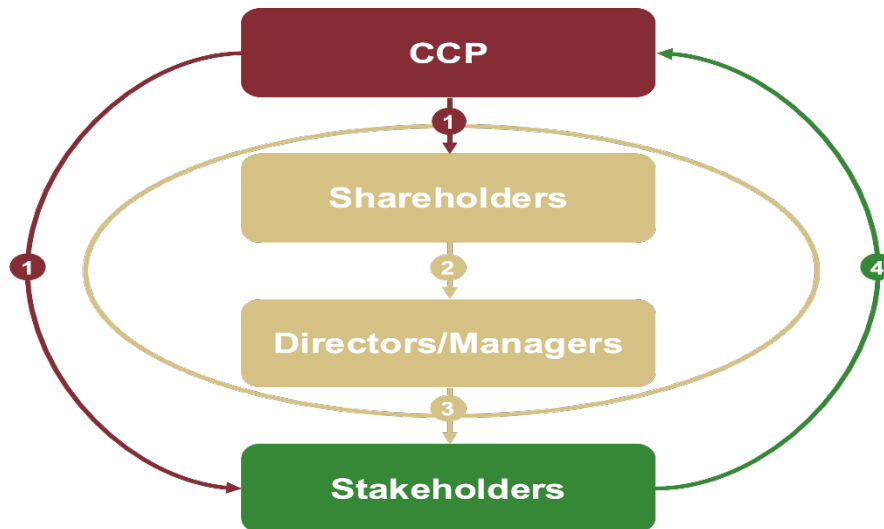
¹⁴ See Chris King-Chi Chan, *Promoting Freedom of Association in China? Putting Transnational Corporate Social Responsibility into a National Context*, 12 J. COMPAR. ASIAN DEV. 6 (2013).

¹⁵ See CHRIS KING-CHI CHAN, THE CHALLENGE OF LABOUR IN CHINA: STRIKES AND THE CHANGING LABOUR REGIME IN GLOBAL FACTORIES (2010).

¹⁶ Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 35, Priv. entrepreneur, in Chongqing, China (Jan. 2021).

safeguard stakeholder interests. If the exploited stakeholders manage to attract public attention, and this leads to (or threatens to lead to) public discontent or even social unrest, the CCP may intervene to pressure the company into fulfilling its legal obligations. In extreme cases, the authorities may even find a scapegoat to remedy the situation and placate any aggrieved parties. However, there is no guarantee that the CCP will respond to stakeholders' needs. It may side with companies to prioritize economic development. Moreover, if there is a risk of political instability, the CCP may impose harsh crackdowns on dissatisfied stakeholders. There is a subtle line between expressing legitimate needs and challenging the CCP's regime in China, and it is subject to the CCP's interpretation.

In summary, shareholder primacy in China differs from that in the Anglo-American system. For SOEs, shareholder primacy paved the way to establish the party-centric governance structure under the CCP's influence. For private companies, shareholders are the highest authority and can effectively exercise their rights to dominate directors and managers, which can in turn dominate employees. The CCP leaves private shareholders and companies free to exploit stakeholders most of the time. Stakeholders may successfully gain support and protection from the CCP if that is in line with the CCP's aim of maintaining legitimacy, but the CCP may also choose the company's side if it prioritizes economic development. The CCP might also intervene on its own initiative to achieve more general policy goals. A diagram of this structure is provided below.



- 1: Political influence of the CCP: exerted through the legislature, the administration, the judiciary, SOEs, etc.
- 2: Shareholder primacy: strong shareholder rights in company law and concentrated shareholding structures
- 3: Weak stakeholder protection: under both company law and labor law
- 4: Pressure on the CCP: negative social and political impacts from dissatisfied stakeholders

This Article draws on empirical data and argues that Chinese corporate governance is *sui generis*.¹⁷ To find out the gap between “law in books” and “law in action,” semi-structured, open-ended interviews were conducted with people who had first-hand information of Chinese corporate governance. The approach was chosen to make better use of interviewees’ knowledge of the research questions by allowing flexibility.¹⁸ Given that the information to

¹⁷ The original data was collected for the author’s PhD thesis. According to the consent of the interviewees and the ethics approval, the author can use the data for further research and publications beyond the thesis.

¹⁸ Svend Brinkmann, *Unstructured and Semi-structured Interviewing*, in *THE OXFORD HANDBOOK OF QUALITATIVE RESEARCH* 285 (Patricia Leavy ed., 2020); Dean Hammer & Aaron Wildavsky, *The Open-ended, Semistructured Interview: An (Almost) Operational Guide*, in *CRAFTWAYS: ON THE ORGANIZATION OF SCHOLARLY WORK* 57, (Aaron Wildavsky ed., 2d ed. 2018).

which each interviewee was privy and hence their responses to the research questions would vary, the author started the interviews with basic questions about party organizations (Part One of Appendix B) but made adjustments according to each interviewee's specific circumstances. Because of the differing backgrounds of interviewees, the focus of each interview was also tailored. Some questions were skipped for certain interviewees due to irrelevance; on the other hand, follow-up questions that were not included in the Questionnaire might be raised to further the discussion in some interviews.

The fieldwork was carried out during September 2020 and March 2021 in China. Altogether, the author conducted forty-one interviews. Among them, fourteen were in-house lawyers at SOEs, eight were in-house lawyers at non-state companies, seven were private entrepreneurs, and the remaining twelve were lawyers from law firms. All interviewees were anonymized to protect their identities. The empirical data covers eleven Provinces (Municipalities/Special Administrative Regions), including both economically developed regions, such as Beijing, Shanghai, and Shenzhen, and less-developed inland provinces, such as Henan, Anhui, and Inner Mongolia. Thus, the data presents a good picture of companies across China.

This Article offers a “law in context” analysis of Chinese corporate governance and makes a positive contribution to the typology of corporate governance, drawing on unique empirical data. Specifically, this Article advances legal scholarship in several ways. First, the current literature on the CCP's influence in corporate governance mainly focuses on SOEs, especially those directly owned and managed by the central government.¹⁹ Scholars

¹⁹ See Hunter Yumo Li, *Understanding the Corporate Governance of China's State-Owned Enterprises in the Context of the State-Owned Enterprises Reform: The Party, the State, and the Enterprises*, 17 OHIO ST. BUS. L.J. 210, 212 (2023); Kasper Ingeman Beck & Kjeld Erik Brødsgaard, *Corporate Governance with Chinese Characteristics: Party Organization in State-owned Enterprises*, 250 THE CHINA Q. 486, 487 (2022); Tamar Groswald Ozery, *The Politicization of Corporate Governance: A Viable Alternative?*, 70 AM. J. COMP. L. 43, 58 (2022); Margaret M. Pearson, *Party Business, in THE PARTY LEADS ALL: THE EVOLVING ROLE OF THE CHINESE COMMUNIST PARTY* 187, 187 (Jacques deLisle & Guobin Yang eds., 2022); Lauren Yu-Hsin Lin, *Institutionalizing Political Influence in Business: Party-building and Insider Control in Chinese State-owned Enterprises*, 45 VT. L. REV. 441, 442 (2021); Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance*, 50 J. LEGAL STUD. 187, 188 (2021) [hereinafter Lin & Milhaupt, *Party Building*]; Leutert & Eaton, *supra* note 6; Wendy Leutert, *Firm Control: Governing the State-owned Economy Under Xi Jinping*, 2018/1-2 CHINA PERSPECTIVES 27, 28 (2018).

have investigated SOEs writing party building into their articles of association,²⁰ the CCP's control over senior personnel of SOEs,²¹ and party organizations' engagement in major decision making in SOEs.²² This Article offers insights into SOEs at the local level (the vast majority of them are not listed companies, so their information is often not publicly available) and the local party authorities' influence on them. Moreover, by providing details about how party organizations function and interact with other institutions in SOEs in practice, this Article demonstrates how a party organization engages in major decision making, the factors it takes into consideration, and how it coordinates with the shareholders' meeting, the board of directors, and general managers.

Second, this Article explores the interaction between the CCP and private companies. Scholars have observed that both SOEs and private companies are under political pressure to implement party policy.²³ Milhaupt and Zheng noticed that private companies are subject to potential political influence and revealed several channels for the authorities to exert such influence, such as coordinating activities within an industry through industrial associations and conducting "interviews" with private firm managers to encourage or force them to comply with government policy.²⁴ However, they did not clarify where the political pressure ultimately comes from. This Article will identify the specific ways in which the CCP can influence private companies: namely, through its control over the legislature, judiciary, and administration. Furthermore, it will look at the benefits a

²⁰ See Lin, *supra* note 19, at 451; Lin & Milhaupt, *Party Building*, *supra* note 19, at 193; John Zhuang Liu & Angela Huyue Zhang, *Ownership and Political Control: Evidence from Charter Amendments*, 60 INT'L REV. LAW & ECON. 1, 4 (2019).

²¹ See Li, *supra* note 19, at 215; Beck & Brødsgaard, *supra* note 19, at 497; Ozery, *supra* note 19; Pearson, *Party Business*, *supra* note 19, at 196; Leutert & Eaton, *supra* note 6, at 204; Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-owned Enterprises*, 47 CORNELL INT'L L.J. 631, 635–36 (2014); Li-Wen Lin & Curtis J. Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 726 (2013).

²² See Li, *supra* note 19, at 215; Beck & Brødsgaard, *supra* note 19, at 497; Ozery, *supra* note 19, at 54–55; Leutert & Eaton, *supra* note 6, at 205.

²³ Christopher Chao-hung Chen et al., *The Effect of Political Influence on Corporate Valuation: Evidence from Party-building Reform in China*, 73 INT'L REV. L. & ECON. 1, 2 (2023); Margaret Pearson et al., *Party-state Capitalism in China*, 120 CURRENT HIST. 207, 209–10 (2021); Milhaupt & Zheng, *supra* note 10, at 668–69.

²⁴ Milhaupt & Zheng, *supra* note 10, at 686–88.

private company can receive through political connections and what costs a private company may have to pay for doing business in China.

Chinese corporate governance not only influences Chinese shareholders and companies but also has implications for foreign entities that trade or cooperate with Chinese companies. So, this Article also provides valuable insights for businesspeople, legal practitioners, and policymakers of foreign countries. Foreign investors might expect China to conform to global norms of corporate governance given that Chinese company law transplanted many Western countries' rules. However, there is a gap between "law in books" and "law in action," and it would be useful for foreign investors to know what they might encounter when doing business in China. Scholars have pointed out that the rise of Chinese companies poses a new challenge for not only academic researchers but also courts, administrative agencies, and dispute settlement tribunals around the world.²⁵ It is helpful for foreign governments and firms to bear in mind that the shareholding structures of Chinese companies do not necessarily reveal the actual controllers. Both SOEs and private companies can act as policy tools under the CCP's political influence.

The rest of this Article is divided into three parts. The first part studies the Chinese shareholder-primacy model by examining "law in books" and shareholding structures. The second part investigates the CCP's influence in corporate governance by examining the party-centric governance structure of SOEs, how the CCP indirectly influences private companies, and the way the CCP intervenes to protect stakeholders. The third part discusses the implications of Chinese corporate governance at home and abroad.

I. SHAREHOLDER PRIMACY

A. *Law in Books: Strong Shareholder Rights*

Chinese company law takes a shareholder-primacy approach and grants shareholders broad rights to control the board of directors and the company. When the first *Company Law* was adopted in 1993, shareholder primacy was a strategy used by the CCP to counterbalance the autonomy that directors obtained under the modern enterprise system (compared to the pre-reform

²⁵ *Id.* at 708.

era, during which SOEs were a part of the administration) and maintain its control over SOEs.²⁶ The state has remained the biggest shareholder in China ever since, so shareholder primacy has never been altered.²⁷

Chinese company law provides comprehensive rights for shareholders to decide major issues, monitor directors and managers, and seek remedies when management breaches its duties. It makes the Chinese model even more shareholder-centric than the United Kingdom, which is widely considered the most shareholder-centric jurisdiction. For Chinese companies, the shareholders' meeting is the highest authority²⁸ to which the board of directors is accountable.²⁹ Almost all major issues are subject to shareholders' decisions or approval, and shareholders can issue binding instructions to directors.³⁰ That is, all power of the company originates from the shareholders' meetings, and directors' managerial authority is conferred by shareholders.³¹ As a result, the board of directors is akin to an executive branch of the shareholders' meeting,³² which distinguishes the Chinese model from Delaware's director-centric model.

Shareholders enjoy comprehensive decision-making rights. Besides the usual authorities that shareholders have in many jurisdictions, such as appointment and removal of directors, increase and decrease of registered capital, and amendment of articles of association,³³ Chinese shareholders possess many other decision-making rights that normally fall within the board of directors' ambit.³⁴ Specifically, the shareholders' meeting decides the company's dividend distribution, issuance of shares and bonds, directors' remuneration, etc.³⁵ For such decisions, the board of directors can only

²⁶ Iain MacNeil, *Adaptation and Convergence in Corporate Governance: The Case of Chinese Listed Companies*, 2 J. CORP. L. STUD. 289, 309 (2002); Robert C. Art & Minkang Gu, *China Incorporated: The First Corporation Law of the People's Republic of China*, 20 YALE J. INT'L L. 273, 297 (1995).

²⁷ Charlie Xiao-chuan Weng, *Inside or Outside the Corporate Law Box? Shareholder Primacy and Corporate Social Responsibility in China*, 18 EUR. BUS. ORG. L. REV. 155, 172 (2017).

²⁸ Company Law art. 58–59, 111–12.

²⁹ *Id.* art. 59, 67, 112, 120.

³⁰ *Id.* art. 59, 112.

³¹ MIN YAN, BEYOND SHAREHOLDER WEALTH MAXIMISATION: TOWARDS A MORE SUITABLE CORPORATE OBJECTIVE FOR CHINESE COMPANIES 126 (1st ed. 2017).

³² *Id.* at 127.

³³ Company Law art. 59, 112.

³⁴ YAN, *supra* note 31, at 127.

³⁵ Company Law art. 59, 112.

formulate plans and provide explanations.³⁶ The latest amendment of *Company Law* has allowed the shareholders' meeting to authorize the board of directors to decide the issuance of bonds and a certain amount of shares and grant other powers to the board.³⁷ It provides more flexibility to companies, but the ultimate authority remains in shareholders' hands, so shareholder primacy remains unhampered. In addition to their decision-making rights, if shareholders are not satisfied with how directors run a business, they can summon directors to shareholders' meetings to answer questions.³⁸ To summarize: a company's shareholders cannot only instruct their nominated directors and managers to run the company in ways they prefer but also directly engage in major decisions through their broad authority with limited liability to the company.³⁹

Additionally, shareholders have considerable access to a company's information and various means to monitor directors. Shareholders can keep track of the company's financial situation by inspecting financial reports, accounting books, and accounting documents.⁴⁰ Access to accounting documents was added in the latest amendment, broadening shareholders' access to information. Shareholders can stay informed of the board of directors' decisions by examining its resolutions.⁴¹ Shareholders can also request courts to rescind board resolutions that violate laws, administrative regulations, or articles of association to prevent damage to the company.⁴²

Shareholder primacy is also reflected in *Company Law*'s accountability mechanism. In Chinese companies, shareholders are the only group to which

³⁶ Company Law art. 67, 120.

³⁷ *Id.* art. 59, 67, 112, 120.

³⁸ *Id.* art. 187.

³⁹ There are two new provisions on de facto and shadow directors added by the latest amendment. See Company Law art. 180, 192. According to art. 180, controlling shareholders and actual controllers are regarded as de facto directors and held accountable to the company if they are executing the company's affairs. According to art. 192, if controlling shareholders or actual controllers instruct directors or senior management to engage in actions that harm the company or shareholders' interests, they will bear joint and several liability with those directors or senior management. However, there are few effective mechanisms monitoring controlling shareholders. That is, if controlling shareholders or actual controllers exert shareholder rights in a way that harms the company's interests, minority shareholders will find it difficult to hold them accountable. See Shaowei Lin & David Cabrelli, *Legal Protection for Minority Shareholders in China*, 8 FRONTIERS L. CHINA 266 (2013).

⁴⁰ Company Law art. 57, 110.

⁴¹ *Id.*

⁴² *Id.* art. 26.

directors can be specifically held responsible. *Company Law* states that directors owe duties of fidelity and diligence to the company.⁴³ However, shareholders can bring derivative suits on behalf of the company against directors if they breach their duties.⁴⁴ Shareholders can also bring direct suits against directors if they infringe on shareholders' rights.⁴⁵ By contrast, the board of directors cannot be held responsible to any non-shareholder groups.⁴⁶ In addition to the rights to appoint and dismiss directors, approve the board of directors' reports, and summon and question directors, shareholders are the only group that can hold directors accountable.⁴⁷

Stakeholders are in a weak position in Chinese companies, with limited influence in decision making. The fact that shareholders dominate management makes stakeholders weaker still, since management has almost no ability to prefer stakeholder interests over shareholder interests. *Company Law* vows to protect employee interests in its general principles but falls short of providing effective mechanisms to accomplish that goal. The latest amendment of *Company Law* added that its objectives include protection of employees' legitimate interests to Article 1.⁴⁸ Article 20 added that companies should thoroughly consider employee interests when conducting business.⁴⁹ However, employees' rights in corporate governance have not been strengthened in any tangible way.

There are several mechanisms in *Company Law* that aim at protecting employees, including employee representatives on the board of directors and the supervisory board and the right to make suggestions on major issues affecting their interests.⁵⁰ However, employee directors are only compulsory for solely state-owned companies (all shares are owned by a government department/institution or public institution) and companies which have more than 300 employees and do not have a supervisory board.⁵¹ Other companies are exempt from this requirement. Further, companies with more than 300

⁴³ Company Law art. 180.

⁴⁴ *Id.* art. 189–90.

⁴⁵ *Id.* art. 190.

⁴⁶ Weng, *supra* note 27, at 165.

⁴⁷ Company Law art. 59, 112.

⁴⁸ *Id.* art. 1.

⁴⁹ *Id.* art. 20.

⁵⁰ *Id.* art. 17, 68, 76, 120, 130.

⁵¹ Company Law art. 68, 120, 173.

employees can choose to have employee supervisors instead of employee directors, and supervisory boards are largely symbolic in Chinese companies. Thus, employee directors are very likely to be limited to solely state-owned companies and absent from private companies, where the labor protection problem is more acute.⁵² Moreover, *Company Law* does not specify the minimum number of employee directors, so there is not likely to be more than one employee on the board of directors, even if companies choose to have them. Additionally, employee directors are often found to be related to controlling shareholders.⁵³ Overall, employee directors are likely to only have limited influence on protecting employee interests.

Both limited liability companies and joint stock companies are required to have a supervisory board in which employee representatives make up one-third of the members.⁵⁴ However, the latest amendment of *Company Law* allows companies to opt out of having a supervisory board if they have an audit committee under the board of directors.⁵⁵ As mentioned above, companies with more than 300 employees have to choose between employee directors and employee supervisors, but smaller companies can avoid having employee supervisors completely.

Apart from the fact that many companies end up not having any employee supervisors, such supervisors are not likely to play a meaningful role in protecting employee interests even when present. First, the quota of employee supervisors, one-third, is low, and they can be easily outnumbered by shareholder supervisors. Second, it is questionable whether employee supervisors can or will challenge shareholder supervisors.⁵⁶ Third, supervisory boards are weak institutions in Chinese companies. They have legal rights to require directors and senior managers to submit performance reports, to inspect the company's financial affairs, and to investigate

⁵² See Teresa Wright, *Labour Protest in China's Private Sector: Responses to Chinese Communism with Capitalist Characteristics*, 47 *ECON. & SOC'Y* 382 (2018).

⁵³ See Xiliang Zhang (张喜亮) & Qiang Li (李强), *Fazhan Hunhe Suoyouuzhi Jingji, Wanshan Zhigong Dongshi Zhidu* (发展混合所有制经济 完善职工董事制度) [*Developing Mixed-ownership Economy, Improvement of Employee Directors*], 04 *GONGHUI LILUN YANJIU* (工会理论研究) [*LABOUR UNION STUDIES*] 10, 13 (2015).

⁵⁴ *Company Law* art. 76, 130.

⁵⁵ *Id.* art. 69, 121.

⁵⁶ Julia Smith & Yuqi Tian, *Empirical Insights into Supervisory Boards of Listed Companies in China*, 19 *ASIAN J. ECON., BUS. & ACCT.* 19, 31 (2020).

abnormal operations, but lack the authority to discipline uncooperative directors or managers.⁵⁷ Supervisory boards can only propose to dismiss directors and managers who violate laws, administrative regulations, or articles of association, but have no right to elect or remove them.⁵⁸ Supervisors can request directors and managers to rectify their behaviour if it harms the company's interests, but there are no legal consequences if directors and managers refuse to do so.⁵⁹ Therefore, it is doubtful whether the supervisory board can effectively monitor the board of directors. In addition, employee supervisors are a minority on the supervisory board, so they are normally little more than a token formality in Chinese companies.⁶⁰

Besides employee directors and employee supervisors, employees can give advice or make suggestions on major issues that will impact their interests, but such advice and suggestions do not carry any binding effects. Specifically, when a company deliberates restructuring, dissolution, or filing for bankruptcy, makes major operational decisions, and drafts important internal rules, it is required to solicit employees' advice and suggestions.⁶¹ Again, this is likely to be a mere formality because directors and managers are not obliged to take employees' opinions into consideration. In summary, employees have limited influence in Chinese companies and are vulnerable to management's opportunism and exploitation.

The latest amendment of *Company Law* is a milestone for party organizations' legal status in SOE governance. It has confirmed that party organizations play a leadership role in SOEs and have major decision-making rights at the national law level for the first time,⁶² even though party organizations had become the de facto highest decision-making bodies before the amendment was passed.⁶³ This is an indication of both shareholder

⁵⁷ Company Law arts. 78–80, 131.

⁵⁸ Company Law art. 78, 131.

⁵⁹ *Id.*

⁶⁰ Smith & Tian, *supra* note 56.

⁶¹ Company Law art. 17.

⁶² Company Law art. 170.

⁶³ Interview with Interviewee 1, Law., in Chongqing, China (Sept. 2020); Interview with Interviewee 7, State-owned enter. in-house law., in Shanghai, China (Oct. 2020); Interview with Interviewee 8, State-owned enter. in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 11, State-owned enter. in-house law. In Chongqing, China (Nov. 2020); Interview with Interviewee 19, State-owned enter. in-house law., in Chongqing, China (Dec. 2020); Interview with Interviewee 33, State-owned enter. in-house law., in Henan, Zhengzhou, China (Dec. 2020); Interview with Interviewee 34, State-owned enter. in-house law., in Chongqing, China (Jan. 2021); Interview with Interviewee 36, State-owned enter. in-house law., in Henan, Luoyang, China (Jan. 2021).

primacy and the CCP's political influence. In SOEs, the Chinese state has controlling rights, so it is in line with the general principles of company law for it to adopt party-centric governance structures. Moreover, the formalization of party organizations' role in SOE governance is indisputable evidence of the CCP's political supremacy, specifically through its control over the legislature.

B. Concentrated Shareholding Structures

Shareholding structures of Chinese companies are concentrated, so shareholders have incentives to exercise their rights and are able to do so effectively. Thus, controlling shareholders dominate Chinese companies, rather than directors and managers.⁶⁴ The majority of Chinese listed companies have a controlling shareholder, be it the state or a founder family.⁶⁵ At the end of 2019, 59.95% of mainboard-listed companies of the two exchanges were under the control of a single controlling shareholder (possessing 30% or more of the company's shares).⁶⁶ The single largest shareholders owned on average 35.93% (median: 33.53%) of outstanding shares.⁶⁷ The largest ten shareholders possessed on average 60.54% (median: 61.65%) of the shares.⁶⁸ Also by the end of 2019, the five-largest shareholders owned on average 49.7% and 53.3% of shares in non-financial listed private companies and SOEs respectively.⁶⁹

A more recent survey found that at the end of 2020, in 51% of listed companies, the top three investors owned more than half of shares; at the

⁶⁴ Fuxiu Jiang & Kenneth A. Kim, *Corporate Governance in China: A Survey*, 24 REV. OF FIN. 733, 736 (2020); Fuxiu Jiang & Kenneth A. Kim, *Corporate Governance in China: A Modern Perspective*, 32 J. OF CORP. FIN. 190, 209 (2015) [hereinafter Jiang & Kim, *Corporate Governance in China: A Modern Perspective*].

⁶⁵ QIAO LIU, CORPORATE CHINA 2.0, at 118 (2016).

⁶⁶ Chao Xi, *Shareholder Voting and COVID-19: The China Experience*, 9 CHINESE J. OF COMPAR. L. 125, 134 (2021) [hereinafter Xi, *Shareholder Voting and COVID-19*].

⁶⁷ *Id.*

⁶⁸ Chao Xi, *Shareholder Voting and Engagement in China*, in THE CAMBRIDGE HANDBOOK OF SHAREHOLDER ENGAGEMENT AND VOTING 26 (Harpreet Kaur et al. eds., 2022) [hereinafter Xi, *Shareholder Voting and Engagement in China*].

⁶⁹ Heejung Choi et al., *Ownership Concentration and Financial Policy of China's Listed Firms*, 79 CHINA ECON. REV. 101973, 2 (2023).

company level, the top three investors owned on average 52.7% of shares.⁷⁰ Additionally, other large shareholders are related to and often act in concert with the largest shareholders.⁷¹ Thus, controlling shareholders often have sufficient equity to effectively dominate directors and managers.

Other shareholders of Chinese listed companies own a relatively small proportion of shares compared to controlling shareholders and lack incentives to engage with the companies. Individual investors make up the largest category of shareholders, but their shareholdings are small. By the end of August 2020, 99.77% of investors were individual investors.⁷² Over 55% of all domestic retail investors in the Shanghai equity market owned less than 100,000 RMB (14,400 USD) in share value, accounting for only 1.25% of the market as measured by share value.⁷³ In addition, many Chinese retail shareholders holding a small stake are poorly educated and lack investment experience; thus, they are regarded as rationally apathetic shareholders.⁷⁴

Of the remaining “non-individual” investors, most are institutional investors. Their shareholdings have been increasing, but they are still minority shareholders in Chinese listed companies, albeit the most important ones.⁷⁵ At the end of March 2020, institutional investors collectively owned 17.04% of A-shares⁷⁶ as measured by market capitalisation.⁷⁷ Domestic institutional investors were the main players; foreign institutional investors only owned 2% of A-shares.⁷⁸ At the company level, domestic and foreign institutional investors aggregately held on average 4.88% (median: 1.89%) of the shares in their portfolio companies.⁷⁹ Domestic institutional investors

⁷⁰ Organization for Economic Co-operation and Development, *Corporate Governance Factbook 2023*, OECD PUBLISHING, <https://doi.org/10.1787/6d912314-en>.

⁷¹ Xi, *Shareholder Voting and Engagement in China*, *supra* note 68, at 25.

⁷² Xi, *Shareholder Voting and COVID-19*, *supra* note 66, at 135.

⁷³ *Id.* at 138–39.

⁷⁴ *Id.* at 139.

⁷⁵ Dan W. Puchniak & Lin Lin, *Institutional Investors in China: An Autochthonous Mechanism Unrelated to UK-cum-Global Stewardship*, in *GLOBAL SHAREHOLDER STEWARDSHIP* 385 (Dionysia Katelouzou & Dan W. Puchniak eds., 2022).

⁷⁶ A-shares are stock shares of mainland-based Chinese companies that trade on the two Chinese stock exchanges, the Shanghai Stock Exchange and the Shenzhen Stock Exchange.

⁷⁷ Xiongfeng Ai & Xue Wei, *Analyst Report on Structures of A-Share Investors*, SINOLINK SECURITIES (May 12, 2020), https://pdf.dfcfw.com/pdf/H3_AP202005131379633647_1.pdf?1589363921000.pdf.

⁷⁸ *Id.*

⁷⁹ Xi, *Shareholder Voting and COVID-19*, *supra* note 66, at 135.

are mostly state controlled, so they are likely to follow the state's policy and act in concert with state shareholders.⁸⁰ As a result of the relatively small role of foreign investors, China's shareholder primacy mainly benefits domestic investors.

Institutional investors are passive compared to controlling shareholders in terms of engagement in corporate governance. During the period between 1994 and 2021, there were only forty-three activist campaigns initiated by minority institutional investors, which on average amounted to 1.54 campaigns per year.⁸¹ Only two out of the forty-three involved foreign institutional investors.⁸² By way of comparison, from 2018 to 2022, the median amount of activist campaigns per year in the United States was 204.⁸³ There are several plausible reasons why institutional investors are passive in China. First, their small shareholdings entail limited ability to influence companies dominated by controlling shareholders.⁸⁴ This is especially true for foreign institutional investors. Second, institutional investors tend to have short-term investment horizons.⁸⁵ Third, domestic institutional investors face regulatory and political pressure to not challenge management.⁸⁶ Fourth, minority protection is weak in Chinese company law and corporate governance.⁸⁷

By contrast, controlling shareholders and other shareholders acting in concert with them actively exercise their rights. For companies listed on the Shanghai Stock Exchange, the median (and average) ratios of shares held by shareholders participating in the shareholders' meeting increased from below 50% in 2015 to slightly above 50% in 2018.⁸⁸ The single largest shareholders owned on average 35.93% of the shares.⁸⁹

⁸⁰ Puchniak & Lin, *supra* note 75, at 394.

⁸¹ Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channeling in the Market within the State*, 35 COLUM. J. ASIAN L. 74, 114 (2022).

⁸² *Id.* at 115.

⁸³ *Lazard's Review of Shareholder Activism 2022*, LAZARD (Jan. 18, 2023), www.lazard.com/research-insights/lazard-s-review-of-shareholder-activism-2022/.

⁸⁴ Lin & Puchniak, *supra* note 81, at 115.

⁸⁵ Jiang & Kim, *Corporate Governance in China: A Modern Perspective*, *supra* note 64, at 192.

⁸⁶ See Pangyue Cheng, *Institutional Investors in China: Problems and Prospects*, 2022 COLUM. BUS. L. REV. 664, 664 (2022).

⁸⁷ See Tamar Groswald Ozery, *Minority Public Shareholders in China's Concentrated Capital Markets—A New Paradigm?*, 30 COLUM. J. ASIAN L. 1, 11 (2016).

⁸⁸ Xi, *Shareholder Voting and Engagement in China*, *supra* note 68, at 34.

⁸⁹ *Id.*

As a result of the concentrated shareholding structure and broad rights granted by *Company Law*, controlling shareholders can dominate directors and managers and have the incentives and ability to control the operation of a company. On the one hand, shareholders enjoy wide decision-making authority themselves as explained above. On the other, controlling shareholders can decide the majority of seats on the board of directors, especially the chair, who is often the primary decision maker on the board.⁹⁰ Although Chinese regulation requires at least one-third of directors of listed companies to be independent,⁹¹ controlling shareholders are still likely to nominate most independent directors.⁹² Besides issues falling within their authority, controlling shareholders can also influence matters within directors' discretion by instructing the directors they appoint or removing those who disobey with little risk of being held accountable to the company.⁹³ Therefore, it is reasonable to conclude that controlling shareholders can dominate directors and companies.

C. Weak Labor Protection

Employees are often in a disadvantageous position in Chinese companies, not only because they have limited rights in corporate governance, but also because labor protection is weak in China. This is not caused by a deficiency in labor regulations, but by ineffective implementation. The *Labor Law* and *Labor Contract Law* in China provide comprehensive protections for employees.⁹⁴ The problems lie in

⁹⁰ Jiang & Kim, *Corporate Governance in China: A Survey*, *supra* note 64, at 736.

⁹¹ Shangshi Gongsì Duli Dongshi Guanli Banfa (上市公司独立董事管理办法) [Measures for the Administration of Independent Directors of Listed Companies] (promulgated by China Sec. Regul. Comm'n., Aug. 1, 2023, effective Sept. 4, 2023), art. 5.

⁹² Zonghao Chen, *Three Essays on Corporate Governance in China 16* (2019) (Ph.D. thesis, Victoria University of Wellington).

⁹³ Duties of directors only apply to controlling shareholders or actual controllers when they are executing the company's affairs. So, if controlling shareholders and actual controllers only give general instructions to directors and management, it is hard to hold them accountable to the company. Additionally, minority shareholders have few effective mechanisms to monitor majority shareholders.

⁹⁴ Zhonghua Renmin Gongheguo Laodong Fa (中华人民共和国劳动法) [Labor Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Dec. 29, 2018, effective Dec. 29, 2018); Zhonghua Renmin Gongheguo Laodong Hetong Fa (中华人民共和国劳动合同法) [Labor Contract Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., effective July 1, 2013) [hereinafter Labor Law].

implementation. First, the Labor Protection Administration lacks adequate human resources to inspect Chinese firms.⁹⁵ Large firms are monitored more closely, while most small- and mid-sized domestic private firms are not inspected.⁹⁶ Small firms are often found to delay wage payments and not pay for overtime.⁹⁷ In addition to insufficient inspection capacity, modest fines are the main sanction, which incentivizes companies to violate regulations if the economic benefits of noncompliance outweigh the costs of being sanctioned.⁹⁸

Additionally, corruption further compromises the implementation of labor protection regulations. Research has found that political connections can help companies evade labor protection responsibilities, such as avoiding social security fund contributions.⁹⁹ This is also reflected in workplace safety. China has strong regulations on paper, such as the *Work Safety Law*¹⁰⁰ and the *Regulation on Work Safety Permits*.¹⁰¹ However, safety records are bad.¹⁰² The main reason is the administration's weak enforcement of the law. Politically connected companies received less frequent safety investigations and more lenient fines, even though their safety records were poor.¹⁰³ This helps them become more profitable than their unconnected counterparts.¹⁰⁴ Empirical data reveals that, on average, the rate of worker fatalities is five times greater in politically connected companies than in similar companies without political connections.¹⁰⁵

⁹⁵ COONEY ET AL., *supra* note 13, at 123.

⁹⁶ *Id.* at 123–24.

⁹⁷ *Id.* at 124.

⁹⁸ *Id.* at 125.

⁹⁹ See Xuchao Li et al., *Is Loss of Political Connection A Gain for Labor? The Effect of Anti-Corruption Policy on Labor Protection in China*, 29 SSRN (June 3, 2024), <http://dx.doi.org/10.2139/ssrn.4091676>.

¹⁰⁰ Zhonghua Renmin Gongheguo Anquan Shengchan Fa (中华人民共和国安全生产法) [Work Safety Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., effective Nov. 1, 2022).

¹⁰¹ Anquan Shengchan Xukezheng Tiaoli (安全生产许可证条例) [Regulation on Work Safety Permits] (promulgated by St. Council, July 29, 2014, effective July 29, 2014).

¹⁰² Yukyung Shim et al., *Comparative Analysis of the National Fatality Rate in Construction Industry Using Time-Series Approach and Equivalent Evaluation Conditions*, 19 INT'L J. ENV'T RSCH. & PUB. HEALTH 3–4 (2022).

¹⁰³ See Fisman & Wang, *supra* note 13.

¹⁰⁴ *Id.* at 1376.

¹⁰⁵ Raymond Fisman & Yongxiang Wang, *The Unsafe Side of Chinese Crony Capitalism*, 91 HARV. BUS. REV. 24, 24 (2013).

Besides the weak implementation of labor regulations, there are other factors that put Chinese workers in a vulnerable position. Chinese employees lack channels or organizations to exert collective bargaining power.¹⁰⁶ They also risk losing their jobs if they disclose information to the media or go on strike. Labor unions are under the supervision of the government, and the prime aim is to strengthen the CCP's social control rather than labor protection.¹⁰⁷ Moreover, labor unions lack independence from employers, so they lack power and incentives to protect workers' rights.¹⁰⁸

Working conditions in the tech sector are a good example of weak labor protection in China. One might suppose that because tech giants have sufficient financial resources to provide a healthy working environment for employees and are under close supervision from labor protection agencies because of their large scale, their working conditions would be adequate. However, the sector has been notorious for its "996" working schedule (from 9:00 a.m. to 9:00 p.m., six days a week) since tech firms were designed to be user-oriented and ultra-efficient.¹⁰⁹ Jack Ma, founder of e-commerce giant Alibaba,¹¹⁰ infamously told staff that the 996 schedule was "a blessing."¹¹¹ President Xi's "Common Prosperity" campaign¹¹² and crackdowns on personalities such as Ma spurred the People's Supreme Court to ban 996 in 2021.¹¹³ However, working life in the tech sector has remained a grind.¹¹⁴

¹⁰⁶ Chris King-Chi Chan & Elaine Sio-Ieng Hui, *The Development of Collective Bargaining in China: From "Collective Bargaining by Riot" to "Party State-led Wage Bargaining,"* 217 CHINA Q. 221 (2014).

¹⁰⁷ SAROSH KURUVILLA ET AL., FROM IRON RICE BOWL TO INFORMALIZATION: MARKETS, WORKERS, AND THE STATE IN A CHANGING CHINA 158 (2011).

¹⁰⁸ Chris King-Chi Chan & Elaine Sio-Ieng Hui, *The Dynamics and Dilemma of Workplace Trade Union Reform in China: The Case of the Honda Workers' Strike*, 54 J. OF INDUS. RELS. 653, 653 (2012).

¹⁰⁹ Waiyee Yip, *China Steps in to Regulate Brutal '996' Work Culture*, BBC (Sept. 2, 2021), <https://www.bbc.co.uk/news/world-asia-china-58381538>.

¹¹⁰ Alibaba is one of China's largest and most influential tech giants. It operates in sectors such as e-commerce, cloud computing, digital payments, entertainment, and logistics. Alibaba's impact extends globally, with investments in e-commerce, technology, and retail ventures worldwide. It is often compared to U.S. companies like Amazon, due to its vast range of online services and technological influence.

¹¹¹ Ryan McMorrow & Nian Liu, *'We're Like Gears Grinding until They Break': Chinese Tech Companies Push Staff to the Limit*, FIN. TIMES (June 23, 2024), <https://www.ft.com/content/c94d046c-570a-4222-bfc5-463fdcf66c2>.

¹¹² The "Common Prosperity" campaign aims to reduce income inequality and promote fairness.

¹¹³ The People's Supreme Court and the Ministry of Human Resources and Social Security jointly issued ten typical cases of overtime work in 2021, one of which made it clear that working 9:00 a.m. to 9:00 p.m. for six days a week seriously violates labor law. See Yip, *supra* note 109.

¹¹⁴ McMorrow & Liu, *supra* note 111.

Two Pinduoduo¹¹⁵ staff died in 2021 in incidents that colleagues linked to overwork.¹¹⁶ More recently, JD.com¹¹⁷ founder Richard Liu warned his staff that “his company did not have room for anyone who wanted work-life balance.”¹¹⁸

Abuse of non-compete clauses is another issue in the tech sector. It was reported that Pinduoduo abused non-compete clauses to deter employees, even the lowest-level employees with no access to trade secrets, from moving to rival companies.¹¹⁹ The company hired private investigators to surveil ex-workers who moved to rival companies, then sued those ex-workers for large amounts of compensation that, in some cases, exceeded their annual salaries.¹²⁰ Chinese courts generally support tech companies’ petitions under the current regulation, which stipulates that non-compete clauses can be used to cover employees with confidentiality obligations.¹²¹ The ambiguity of the law was exploited by Pinduoduo to go after its low-level ex-workers and make their lives miserable.¹²²

Additionally, there is “the curse of 35” in the tech sector. Tech firms prefer younger and unmarried workers because they perceive that older staff are less enthusiastic about working long hours and face more responsibilities at home.¹²³ Although Chinese labor law prohibits employers from discriminating based on ethnicity, gender, and religion, it does not explicitly

¹¹⁵ Pinduoduo, founded in 2015 by Colin Huang, is a fast-growing Chinese e-commerce platform known for its innovative ‘social commerce’ model. It has grown rapidly, becoming one of China’s largest e-commerce platforms and a key competitor to Alibaba and JD.com. Despite being newer, Pinduoduo has transformed China’s online retail landscape with its focus on price-sensitive consumers and social interactions.

¹¹⁶ *Id.*

¹¹⁷ JD.com is one of China’s largest e-commerce companies. It has a growing international presence and partnerships with major global brands, making it one of the most trusted platforms for online shopping in China.

¹¹⁸ McMorrow & Liu, *supra* note 111.

¹¹⁹ Nian Liu & Ryan McMorrow, *Ex-workers at Temu Owner PDD Suffer Surveillance and Financial Ruin over Non-competes*, FIN TIMES (Mar. 11, 2024), <https://www.ft.com/content/d40cd7a9-24c7-4bae-91b6-ae74b54e5978>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Kai Waluszewski & Eleanor Olcott, *China’s Ageing Tech Workers Hit by ‘Curse of 35,’* FIN. TIMES (Apr. 23, 2024), <https://www.ft.com/content/5cf306ad-3a39-4357-b7b3-1d2644bb13a7>.

refer to age.¹²⁴ Consequently, tech firms tend to push out junior workers in their mid-thirties. The average age of staff at Kuaishou¹²⁵ is twenty-eight and at ride-hailing app DiDi it is thirty-three,¹²⁶ both of which are much younger than the national average age of workers in China (38.3).¹²⁷ Unfortunately, this trend has become only more entrenched with progressive waves of layoffs driven by an economic slowdown and regulatory concerns.¹²⁸ At the same time, over-thirty-fives often find it difficult to secure new employment after losing jobs. The age limit for China's civil service entrance examinations is generally thirty-five, and the service sector also prefers younger applicants.¹²⁹ Thus, over-thirty-fives are likely to put up with intense work if they are lucky enough to keep their jobs.

Despite the problems mentioned above, the tech sector is still among the best choices for job seekers. First, the tech sector has relative meritocracy, which means hard work and satisfactory performance can lead to social mobility. Second, the sector offers generous pay, making it even more appealing following the central government's instruction to the state sector to reduce salaries.¹³⁰

In conclusion, employees are not properly protected under the labor law framework, and corporate governance falls short in offsetting the weak labor protection. However, the CCP has the potential to be a game changer, breaking the status quo between employees and companies. As for which side the CCP chooses, it varies from case to case and from time to time, depending on its policy goals.

¹²⁴ Zhōnghuá Rénmín Gònghéguó Láodòng Fǎ (中华人民共和国劳动法) [Labour Law of the People's Republic of China] (promulgated by the Eighth Standing Comm. Nat'l People's Cong., July 5, 1994, effective Jan. 1, 1995), art. 12 (China).

¹²⁵ Kuaishou, founded in 2011, is a leading Chinese short-video and live-streaming platform, similar to TikTok (Douyin in China). It went public in 2021, solidifying its position as one of China's major internet companies and expanding its influence in the online entertainment and e-commerce sectors.

¹²⁶ Didi Chuxing, founded in 2012, is China's largest ride-hailing company and one of the world's leading mobility technology platforms. It is often referred to as "China's Uber." It operates in over 400 cities across China and has expanded internationally into regions like Latin America, Australia, and parts of Africa and Asia.

¹²⁷ Waluszewski & Olcott, *supra* note 123.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Frank Chen & Huifeng He, *China's Financial Sector Jobs Seen Losing Their Lustre as Salaries Tumble amid Crackdown*, S. CHINA MORNING POST (July 10, 2024), <https://www.scmp.com/economy/economic-indicators/article/3269737/chinas-financial-sector-jobs-seen-losing-their-lustre-salaries-tumble-amid-crackdown>.

II. PARTY INFLUENCE IN CORPORATE GOVERNANCE

The CCP's influence on corporate governance is not limited to “law in books” but broadly appears in practice. The CCP approaches SOEs and private companies in different ways since their legal, political, and social relationships with the Chinese state are different. SOEs have long been under the CCP's control, but the methods of control have evolved with legal reforms and economic development. The current party-centric governance structure is a combined result of shareholder primacy and party influence. Private companies are not free from party influence either. They actively respond to party-building campaigns to demonstrate their political loyalty. They also contribute to policy goals voluntarily or reluctantly under the pressure created by the CCP indirectly through the legislature, judiciary, and administration.

A. SOEs: The Party-Centric Governance Structure

Following “the Party leads all” campaign, SOEs began to write party organizations' authority into articles of association as early as 2015, and most had completed the work by the end of 2018.¹³¹ During this period, there were no legal provisions (national laws, administrative laws and regulations, or ministry rules) granting party organizations the authority to engage in SOE governance. However, it was not illegal for SOEs to do so, since shareholders (the Chinese government) have the autonomy to tailor corporate governance structures under *Company Law*. The amendment of articles of association was mainly conducted under the guidance of two intra-party documents.¹³²

¹³¹ Interview with Interviewee 12, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 15, Law., in Shanghai, China (Nov. 2020); Interview with Interviewee 16, Law., in Shanghai, China (Nov. 2020); Interview with Interviewee 17, Law., in Beijing, China (Nov. 2020).

¹³² Zhonggong Zhongyang Guowuyuan Guanyu Shenhua Guoyou Qiye Gaige De Zhidao Yijian (中共中央、国务院关于深化国有企业改革的指导意见) [Guiding Opinions of the CPC Central Committee and the State Council on Deepening the Reform of State-owned Enterprises] (promulgated by Central Comm. CCP & St. Council, Aug. 24, 2015, effective Aug. 24, 2015) [hereinafter Guiding Opinions of the Chinese Communist Party]; Guanyu Zhashi Tuidong Guoyou Qiye Dangjian Gongzuo Yaoqiu Xieru Gongsi Zhangcheng De Tongzhi (关于扎实推动国有企业党建工作要求写入公司章程的通知) [Notice Regarding the Promotion of the Requirements of Incorporation of Party Building Work into the Articles of Associations of State-Owned Enterprises] (promulgated by Org. Dep't CCP & Party Comm. SASAC, Mar. 15, 2017).

After the work was done, more comprehensive rules were introduced. The first systematic CCP regulation concerning the authority of SOEs' party organizations in corporate governance, *Regulation on the Work of Grassroots Party Organizations in State-owned Enterprises (Trial Implementation)*, was not issued until the end of 2019.¹³³ It took another year to have a comprehensive non-CCP document regarding the issue: *Administrative Measures for the Formulation of Articles of Association of State-owned Enterprises*, an administrative regulatory document.¹³⁴ Afterwards, a higher-level regulation (a ministry rule) came out: *Measures for the Compliance Management of Central State-owned Enterprises*; however, this regulation only applies to SOEs directly owned and managed by the central government.¹³⁵ More recently, *Company Law* formalized the party-centric governance structure for SOEs.¹³⁶

The party-centric governance structure mainly features in two mechanisms in SOEs: the “Two-way Entry and Cross-holding Posts” mechanism for personnel control, and the “Three Majors and One Large” mechanism for decision-making control. The “Two-way Entry and Cross-holding Posts” mechanism refers to the arrangement that party organization members concurrently take high-level posts in the company, such as directors and managers. The CCP monopolizes the appointment of senior personnel in SOEs; thus, this strategy is convenient for the CCP. More importantly, through this arrangement, the Party's organizational structures overlap more or less perfectly with the company's institutional structures, which can ensure that SOEs' strategies are in line with the CCP's policy.

¹³³ Zhongguo Gongchandang Guoyou Qiye Jiceng Zuzhi Gongzuo Tiaoli (Shixing) (中国共产党国有企业基层组织工作条例(试行)) [Regulation on the Work of Grassroots Organizations of the Chinese Communist Party in State-owned Enterprises (Trial Implementation)] (promulgated by Central Comm. CCP Nov. 29, 2019, effective Dec. 30, 2019).

¹³⁴ Guoyou Qiye Gongsì Zhangcheng Zhiding Guanli Banfa (国有企业公司章程制定管理办法) [Administrative Measures for the Formulation of Articles of Association of State-owned Enterprises] (promulgated by Party Comm. SASAC & Ministry of Finance, effective Dec. 31, 2020).

¹³⁵ Zhongyang Qiye Hegui Guanli Banfa (中央企业合规管理办法) [Measures for the Compliance Management of Central State-owned Enterprises] (promulgated by SASAC Aug. 23, 2022, effective Oct. 1, 2022), art. 2 & 4.

¹³⁶ Company Law, *supra* note 7, art. 170.

Normally, the secretary of the party organization serves as the chairperson of the board of directors.¹³⁷ This is a counterbalance to the modern enterprise system, under which the board of directors has gained more autonomy from shareholders.¹³⁸ The CCP appoints the chairperson to ensure that autonomy is exercised in a manner consistent with its policy. If the secretary or chairperson diverges from the CCP's instructions, they can be held responsible within the party system.¹³⁹ Another aim of this arrangement is to ensure unity of opinions of the party organization and the board of directors, considering that the secretary or chairperson generally plays a dominant role in both institutions, so that SOEs will unswervingly follow the CCP's lead.

Usually, the general manager serves concurrently as the deputy secretary of the party organization.¹⁴⁰ However, in large SOEs, there may be

¹³⁷ Interview with Interviewee 1, Law., in Chongqing, China (Sept. 2020); Interview with Interviewee 3, State-owned enter. in-house law., in Shanghai, China (Sept. 2020); Interview with Interviewee 7, State-owned enter. in-house law., in Shanghai, China (Oct. 2020); Interview with Interviewee 8, State-owned enter. in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 11, State-owned enter. in-house law., in Chongqing, China (Nov. 2020); Interview with Interviewee 19, State-owned enter. in-house law., in Chongqing, China (Dec. 2020); Interview with Interviewee 29, State-owned enter. in-house law., in Beijing, China (Dec. 2020); Interview with Interviewee 31, State-owned enter. in-house law., in Beijing, China (Dec. 2020); Interview with Interviewee 32, State-owned enter. in-house law., in Henan, Shangqiu, China (Dec. 2020); Interview with Interviewee 34, State-owned enter. in-house law., in Chongqing, China (Jan. 2021); Interview with Interviewee 36, State-owned enter. in-house law., in Henan, Luoyang, China (Jan. 2021); Interview with Interviewee 37, State-owned enter. in-house law., in Beijing, China (Jan. 2021); Interview with Interviewee 38, State-owned enter. in-house law., in Hongkong, China (Mar. 2021); Interview with Interviewee 41, State-owned enter. in-house law., in Sichuan, Chengdu, China (Mar. 2021).

¹³⁸ In comparison with the past, when SOEs were appendages of the administration.

¹³⁹ The CCP's intra-party disciplinary system is independent from the state judiciary system. The CCP investigates and sanctions its members on its own initiative through its intra-party disciplinary system. It does not need approval or receive supervision from the state judicial system. After the intra-party procedures of investigation and punishment, the case will be transferred to the state judicial system. Consequently, the intra-party disciplinary system can be more efficient and powerful than the state judicial system. See Ling Li, *The 'Organisational Weapon' of the Chinese Communist Party China's Disciplinary Regime from Mao to Xi Jinping*, in *LAW AND THE PARTY IN XI JINPING'S CHINA: IDEOLOGY AND ORGANIZATION* (R. Creemers & S. Trevaskes eds., 2020).

¹⁴⁰ Interview with Interviewee 3, State-owned enter. in-house law., in Shanghai, China (Sept. 2020); Interview with Interviewee 11, State-owned enter. in-house law., in Chongqing, China (Nov. 2020); Interview with Interviewee 19, State-owned enter. in-house law., in Chongqing, China (Dec. 2020); Interview with Interviewee 29, State-owned enter. in-house law., in Beijing, China (Dec. 2020); Interview with Interviewee 31, State-owned enter. in-house law., in Beijing, China (Dec. 2020); Interview with Interviewee 32, State-owned enter. in-house law., in Henan, Shangqiu, China (Dec. 2020); Interview with Interviewee 36, State-owned enter. in-house law., in Henan, Luoyang, China (Jan. 2021); Interview with

a full-time deputy secretary in charge of party-building work.¹⁴¹ Besides secretaries and their deputies, other party organization members may include directors, deputy general managers, the assistant to the general manager, the chairperson of the labor union, the chairperson of the board of supervisors, or even mid-level managerial personnel.¹⁴²

The “Two-way Entry and Cross-holding Posts” mechanism lays the foundation for the CCP’s control over SOEs by inserting the CCP’s own personnel into senior positions in SOEs. The “Three Majors and One Large” mechanism works from the institutional perspective by controlling decision-making processes. According to *Company Law* and CCP rules, the deliberation of party organizations on major decisions is a prerequisite before an agenda can be submitted to boards of directors or general managers for approval, and SOEs have written this into their articles of association.¹⁴³ The CCP insists that party organizations do not deprive the board or management of decision-making authority.¹⁴⁴ However, in practice, SOEs’ decision-making is centered on party organizations, which have become the de facto highest decision-making bodies.¹⁴⁵ During the decision-making process of

Interviewee 37, State-owned enter. in-house law., in Beijing, China (Jan. 2021); Interview with Interviewee 38, State-owned enter. in-house law., in Hongkong, China (Mar. 2021); Interview with Interviewee 41, State-owned enter. in-house law., in Sichuan, Chengdu, China (Mar. 2021).

¹⁴¹ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 8, State-owned enter. in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 34, State-owned enter. in-house law., in Chongqing, China (Jan. 2021).

¹⁴² Interview with Interviewee 38, State-owned enter. in-house law., in Hongkong, China (Mar. 2021).

¹⁴³ Interview with Interviewee 12, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 15, Law., in Shanghai, China (Nov. 2020); Interview with Interviewee 16, Law., in Shanghai, China (Nov. 2020); Interview with Interviewee 17, Law., in Beijing, China (Nov. 2020).

¹⁴⁴ Ge Qiang (强啊), *Guoyou Qiye Dangwei (Dangzu) Fahui Lingdao Zuoyong Ruhe Gaibian Guoyou Qiye Gongsi Zhili Jiegou?—Cong Geren Qianru Dao Zuzhi Qianru (国有企业党委(党组)发挥领导作用如何改变国有企业公司治理结构?—从个人嵌入到组织嵌入)* [From *Embeddedness of Individuals to Embeddedness of Organizations: The Party and the Structure of State-owned Enterprise Governance*], 206 JINGJI SHEHUI TIZHI BIJIAO (经济社会体制比较) [COMPAR. ECON. & SOC. SYS.] 71, 79 (2019).

¹⁴⁵ Interview with Interviewee 1, Law., in Chongqing, China (Sept. 2020); Interview with Interviewee 3, State-owned enter. in-house law., in Shanghai, China (Sept. 2020); Interview with Interviewee 11, State-owned enter. in-house law., in Chongqing, China (Nov. 2020); Interview with Interviewee 15, Law., in Shanghai, China (Nov. 2020); Interview with Interviewee 19, State-owned enter. in-house law., in Chongqing, China (Dec. 2020); Interview with Interviewee 23, Law., in Anhui, Hefei, China (Dec. 2020); Interview with Interviewee 32, State-owned enter. in-house law., in Henan, Shangqiu, China (Dec. 2020); Interview with Interviewee 37, State-owned enter. in-house law., in Beijing, China (Jan. 2021).

party organizations, central and local party authorities may give directives or party organizations may seek instructions regarding important issues.¹⁴⁶ Interviewees indicated that while SOEs follow the procedural requirements of the modern enterprise system, they mostly do so in a superficial sense.¹⁴⁷ Meetings of the board of directors or general managers are often mixed with those of the party organization for convenience because their members are either entirely or nearly identical.¹⁴⁸ Substantial discussion of major issues happens during party organization meetings, and decision-making processes of the board of directors and general managers mainly or solely involve paperwork.¹⁴⁹

SOEs have their lists of “Three Majors and One Large” issues, i.e., major decisions, major personnel appointments and dismissals, arrangements of major projects, and large expenditures.¹⁵⁰ The list is comprehensive and covers virtually everything relevant to production and operation. As a result, party organizations are often involved in the day-to-day management of SOEs.¹⁵¹ According to *Company Law*, the board of directors may delegate

¹⁴⁶ Interview with Interviewee 3, State-owned enter. in-house law., in Shanghai, China (Sept. 2020); Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 8, State-owned enter. in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 11, State-owned enter. in-house law., in Chongqing, China (Nov. 2020); Interview with Interviewee 19, State-owned enter. in-house law., in Chongqing, China (Dec. 2020); Interview with Interviewee 29, State-owned enter. in-house law., in Beijing, China (Dec. 2020); Interview with Interviewee 32, State-owned enter. in-house law., in Henan, Shangqiu, China (Dec. 2020); Interview with Interviewee 34, State-owned enter. in-house law., in Chongqing, China (Jan. 2021); Interview with Interviewee 36, State-owned enter. in-house law., in Henan, Luoyang, China (Jan. 2021); Interview with Interviewee 41, State-owned enter. in-house law., in Sichuan, Chengdu, China (Mar. 2021).

¹⁴⁷ Interview with Interviewee 1, Law., in Chongqing, China, (Sept. 2020); Interview with Interviewee 3, State-owned enter. in-house law., in Shanghai, China (Sept. 2020); Interview with Interviewee 11, State-owned enter. in-house law., in Chongqing, China (Nov. 2020); Interview with Interviewee 15, Law., in Shanghai, China (Nov. 2020); Interview with Interviewee 19, State-owned enter. in-house law., in Chongqing, China (Dec. 2020); Interview with Interviewee 23, Law., in Anhui, Hefei, China (Dec. 2020); Interview with Interviewee 32, State-owned enter. in-house law., in Henan, Shangqiu, China (Dec. 2020); Interview with Interviewee 37, State-owned enter. in-house law., in Beijing, China (Jan. 2021).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Interview with Interviewee 1, Law., in Chongqing, China (Sept. 2020); Interview with Interviewee 3, State-owned enter. in-house law., in Shanghai, China (Sept. 2020); Interview with Interviewee 8, State-owned enter. in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 37, State-owned enter. in-house law., in Beijing, China (Jan. 2021).

¹⁵¹ Interview with Interviewee 1, Law., in Chongqing, China (Sept. 2020); Interview with Interviewee 3, State-owned enter. in-house law., in Shanghai, China (Sept. 2020); Interview with

day-to-day management authority to general managers.¹⁵² In practice, the CCP (through shareholders' rights) has delegated this authority to party organizations.

One might ask what the implications of the party-centric governance structure of SOEs are. Some might argue that there is no substantial difference between this structure and the former administrative-based control, since no matter what hats SOE officials wear—party organization members or executive officers—they are all selected, appointed, and ultimately supervised by the CCP. That is, the fundamental relationship between the party-state and SOEs has not changed; only the channel to exert influence has been shifted from the administrative system to the party system.

Others might counter that the autonomy of SOEs is at risk because of the shift. The Chinese government had been promoting the transformation of its relationship with SOEs from direct management to investment supervision.¹⁵³ The embeddedness of party organizations into SOE governance might erode managerial discretion if political considerations take precedence over economic ones. The extra supervision from the party system puts pressure on decision makers of SOEs to take policy goals into account, which might be at odds with market forces and economic profits.

However, the party-centric governance structure may also bring benefits to SOEs. First, the collective decision-making mechanism of party organizations can provide checks and balances so that no single person dominates (if it functions properly). Second, SOE leaders are subject to intra-party discipline in addition to the fiduciary duties prescribed by company law, which is a possible deterrence to corruption. Third, the legalization and institutionalization of party organizations' engagement in SOEs might improve transparency if decision-making processes and resolutions of party organizations are properly disclosed (under the current rules, even listed SOEs are not required to disclose such information).

Interviewee 11, State-owned enter. in-house law., in Chongqing, China (Nov. 2020); Interview with Interviewee 15, Law., in Shanghai, China (Nov. 2020); Interview with Interviewee 19, State-owned enter. in-house law., in Chongqing, China (Dec. 2020); Interview with Interviewee 23, Law., in Anhui, Hefei, China (Dec. 2020); Interview with Interviewee 32, State-owned enter. in-house law., in Henan, Shangqiu, China (Dec. 2020); Interview with Interviewee 37, State-owned enter. in-house law., in Beijing, China (Jan. 2021).

¹⁵² Company Law, *supra* note 7, art. 67 & 120.

¹⁵³ Guiding Opinions of the Chinese Communist Party, *supra* note 132.

B. Party Building in Private Companies

Although the Chinese government has no equity in private companies, the CCP can exert influence indirectly. The party-building campaign also spread to the private sector, but mostly in a symbolic way.¹⁵⁴ Many private companies, especially large ones, have established party organizations like their state-owned counterparts.¹⁵⁵ According to data released by the All-China Federation of Industry and Commerce, the average age of private companies with party organizations was fifteen years and the average size was 569 employees in 2018 (the climax of the party-building campaign).¹⁵⁶ This is also evident from the coverage rate of party organizations among the top 500 private companies: by 2019, 92.4% of them had established party organizations.¹⁵⁷

Interviewees indicated that party organizations are a token presence in most private companies and hold no substantial power in corporate governance.¹⁵⁸ However, exceptions may exist in giant private firms. To

¹⁵⁴ The overall aim of the party building campaign is to strengthen the CCP's leadership over business and the Chinese economy. For private companies specifically, it involves establishing party organizations, conducting ideological education, and advocating party policies, etc. *See generally* Jean Christopher Mittelstaedt, *Party-Building through Ideological Campaigns under Xi Jinping*, 63 *ASIAN SURV.* 716 (2023).

¹⁵⁵ Interview with Interviewee 9, Non-state company in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); Interview with Interviewee 23, Law., in Anhui, Hefei, China (Dec. 2020); Interview with Interviewee 30, Priv. entrepreneur, in Tianjin, China (Dec. 2020).

¹⁵⁶ Zhonghua Quanguo Gongshangye Lianhehui (中华全国工商业联合会) [All-China Federation of Industry and Commerce], *Woguo Mingying Qiye Dangzuzhi Jianshe Xianzhuang Fenxi Baogao (我国民营企业党组织建设现状分析报告) [An Analysis Report on the Current Situation of Party Organization Establishment in China's Private Enterprises]*, https://www.acfic.org.cn/fgzs/fgdt/201905/t20190523_64087.html (last visited Mar. 5, 2025).

¹⁵⁷ Zhonghua Quanguo Gongshangye Lianhehui (中华全国工商业联合会) [All-China Federation of Industry and Commerce], *2020 Zhongguo Mingying Qiye 500 Qiang Diaoyan Fenxi Baogao (2020 中国民营企业500强调研分析报告) [2020 Research and Analysis Report on China's Top 500 Private Enterprises]*, <http://download.china.cn/app/2020%E4%B8%AD%E5%9B%BD%E6%B0%91%E8%90%A5%E4%BC%81%E4%B8%9A500%E5%BC%BA%E8%B0%83%E7%A0%94%E5%88%86%E6%9E%90%E6%8A%A5%E5%91%8A.pdf> (last visited Mar. 5, 2025).

¹⁵⁸ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 9, Non-state company in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); Interview with Interviewee 23, Law., in Anhui, Hefei, China (Dec. 2020); Interview with Interviewee 30, Priv. entrepreneur, in

fulfil their political obligations, private companies conduct party-building activities, but only to the extent that they pass the upper-level authorities' inspections.¹⁵⁹ Private entrepreneurs may attend political study sessions, but they regard them as formalities and remain focused on business.¹⁶⁰ Some private companies' party organizations may engage in decision making on the surface, but actual controlling rights are retained in the hands of majority shareholders.¹⁶¹ Interviews also revealed that in meetings with governmental departments, officials suggested that private companies should incorporate party organizations into their governance structures; however, such suggestions fell short of being requirements, so the vast majority of private companies have ignored them.¹⁶²

However, party organizations have not been inactive in all private companies. Party organizations may be more embedded in the operation and management of leading companies, which are likely to face stronger political pressure because of their political, social, and economic impacts. For example, Tencent¹⁶³ actively promoted the "Two-way Entry and Cross-holding Posts" mechanism to deeply integrate party building and business.¹⁶⁴ At the peak of the party-building campaign in 2018, the secretary of its party organization was a senior vice-president, the three deputy secretaries were the vice-presidents and general managers in charge of information security, network media, and public policy respectively, and the other members were also all members of the management team.¹⁶⁵ Tencent's team of information

Tianjin, China (Dec. 2020); Interview with Interviewee 35, Priv. entrepreneur, in Chongqing, China (Jan. 2021); Interview with Interviewee 39, Priv. entrepreneur, in Anhui, Wuhu, China (Mar. 2021).

¹⁵⁹ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 9, Non-state company in-house law., in Beijing, China (Oct. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); Interview with Interviewee 23, Law., in Anhui, Hefei, China (Dec. 2020); Interview with Interviewee 30, Priv. entrepreneur, in Tianjin, China (Dec. 2020).

¹⁶⁰ Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); Interview with Interviewee 30, Priv. entrepreneur, in Tianjin, China (Dec. 2020).

¹⁶¹ Interview with Interviewee 39, Priv. entrepreneur, in Anhui, Wuhu, China (Mar. 2021).

¹⁶² Interview with Interviewee 22, Private entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); Interview with Interviewee 30, Private entrepreneur, in Tianjin, China (Dec. 2020).

¹⁶³ Tencent is a top Chinese multinational technology company, based in Shenzhen. It ranked among the top-grossing multimedia firms globally by revenue, and it is also the largest company in the video game industry by equity investments.

¹⁶⁴ *Tencent: When the 'Penguin' Wears the Party Emblem*, XINHUA NET (Apr. 2, 2018, 9:35 AM), www.xinhuanet.com/politics/2018-04/02/c_129842262.htm.

¹⁶⁵ *Id.*

security and public opinion guidance was led by a deputy secretary, and 80% of the team had CCP membership.¹⁶⁶ They aimed to resolutely convey the voice of the CCP, actively promote core socialist values, and guide the correct orientation of public opinion.¹⁶⁷ Moreover, Tencent also aimed to achieve overlap between CCP members and key personnel at lower levels: Among new CCP members, more than 80% were the company's team leaders and core technicians.¹⁶⁸ When recruiting, it gave priority to candidates with CCP membership.¹⁶⁹ Of the more than 1,800 college students who joined in 2017, 1,200 (67%) were party members.¹⁷⁰

However, it is not clear whether the party organization had any involvement in Tencent's big picture decision making. Thus, it is unclear whether the party organization played any role as an institution in the governance of Tencent. This does not mean that the CCP falls short of influencing Tencent, not only because "CCP members should remember their first identity as party members, and their first duty is to work for the Party and be loyal to the party organization," as warned by President Xi,¹⁷¹ but also because the CCP can indirectly influence private companies through other mechanisms.

C. The Party's Indirect Influence in the Private Sector

Without any equity, it is difficult for the CCP to directly engage in governance of private companies; however, it can indirectly exert influence through its control over the legislature, judiciary, and administration. This can be in the form of "sticks" or "carrots," depending on policy goals and actual situations. The potential influence of the CCP can create uncertainty for businesses, but if a business is in line with the CCP's policy goals, it can enjoy considerable support. The ultimate goal of the CCP is to maintain legitimacy and preserve power, like any other political party. What makes China different is the control that the CCP has over the state and society,

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Biao Fu (付彪), *Dangyuan Gai Zhenshi Ziji De "Dì Yī Shēn Fēn"* (党员该珍视自己的“第一身份”) [*Party Members Should Cherish Their 'First Identity'*], CPC NEWS (Apr. 13, 2016), <http://cpc.people.com.cn/pinglun/n1/2016/0413/c241220-28273810.html>.

which far exceeds that of the governments of Western democracies. Nowadays, the CCP is not pursuing absolute control over Chinese society like it did during the Maoist era, but as an all-responsible or paternalist ruling party, it defines the nation's ambitions and plans the means to achieve them. When it comes to the relationship between the CCP and private companies, it might result in the CCP using state power to encourage or discourage certain companies or sectors according to its macro policy goals.

1. Laws and Regulations

Although Chinese *Company Law* does not provide the means for the CCP to directly engage in the governance of private companies, it can indirectly influence private companies by creating or proposing to create legal obligations. As the sole ruling party in China, the CCP has de facto control over the legislature,¹⁷² which is an effective tool for promoting party policy.¹⁷³ The CCP can promote or hinder specific sectors according to its policy goals by modifying the regulatory framework. Against this backdrop, private firms often respond to policy calls voluntarily (although possibly reluctantly) as a strategy to survive and develop, and by doing so, they reinforce the CCP's influence.¹⁷⁴

History has witnessed the prosperity and decline of the private sector under different economic policies. During the Maoist era, to achieve the social objectives of eliminating labor exploitation and inequality, public ownership was regarded as the solution, and private business was wiped out as a result of the attack on capitalism.¹⁷⁵ The private sector only re-emerged under the reform and opening-up policy, which prioritized economic

¹⁷² See Perry Keller, *Sources of Order in Chinese Law*, 42 AM. J. COMP. L. 711, 759 (1994); YONGNIAN ZHENG, *CONTEMPORARY CHINA: A HISTORY SINCE 1978* (2013).

¹⁷³ See William P. Alford, *A Second Great Wall?: China's Post-Cultural Revolution Project of Legal Construction*, 11 CULTURAL DYNAMICS 193, 199 (1999); John R. Allison & Lianlian Lin, *Evolution of Chinese Attitudes toward Property Rights in Invention and Discovery*, 20 U. PA. J. INT'L ECON. L. 735, 783 (1999).

¹⁷⁴ Interview with Interviewee 6, Private entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Private entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020).

¹⁷⁵ See BRUCE J. DICKSON, *RED CAPITALISTS IN CHINA: THE PARTY, PRIVATE ENTREPRENEURS, AND PROSPECTS FOR POLITICAL CHANGE* 72 (2003).

objectives.¹⁷⁶ The non-public economy was officially recognized by the *Constitution of People's Republic of China* in 1988.¹⁷⁷ The aim of developing the economy was kept by the Jiang Zemin and Hu-Wen administrations, and more laws promoting the private sector were passed, such as *Company Law (1993)* and *Securities Law (1999)*. Although the private sector is not under threat of extinction again, it has been facing increasing regulatory pressure in recent years.

The instrumental role of law and the CCP's leadership over the law has been further emphasized since President Xi took office. At the Fourth Plenum of the Eighteenth Party Congress, it was stated that law is an important tool (重器) for governing the country, and the CCP's leadership is equal to the socialist rule of law.¹⁷⁸ It was mandated that the CCP's leadership over the work of the rule of law should be strengthened, and the CCP's leadership should be embedded in the entire process of developing the rule of law.¹⁷⁹

As part of the "Party leads all" campaign, the legal framework concerning private business has also been tightened. Tech firms, which potentially have a significant social impact, were caught up in the wave. The *Data Security Law* and *Personal Information Protection Law* impose stringent restrictions on data storage and cross-border data transfer to strengthen regulators' control over tech firms and the data they own.¹⁸⁰ The *Measures for Cybersecurity Review* require online platform operators that store more than one million users' personal information to apply for review before being listed abroad, which increased regulators' influence on tech

¹⁷⁶ *Id.*

¹⁷⁷ *Zhonghua Renmin Gongheguo Xianfa* (中华人民共和国宪法) [Constitution of the People's Republic of China], Dec. 4, 1982, *Zhonghua Renmin Gongheguo Xianfa Xiuzhengan 1988* (中华人民共和国宪法修正案 1988) [Amendment to the Constitution of the People's Republic of China 1988], (promulgated by Nat'l People's Cong., effective Apr. 12, 1988) art. 1.

¹⁷⁸ *See Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti De Jueding* (中共中央关于全面推进依法治国若干重大问题的决定) [Decision of the Central Committee of the Chinese Communist Party on Several Major Issues Concerning Comprehensively Promoting the Rule of Law] (promulgated by Central Comm. CCP, effective Oct. 23, 2014).

¹⁷⁹ *Id.*

¹⁸⁰ *See Zhonghua Renmin Gongheguo Shuju Anquan Fa* (中华人民共和国数据安全法) [Data Security Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., June 10, 2021, effective Sept. 1, 2021); *Zhonghua Renmin Gongheguo Xinxi Baohu Fa* (中华人民共和国个人信息保护法) [Personal Information Protection Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Aug. 20, 2021, effective Nov. 1, 2021).

firms' access to capital.¹⁸¹ The *Anti-monopoly Law (2022)* makes tech giants easy targets and their further expansion subject to the regulator's review.¹⁸² The *Counterespionage Law (2023)* virtually grants regulators access to any documents and data that it deems related to national security.¹⁸³ The *Law on Guarding State Secrets (2024)* requires network operators to monitor information shared by users, remove posts containing sensitive information, keep records of them, and report to regulators, which strengthened regulators' oversight over tech firms' operation and information online.¹⁸⁴ During the wave of regulatory tightening, President Xi launched the "Common Prosperity" campaign, to which tech giants actively responded with generous investments and donations.¹⁸⁵ This reflected tech giants' urgent desire to curry favor with the authorities and the extent to which the CCP can apply pressure on Chinese companies.

Despite the strong desire to keep the private sector in check, the CCP is cautious about strangling it, because delivering adequate economic growth is another policy goal. In recent years, the CCP has made efforts to rescue the Chinese economy after it was battered by COVID controls. For example, the *Securities Law* changed the IPO system from approval-based to registration-based to enhance investor protection and facilitate stock issuance back in

¹⁸¹ See Wangluo Anquan Shencha Banfa (网络安全审查办法) [Measures for Cybersecurity Review] (promulgated by Cyberspace Admin. of China et al., Nov. 16, 2021, effective Feb. 15, 2022) China Nextin Network, Jan. 4, 2022, art. 7, https://www.cac.gov.cn/2022-01/04/c_1642894602182845.htm.

¹⁸² See Zhonghua Renmin Gongheguo Fanlongduan Fa (中华人民共和国反垄断法) [Anti-monopoly Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., June 24, 2022, effective Aug. 1, 2022).

¹⁸³ See Zhonghua Renmin Gongheguo Fanjiandie Fa (中华人民共和国反间谍法) [Counterespionage Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Apr. 26, 2023, effective July 1, 2023).

¹⁸⁴ Zhonghua Renmin Gongheguo Baoshou Guojia Mimi Fa (中华人民共和国保守国家秘密法) [The Law of the People's Republic of China on Guarding State Secrets] (promulgated by Standing Comm. Nat'l People's Cong., Feb. 27, 2024, effective May 1, 2024) art. 34.

¹⁸⁵ See, e.g., Brenda Goh, *China's Alibaba to Invest \$15.5 Bln for Tenant launches "Common Prosperity Special Plan" with another 50 billion yuan in funding*, REUTERS (Sept. 2, 2021, 11:35 AM), <https://www.reuters.com/world/china/chinas-alibaba-invest-155-bln-towards-common-prosperity-2021-09-02/>; Zai'eng 500 Yiyuan Zijin, Tengxun Qidong "Gongtong Fuyu Zhuanxiang Jihua" (再增500亿元资金 腾讯启动"共同富裕专项计划") [An Additional 50 Billion RMB of Funds, Tencent Launched the "Common Prosperity Plan"]; RENMIN WANG (人民网) [PEOPLE.CN] (Aug. 19, 2021, 8:51 AM), <http://gongyi.people.com.cn/n1/2021/0819/c151132-32199448.html>.

2020.¹⁸⁶ However, it was not until the CCP lifted all restrictions in early 2023 that regulators issued specific guidance to implement the change.¹⁸⁷ It should be stressed that this did not mean the CCP completely relinquished control over Chinese companies' access to the equity market. Companies still have to apply to stock exchanges, which are under the CCP's control, to get listed.¹⁸⁸ Then, they need to register with the China Securities Regulatory Commission ("CSRC," also under the CCP's control), which has the discretion to reject applications.¹⁸⁹ This change from approval to registration has been made in other areas before, such as foreign investment in non-restricted sectors, but companies have found that they may still encounter administrative barriers during the registration process even if they satisfy all the legal requirements.¹⁹⁰

Another example worth mentioning is the real estate sector, which illustrates the CCP's efforts to pursue economic growth. The central government tightened the sector's access to capital in 2020 out of fear that it might jeopardise the financial system, but this dragged the sector into liquidity crises.¹⁹¹ To stabilise the economy and society, the Chinese government has taken various measures to stimulate property purchasing in the past two years. For example, more than twenty cities abolished purchase restrictions, and more than thirty cities loosened purchase restrictions.¹⁹² By May 2024, only seven provinces/cities still had purchase restrictions in

¹⁸⁶ Zhonghua Renmin Gongheguo Zhengquan Fa (中华人民共和国证券法) [Securities Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 28, 2019, effective Mar. 1, 2020), art. 9, 21.

¹⁸⁷ Hongpei Zhang, *China Starts to Implement Registration-Based IPO System*, GLOBAL TIMES (Mar. 19, 2023, 7:21 PM), <https://www.globaltimes.cn/page/202303/1287552.shtml>.

¹⁸⁸ Shangshi Gongsi Zhengquan Faxing Zhuce Guanli Banfa (上市公司证券发行注册管理办法) [Measures for the Administration of Registration of Initial Public Offerings of Stocks] (promulgated by the China Sec. Regul. Comm'n, Feb. 17, 2023, effective Feb. 17, 2023) [hereinafter Measures for the Administration of Registration of Initial Public Offerings of Stocks], art. 16, 19.

¹⁸⁹ Measures for the Administration of Registration of Initial Public Offerings of Stocks, art. 24.

¹⁹⁰ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020).

¹⁹¹ Evelyn Cheng, *How Evergrande Found Itself on the Wrong Side of China's Regulators*, CNBC (Oct. 19, 2021, 11:31 PM), <https://www.cnbc.com/2021/10/19/how-evergrande-found-itself-on-the-wrong-side-of-chinas-regulators.html>.

¹⁹² See Wei Sun, *Youyou Liangda Chengshi Quxiao Xiangou, Loushi Xiangou Huifou Quanmian Tuichu?* (又有两大城市取消限购, 楼市限购会否全面退出?) [*Two More Major Cities Have Lifted Purchase Restrictions, Will Housing Purchase Restrictions Be Completely Withdrawn?*], ZHONGGUO XIAOFEI WANG (中国消费网) [CHINA CONSUMER NETWORK] (May 13, 2024, 6:48 PM), <https://www.ccn.com.cn/Content/2024/05-13/1848506926.html>.

place.¹⁹³ six of them are first-tier cities;¹⁹⁴ the other is Hainan province, a popular tourist destination. Additionally, the central government lowered the down-payment ratio to 15% (it was never lower than 20% before) and reduced interest rates for mortgages.¹⁹⁵ Unfortunately, despite these efforts, the property market has yet to recover.¹⁹⁶

To summarize, the CCP can not only indirectly promulgate laws and regulations to achieve specific policy goals but also use the threat of new laws to apply pressure on private companies that will eventually impel them to contribute to party policy.

2. *The Administration*

The whole lifespan of a company involves interactions with the administration, from obtaining permission to enter the market to ongoing compliance in areas such as environmental protection, labor protection, taxation, access to capital, expansion, etc. The discretion of the administration in granting permissions can have a significant influence on companies: what business they can conduct, when they can start a business, in what ways they can manufacture products or provide services, etc. Moreover, due to the prevalence of noncompliance issues among private companies, they are susceptible to investigation and punishment.¹⁹⁷ Law enforcement can be flexible and selective, giving the administration leeway

¹⁹³ *Id.*

¹⁹⁴ According to indicators of development levels such as GDP, population, average incomes, education and healthcare resources etc., Chinese cities are classified into different tiers. First-tier cities are those most economically developed, such as Beijing, Shanghai, Shenzhen, and Guangzhou.

¹⁹⁵ Yan Chen, *Zhongguo Chutai “Lishixing” Cuoshi Ciji Fangdichan: Weilai Loushi Hequ Hecong* (中国出台“历史性”措施刺激房地产：未来楼市何去何从) [China Introduces “Historic” Measures to Stimulate the Real Estate Market: What Does the Future Hold for the Housing Market?], BBC NEWS (May 21, 2024), <https://www.bbc.com/zhongwen/simp/business-69038196>.

¹⁹⁶ Aileen Chuang & Daniel Ren, *China Property: Beijing’s Stimulus Plan Needs More Time, Money and Policy Support to Resolve Long-Standing Housing Crisis*, SOUTH CHINA MORNING POST (May 18, 2024, 6:31 PM), <https://www.scmp.com/business/china-business/article/3263202/china-property-beijings-stimulus-plan-needs-more-time-money-and-policy-support-resolve-long-standing>.

¹⁹⁷ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020).

to maneuver.¹⁹⁸ Through its control of the administration, the CCP can indirectly influence the manner and the extent of enforcement, which can then be used to encourage or suppress certain practices and businesses according to policy goals. Because of the potential influence on business, private companies often voluntarily build a friendly relationship with the authorities by responding to policy calls.¹⁹⁹

The ways to influence private firms can be roughly divided into “carrots” and “sticks.” “Carrots” include expedited administrative approval, preferential access to finance (loans, bonds, and equity), grants and subsidies, tax benefits and leniency, waiving administrative fees, less frequent inspections, lenient sanctions, etc.²⁰⁰ These benefits can bring significant competitive advantages to companies. On the one hand, the CCP can nurture hand-picked players and keep them as policy tools at home and abroad and favored industries can enjoy enormous support such as grants and subsidies. On the other hand, private companies often search for opportunities to curry favor with the authorities to gain these benefits.²⁰¹ For example, research found that political connections help companies obtain administrative clearance to sectors with high barriers and improve economic performance.²⁰² In exchange for possible “carrots,” private companies may

¹⁹⁸ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020). See also Ignazio Castellucci, *Rule of Law with Chinese Characteristics*, 13 ANN. SURV. INT'L & COMPAR. L. 35, 59 (2007); Randall Peerenboom, *Let One Hundred Flowers Bloom, One Hundred Schools Contend: Debating Rule of Law in China*, 23 MICH. J. INT'L L. 471, 482 (2002).

¹⁹⁹ Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020).

²⁰⁰ Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 18, Priv. entrepreneur, in Zhejiang, Hangzhou, China (Dec. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); Interview with Interviewee 39, Priv. entrepreneur, in Anhui, Wuhu, China (Mar. 2021); Interview with Interviewee 40, Priv. entrepreneur, in Inner Mongolia, Baotou, China (Mar. 2021).

²⁰¹ DONGYA HUANG (黄冬娅), ZAI TIZHINEI YOUSHUO: ZHENGCE GUOCHENGZHONG DE ZHENGSHANG GUANXI YANJIU (在體制內遊說：政策過程中的政商關係研究) [LOBBYING WITHIN THE SYSTEM: A STUDY OF GOVERNMENT-BUSINESS RELATIONS IN THE POLICY PROCESS] 7 (Qin Yue (秦玥), 2023).

²⁰² See Danglun Luo (罗党论) & Xiaolong Liu (刘晓龙), *Zhengzhi Guanxi, Jinru Bilei Yu Qiye Jixiao—Laizi Zhongguo Minying Shangshi Gongsi De Jingyan Zhengju* (政治关系、进入壁垒与企业绩效—来自中国民营上市公司的经验证据) [Political Connections, Entry Barriers, and Firm Performance: Empirical

participate in CCP campaigns (such as “Common Prosperity,” “Poverty Alleviation,” and “Rural Revitalisation”), contribute to public welfare (such as building schools and other infrastructure), and help safeguard public and national security by providing data, etc.²⁰³

By contrast, “sticks” can be used to contain businesses that might have a negative impact and punish uncooperative and misbehaving companies and entrepreneurs. Widespread noncompliance makes private companies easy targets.²⁰⁴ Possible “sticks” include denial of administrative clearance, raids, severe sanctions, etc.²⁰⁵ These punishments can bring serious consequences. Targeted companies may not be able to operate normally, so revenues fall; they may face heavy fines; their reputations may be tarnished, and customers may boycott their products. Eventually, they may face bankruptcy. In fact, the administration may not have to actually carry out these actions: the ability to do so is a powerful deterrent in itself. Therefore, when approached by the authorities, private companies often choose to acquiesce, because the cost of doing otherwise can be much greater than following the authorities’ instructions.²⁰⁶

Besides targeting specific companies, the CCP can also adopt more general strategies by promoting or suppressing certain types of practices or businesses, which extends the CCP’s influence to all companies within a sector or under the same or similar conditions. Examples abound: to begin with, the regulators took a *laissez-faire* approach to peer-to-peer lending to alleviate small- and mid-sized enterprises’ difficulties in accessing funding, but quickly clamped down on the sector when it exposed risks of financial

Evidence from China’s Private Listed Companies], GUAN LI SHI JIE (管理世界) [MGMT. WORLD], Issue 5, 2009, at 97 (2009).

²⁰³ Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020); see also Xin Sun et al., *Organizational Clientelism: An Analysis of Private Entrepreneurs in Chinese Local Legislatures*, 14 J. E. ASIAN STUD. 1, 11 (2014).

²⁰⁴ Interview with Interviewee 5, Lawyer, in Chongqing, China (Oct. 2020); Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Ningbo, Zhejiang, China (Dec. 2020).

²⁰⁵ *Id.*

²⁰⁶ Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020).

and social instability.²⁰⁷ More recently, COVID testing firms made a fortune during the three-year Zero-COVID policy but became insolvent overnight when restrictions were suddenly lifted, with billions in receivables unpaid by cash-strapped local governments.²⁰⁸ As an effort to tackle climate change, generous clean-energy subsidies have helped relevant sectors to flourish, such as manufacturers of electric vehicles, solar panels, and wind turbines.²⁰⁹

However, the CCP's ability to sway law enforcement can be a double-edged sword. It enables the CCP to influence the private sector and advance its policy goals; at the same time, it creates uncertainty for the business world, which might deter investment, hinder technological advancement, and discourage talent and entrepreneurs.

3. The Judiciary

The CCP has long regarded the judiciary as an instrument to advance its policy goals.²¹⁰ Based on its control over the judicial system, the CCP can indirectly influence courts' judgements and public prosecutors' decisions.²¹¹ This can work in two ways: protecting firms and entrepreneurs whose businesses are aligned with policy goals and suppressing those that are not. It can also encourage or contain certain practices or interpretations of laws to extend their influence more broadly on civil society.

Interviewees reported that many private firms have a bad record of compliance, especially in their early stages; thus, both private firms and entrepreneurs are vulnerable to formal investigation.²¹² If they are

²⁰⁷ See Ding Chen et al., *Too Much Technology and Too Little Regulation? The Spectacular Demise of P2P Lending in China*, ACCT., ECON., & L.: CONVIVIUM., Nov. 9, 2021, at 1.

²⁰⁸ Sun Yu & Edward White, *China's coronavirus test providers hit by payments crunch*, FIN. TIMES (Nov. 15, 2022), <https://www.ft.com/content/2e3f9397-6745-45a1-ae7b-a1a6f7d7aed4>.

²⁰⁹ Frank Bickenbach et al., *EU Concerns about Chinese Subsidies: What the Evidence Suggests*, 59 INTERECONOMICS: REV. EUR. ECON. POL'Y 214 (2024); Scott Kennedy, *The Chinese EV Dilemma: Subsidized Yet Striking*, CENT. FOR STRATEGIC & INT'L STUD. (June 20, 2024), <https://www.csis.org/blogs/trustee-china-hand/chinese-ev-dilemma-subsidized-yet-striking>.

²¹⁰ Xin He, *The Party's Control over the Judiciary*, in THE PARTY LEADS ALL: THE EVOLVING ROLE OF THE CHINESE COMMUNIST PARTY 157, 169–72 (Jacques deLisle & Guobin Yang eds., 2022).

²¹¹ *Id.*

²¹² Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020).

contributing to policy goals, the authorities can shield them by directing the public prosecutor to turn a blind eye and not charge them and the court to not admit cases against them or to adjudicate in their favor.²¹³ If they are hindering policy goals or attracting public scrutiny, the judicial system can act against them more efficiently than usual.²¹⁴

The courts can support or criticize practices and interpret laws in line with the CCP's policies.²¹⁵ The impact is much broader than influencing cases concerning individual companies: firms in the same or similar situation will all be impacted. For example, the People's Supreme Court condemned the "996" work culture as a serious violation of labor protection rules during the clampdown on the tech sector in 2021, even though the problem had long existed.²¹⁶ However, under the pressure of a slowing economy, the People's Supreme Court has been silent on this issue recently, and tech giants have been pushing staff to the limit.²¹⁷

The CCP's ability to influence law enforcement is an effective deterrent in itself: no action might be needed to ensure entrepreneurs' and companies' cooperation. Because of pervasive rule-breaking problems, it is not difficult for the authorities to find levers to discipline or influence companies and their shareholders. Entrepreneurs and companies are likely to try everything to protect what they have achieved under the threat of investigation and prosecution, including supporting policy implementation. The CCP may not even have to show its leverage: entrepreneurs and companies might police themselves through fear of losing everything. The fact that Chinese billionaires often choose to emigrate and transfer their assets overseas reflects their vulnerability and insecurity.²¹⁸ Because of the potential

²¹³ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020).

²¹⁴ *Id.*

²¹⁵ He, *supra* note 210, at 170.

²¹⁶ Bill Chappell, *Employers Can't Require People To Work 72 Hours A Week, China's High Court Says*, NPR (Aug. 30, 2021, 2:25 PM), <https://www.npr.org/2021/08/30/1032458104/12-hour-6-day-996-work-schedule-illegal-china-deaths-tech-industry>.

²¹⁷ McMorrow & Liu, *supra* note 111.

²¹⁸ Milton Ezrati, *High-Net-Worth People Are Leaving China*, FORBES (July 3, 2024), <https://www.forbes.com/sites/miltonezrati/2024/07/03/high-net-worth-people-are-leaving-china/#:~:text=The%20country's%20millionaires%20and%20billionaires,2023's%20out%20migration%20of%2013%2C800>.

influence, private companies and entrepreneurs often actively seek to foster political connections with the authorities and stay within the safe line by actively responding to policy calls.²¹⁹

D. The CCP's Intervention in Stakeholder Protection

As explained above, employees are vulnerable to companies' exploitation and opportunism since company law provides little protection, and labor law is often ineffectively enforced. The CCP may take additional measures to protect labor interests for political concerns. If there is a risk of social turmoil or if aggrieved employees manage to attract public attention, the authorities might intervene to placate the aggrieved and resolve the issue so that the CCP's reputation as an all-responsible party will not be tarnished and the officials in charge will not get into trouble. It works in the same way for other stakeholders, such as local communities facing pollution problems. However, there is no guarantee that the CCP will always prioritize stakeholder interests. The CCP's pursuit of economic growth and tax revenue may align its interests with companies and make it lax with regard to employee protection and pollution.²²⁰

As an all-responsible or paternalist party, the CCP styles itself as a "parent" who looks after its "children," and Chinese people generally adhere to this belief (as a trade-off for political monopoly). Therefore, when their interests are infringed, people expect the CCP to intervene on their behalf. Otherwise, they may accuse the CCP of incompetence and stage demonstrations (if they have the chance to do so). Additionally, one of the CCP cadres' core tasks is "social stability maintenance (维稳)," which means they should try all means to avoid mass incidents to avoid getting a black mark on their dossiers and jeopardize their chances of promotion. Thus, both the CCP and individual officials are incentivized to intervene when there is a risk of social unrest.

Against this backdrop, local courts and governments may intervene in unusual ways to solve labor issues. For example, in one case where the

²¹⁹ Interview with Interviewee 6, Priv. entrepreneur, in Chongqing, China (Oct. 2020); Interview with Interviewee 13, Law., in Chongqing, China (Nov. 2020); Interview with Interviewee 22, Priv. entrepreneur, in Zhejiang, Ningbo, China (Dec. 2020).

²²⁰ HUANG, *supra* note 201, at 18.

employer failed to pay wages, the court persuaded the lessor of the employer's premises to make some payments to unpaid employees, even though it had no legal liability to do so.²²¹ Judges often refer absconding or bankruptcy cases to local governments, which might pay the aggrieved workers from a wage protection fund or similar resource.²²² In more extreme cases, private companies have been compelled by local governments to compensate people to whom they were not legally responsible to conciliate protesting victims and avoid negative social impacts.²²³ These are typical examples of private companies being compelled to contribute to political goals.

During the 2008 financial crisis, the authorities adopted various measures to maintain employment stability to prevent mass protests and the erosion of their legitimacy. First, they offered financial support to firms to maintain employment by granting tax breaks and subsidies and deferring or reducing payments of social insurance premiums.²²⁴ Second, they tightened restrictions on layoffs (without a solid legal basis). Large SOEs and mid-sized companies had to apply for approval before dismissing fifty employees or more; small ones were urged to refrain from cutting jobs extensively.²²⁵ Third, the government worked on creating new job opportunities for sacked migrant workers by providing vocational training, preferential land-use policies, tax benefits, and loans.²²⁶

Some of the measures listed above may be similar to those taken by other countries during financial crises. However, what makes China unique is that the CCP also unfairly restricted labor rights to help firms survive, since they were the lifeblood of the economy. Specifically, the judiciary adopted an unduly restrictive interpretation of *Labor Contract Law* to permit employers to unilaterally amend labor contracts and salaries without written consent and restrict employees' capacity to claim for overtime payments.²²⁷

²²¹ COONEY ET AL., *supra* note 13, at 116–17.

²²² *Id.* at 117.

²²³ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020).

²²⁴ COONEY ET AL., *supra* note 13, at 117; *Gov't Reacts to Return of Rural Migrants*, CHINA.ORG.CN (中国网) (Nov. 19, 2008), http://www.china.org.cn/government/local_governments/2008-11/19/content_16790890.htm.

²²⁵ *Gov't Reacts to Return of Rural Migrants*, *supra* note 224.

²²⁶ *Id.*

²²⁷ COONEY ET AL., *supra* note 13, at 117–18.

Besides, labor unions were deployed to encourage workers to cooperate with companies' needs for internal adjustments by accepting flexible working hours, improving productivity, and reducing costs.²²⁸

Although the CCP might intervene to protect labor interests for political concerns, there is no guarantee that the CCP will always do so. Companies may gain the CCP's support if economic growth is a more urgent goal. Some recent examples vividly illustrate this. In early 2023, Chinese migrant workers demanding overdue wages from their employers were cracked down on by local governments over alleged "malicious" labor activism.²²⁹ These employers included debt-laden real-estate developers and COVID-19 testing providers that had difficulties in collecting receivables from cash-strapped local governments.²³⁰ The reason why local governments chose to shield employers was that they were the biggest contributors to fiscal revenues and key players in reviving the economy, a top priority of the CCP after three years of stringent COVID restrictions.²³¹ Another example is the CCP's sudden change of attitude towards *dabai* (大白).²³² They were once praised by President Xi for having "braved hardships and courageously persevered" to execute the CCP's task of combating COVID.²³³ However, after the sudden lifting of restrictions, some *dabai* received threats from local governments for holding public demonstrations to demand unpaid wages.²³⁴

Another example is the Chinese authorities' attitude towards the "996" working schedule in the tech sector. During the crackdown on the sector in 2021, the Supreme Court declared the "996" schedule illegal.²³⁵ Even though the main reason was likely the authorities' objective of containing the tech sector, labor activists' efforts might have also played a role: three of them

²²⁸ *Id.* at 117.

²²⁹ Sun Yu, *Chinese migrant workers face crackdown for 'malicious' protests over unpaid wages*, FIN. TIMES (Jan. 24, 2023), <https://www.ft.com/content/779512aa-6a73-47ce-b924-471fa63dc5a1>.

²³⁰ *Id.*

²³¹ *Id.*

²³² Dabai (大白) means "big whites" in Chinese, owing to their distinctive white personal protective equipment. See Savannah Billman, *Why are China's Covid Hazmat Volunteers called 'Big White'?*, CHINA ADMISSIONS (May 11, 2022), <https://www.china-admissions.com/blog/why-are-chinas-covid-hazmat-volunteers-called-big-white/>.

²³³ Arjun Neil Alim, Kai Waluszewski & Eleanor Olcott, *'No one remembers us': China's 'big white' pandemic workers reel from end of zero-Covid*, FIN. TIMES (Feb. 2, 2023), <https://www.ft.com/content/2cc7e36c-ec30-4c8a-8629-369663f82ac8>.

²³⁴ *Id.*

²³⁵ Yip, *supra* note 109.

were sentenced to prison before the Supreme Court's condemnation of the "996" culture.²³⁶ Unfortunately, the situation did not last long. In 2024, tech companies were actively promoting long working hours and again showed their contempt for work-life balance under the shadow of a slowing economy and the pressure of fierce competition.²³⁷ However, the authorities refrained from criticising the "996" working schedule this time, for which one big reason is likely to have been the pressing need to boost the sluggish economy.

Employees aside, *Company Law* is silent on how companies should balance interests of communities, customers, creditors, and suppliers when running their businesses. The *Code of Corporate Governance for Listed Companies* states that listed companies shall conduct business in a sustainable way by protecting stakeholders' interests, protecting the environment, and fulfilling social responsibilities.²³⁸ However, it only applies to listed companies, and only the CSRC can require ratification; aggrieved stakeholders cannot rely on it as a legal basis to sue a company.²³⁹ Although stakeholders are weak from a company law perspective, they may be able to pressure governments to intervene by attracting public attention. For instance, SOE projects that carried environmental or health risks have been forced to close or relocate because of local communities' protests.²⁴⁰

SOEs usually pay more attention to stakeholders' interests than private companies for political reasons. One might argue that this is because SOEs have deeper pockets, but SOEs often achieve lower profit margins.²⁴¹ Or, one might argue that SOE managers are not paying out of their own pockets, a typical agency problem. However, the fact that SOEs have active and well-

²³⁶ McMorrow & Liu, *supra* note 111.

²³⁷ *Id.*

²³⁸ Shangshi Gongsi Zhili Zhunze (上市公司治理准则) [Code of Corporate Governance for Listed Companies], promulgated by the China Securities Regulatory Commission, effective Sept. 30, 2018, Chap. 8.

²³⁹ Shangshi Gongsi Zhili Zhunze (上市公司治理准则) [Code of Corporate Governance for Listed Companies], Preface.

²⁴⁰ See Yanwei Li et al., *Governing Environmental Conflicts: A Comparative Analysis of Ten Protests against Industrial Facilities in Urban China*, 43 LOC. GOV'T STUD. 992 (2017); Aizhu Chen & Ding Qi, *China Cancels \$6 Billion Uranium Plant After Protest*, REUTERS (July 13, 2013), www.reuters.com/article/us-china-uranium-idUKBRE96C02G20130713.

²⁴¹ Bradley Krom & Matt Wagner, *Evaluating Recent Fundamental Trends in Chinese Ex-state-owned Enterprises*, BARRON'S (July 12, 2018), www.barrons.com/articles/evaluating-recent-fundamental-trends-in-chinese-ex-state-owned-enterprises-1531257141.

funded labor unions in charge of worker welfare and punishments for managers if they fail to handle labor issues properly reflects the CCP's endorsement.²⁴² Generally speaking, directors and managers of SOEs take social implications into consideration during decision making, which lays the foundation for SOEs' awareness of stakeholder interests.²⁴³ For example, SOEs are very cautious about massive layoffs, and they always make mitigation plans concurrently with layoffs.²⁴⁴ Research has confirmed that SOEs have stickier labor costs than non-SOEs.²⁴⁵

In conclusion, stakeholders are in a vulnerable position in Chinese corporate governance. Employees have limited influence in the company's decision-making, and they face a weak labor protection regime. The CCP may come to the rescue of infringed employees if they pose a threat to social stability and the CCP's legitimacy. However, employees may also encounter the CCP's crackdowns if its interests are in line with employers. Other stakeholders face a similar dilemma: Whether the CCP sides with them depends on its policy goals, which vary from case to case, from time to time, and with the leaders' ideas.

III. IMPLICATIONS

Many countries use legislative and administrative means to promote policy goals, and all political parties strive to maintain legitimacy and preserve power. Why should China be regarded as being different? The short answer is that the presence of the CCP makes China different. As an all-responsible government, the CCP decides the country's development strategies and deploys most of its resources.²⁴⁶ As the sole ruling party, the CCP has more effective control over the legislature, administration, and judiciary than political parties in democratic countries, and this enables it to take various and sometimes unique means to achieve its policy goals, such as regulation, state ownership, and informal interviews.²⁴⁷ As a result,

²⁴² Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020); Interview with Interviewee 34, State-owned enter. in-house law., in Chongqing, China (Jan. 2021).

²⁴³ *Id.*

²⁴⁴ Interview with Interviewee 5, Law., in Chongqing, China (Oct. 2020).

²⁴⁵ Zhaoyang Gu et al., *The Political Economy of Labor Employment Decisions: Evidence from China*, 66 MGMT. SCI. 4703, 4721 (2020).

²⁴⁶ LI, *supra* note 2, at 36.

²⁴⁷ See HUANG, *supra* note 201; Milhaupt & Zheng, *supra* note 10.

Chinese corporate governance is heavily influenced by the CCP's policy, and businesses are sensitive to policy changes.

It is undoubtable that the CCP exerts significant influence on corporate governance, but its relationships with SOEs and private companies are different. The CCP has effective control over SOEs based on the state's shareholder rights, and this has resulted in a unique form of shareholder primacy: the party-centered governance structure. Control over SOEs is not new; it has been the case since the CCP took power in 1949. What is special about the current system is that the channel of control has been shifted from the administrative system to the party system in the past two decades: a change that has been accelerated and consolidated by the Xi administration.²⁴⁸ To the author's best knowledge, there is no other country whose political party supervises and manages SOEs through its intra-party system. Theoretically, this is at odds with the legal ownership of SOEs, whose shareholders are the Chinese state on behalf of Chinese citizens. However, it is politically rational, since the CCP is an all-responsible party and looks after all state affairs.

Private companies are not under as direct control as SOEs, but they are also subject to the CCP's potential influence. Private shareholders have primacy within the company and can effectively dominate management. However, externally, private shareholders and companies are exposed to the CCP's influence. The CCP can influence private companies by changing regulation and maneuvering implementation. Or it can simply exert pressure by approaching private companies informally without taking any concrete action, which is another layer of influence beyond law and the market. Western countries may also adopt legal requirements or use financial incentives to promote government policy, but firms operate in an economic realm protected by the rule of law and largely enjoy business autonomy. Comparatively, the CCP can exert a stronger influence on Chinese private companies, due to its political supremacy.

What are the implications of this system for Chinese companies and people and, more broadly, the world? The author believes that the Chinese corporate governance system has its own unique advantages and disadvantages. One advantage is that the CCP can maintain policy consistency. Unlike democratic countries, China does not face the risk of

²⁴⁸ Leutert & Eaton, *supra* note 6.

policy reversals due to a change in the ruling party. There is a possibility that different generations of leaders adopt different governance philosophies and economic policies, but radical changes have been limited thus far. Therefore, China has the benefit of being able to formulate long-term plans and pursue long-term goals. If properly managed, such stability can provide clarity for companies and encourage investment.

The second advantage is that the CCP can effectively instruct and coordinate Chinese companies to contribute to national policies. SOEs are naturally involved in policy promotion. Policy goals direct their decision making, and profit maximisation is often not their top priority. As a result, SOEs have invested in strategic sectors, contributed to national projects, and participated in domestic and international initiatives, such as the “Belt and Road Initiative.”²⁴⁹ Private companies may also be mobilised to advance policy goals such as “Going Out” and “Common Prosperity” through “carrots” and “sticks.”²⁵⁰

A collateral benefit is that Chinese companies are encouraged to contribute to the public good and may face less pressure to achieve short-term profits. Employee welfare and community interests are often embedded in SOEs’ business strategies, and SOEs may have sufficient leeway to adopt long-term, sustainable plans, which may ultimately generate society-wide benefits.²⁵¹ For example, SOEs invested in infrastructure in poorer interior provinces, supported social stability by employing a large workforce, and engaged in the “Poverty Alleviation” and “Rural Vitalisation” campaigns.²⁵² However, this might impinge on minority shareholders’ interests. Private companies may also be encouraged by “carrots” such as lower entry barriers, easier access to funding, grants and subsidies, etc. to take sustainable approaches. China’s leading role in electric vehicle production and ownership is a good example. With generous government support, such as

²⁴⁹ Wendy Leutert, *State-Owned Enterprises in Contemporary China*, in THE ROUTLEDGE HANDBOOK OF STATE-OWNED ENTERPRISES (Luc Bernier et al. eds., 2020).

²⁵⁰ See Goh, *supra* note 185; Meg Rithmire, *Going Out or Opting Out? Capital, Political Vulnerability, and the State in China’s Outward Investment*, COMPAR. POL., Apr. 2022, at 477. 479.

²⁵¹ Beck & Brødsgaard, *supra* note 19, at 503.

²⁵² Qing Liang (梁晴), *Shandong Shengshu Guozi Guoqi Shehui Zeren Baogao Liangdian Fencheng* (山东省属国资国企社会责任报告亮点纷呈) [*Shandong Provincial State-Owned Enterprises’ Social Responsibility Report Highlights*], 08 Shandong Guozi (山东国资) [*Shandong State-owned Assets*] 36 (2022).

subsidies and tax exemptions, China has become the world leader in electric vehicle manufacturing and has the highest percentage of electric vehicle ownership: an important step towards cutting emissions and tackling global warming, despite the ironic fact that the industry itself is energy intensive.²⁵³

One interesting question is whether the shareholder-value model in the Anglo-American system is more efficient than China's shareholder-primacy model. Will the former be better able to confront the challenges of climate change and sustainability? In the Anglo-American system, shareholder value is justified by law and economics theories, which argue that shareholder value maximizes the total social wealth and ultimately contributes to the public good.²⁵⁴ However, externalities are often ignored or assumed to be solved by regulation or even the market itself.²⁵⁵ Comparatively, China might have more tangible measures to tackle short-termism and make joint efforts toward sustainability as argued above. But it is the CCP that determines what is public good, which is justified by the ideology that the CCP looks after the Chinese people and works on constantly improving people's living standards.

It is hard to deny that there are also concerning aspects of Chinese corporate governance. The CCP might find it necessary to maintain its influence on companies for political concerns, but such a degree of influence can create uncertainty and insecurity for business. At the same time, there are few channels and limited room for private entrepreneurs and companies to influence government policy.²⁵⁶ As a result, companies may be hesitant about investment through fear of the authorities' changing priorities or interfering with businesses for policy goals. To accommodate the uncertainty and overcome the insecurity, Chinese companies and entrepreneurs always try to

²⁵³ See Elizabeth Economy, *China Wins Advantage with Art of Surprise*, FIN. TIMES (July 19, 2023), www.ft.com/content/a39b9dbf-decc-4e63-9929-628c75519058; Linda Lew, *How China Beat Everyone to Be World Leader in Electric Vehicles*, BLOOMBERG (July 18, 2023), www.bloomberg.com/news/articles/2023-07-17/how-china-beat-everyone-to-be-world-leader-in-electric-vehicles#xj4y7vzkg.

²⁵⁴ Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 39 (2001); William Lazonick & Mary O'Sullivan, *Maximizing Shareholder Value: A New Ideology for Corporate Governance*, 29 ECON. & SOC'Y 13 (2000).

²⁵⁵ Beate Sjäffjell et al., *Shareholder Primacy: The Main Barrier to Sustainable Companies*, in COMPANY LAW AND SUSTAINABILITY: LEGAL BARRIERS AND OPPORTUNITIES 84–85 (Beate Sjäffjell & Benjamin J. Richardson eds., 2015).

²⁵⁶ HUANG, *supra* note 201, at 7.

maintain an amicable relationship with the authorities, and this further strengthens the CCP's influence.

Foreign investors are likely to find it even more difficult to navigate the Chinese system. Domestic companies have more local knowledge, making them more adaptive and better at cultivating relationships with the authorities. Foreign investors face various difficulties such as language barriers, political system differences, and cultural differences. The crackdown on consulting firms in recent years has made it even harder for foreign investors to do business in China.²⁵⁷ The recent wave of foreign capital pulling out of China has been a hit to the Chinese economy.²⁵⁸ If China can improve transparency and policy consistency, it would be beneficial for attracting investment.

CONCLUSION

China represents a new type of corporate governance that has not been fully captured by the current literature: shareholder primacy under the CCP's influence. It functions in SOEs and private companies in different ways. For the former, shareholder primacy and party influence have been merged into the party-centric governance structure. For the latter, shareholders dominate directors and managers, and stakeholders are vulnerable to companies' opportunism and exploitation. However, ultimately, all these groups are subject to the CCP's potential influence.

Having the CCP's political influence embedded in Chinese corporate governance carries both strengths and weaknesses. As an all-responsible party, the CCP has considerable influence on Chinese society and economy. It can effectively mobilize both SOEs and private companies to make joint efforts to achieve development goals and generate public good. However, it is the CCP that designs the country's future and defines public good. Because of the significant influence the CCP can exert on Chinese companies, it might create uncertainty and insecurity for business, discouraging investment and hindering technological development.

²⁵⁷ Ryan McMorrow et al., *Work Dries Up for US Consultancies in China after National Security Raids*, FIN. TIMES (July 23, 2023), <https://www.ft.com/content/0b869421-10fd-41e7-8280-5d09a224062f>.

²⁵⁸ Hudson Lockett & Mercedes Ruehl, *Foreign Investors Sidestep China in Rush into Asian Stocks*, FIN. TIMES (July 20, 2023), www.ft.com/content/8a3764af-e7f2-45a5-bcd4-83da598987c0.

As the world's second-largest economy with widespread international trade and investment relationships, the influence of Chinese corporate governance goes beyond China's territory. If China can improve transparency and policy consistency, it would be helpful for its economy, which is in need of stimulus and reform. For the outside world, better knowledge of China can help it manage investment in China and deal with Chinese trading partners more efficiently. Thus, further research on Chinese corporate governance will not only advance academic literature but also benefit business.

Appendix A: List of Interviewees

Reference Number	Interviewee	Date	Location
1	Lawyer	September 2020	Chongqing
2	Non-state company in-house lawyer	September 2020	Chongqing
3	State-owned enterprise in-house lawyer	September 2020	Shanghai
4	Non-state company in-house lawyer	October 2020	Chongqing
5	Lawyer	October 2020	Chongqing
6	Private entrepreneur	October 2020	Chongqing
7	State-owned enterprise in-house lawyer	October 2020	Shanghai
8	State-owned enterprise in-house lawyer	October 2020	Beijing
9	Non-state company in-house lawyer	October 2020	Beijing
10	Non-state company in-house lawyer	November 2020	Chongqing
11	State-owned enterprise in-house lawyer	November 2020	Chongqing
12	Lawyer	November 2020	Chongqing
13	Lawyer	November 2020	Chongqing
14	Non-state company in-house lawyer	November 2020	Chongqing
15	Lawyer	November 2020	Shanghai
16	Lawyer	November 2020	Shanghai
17	Lawyer	November 2020	Beijing
18	Private entrepreneur	December 2020	Zhejiang (Hangzhou)
19	State-owned enterprise in-house lawyer	December 2020	Chongqing
20	Non-state company in-house lawyer	December 2020	Shanghai
21	Lawyer	December 2020	Shanghai
22	Private entrepreneur	December 2020	Zhejiang (Ningbo)
23	Lawyer	December 2020	Anhui (Hefei)
24	Lawyer	December 2020	Guangdong (Shenzhen)
25	Non-state company in-house lawyer	December 2020	Guangdong (Shenzhen)
26	Non-state company in-house lawyer	December 2020	Shanghai

Reference Number	Interviewee	Date	Location
27	Lawyer	December 2020	Shanghai
28	Lawyer	December 2020	Beijing
29	State-owned enterprise in-house lawyer	December 2020	Beijing
30	Private entrepreneur	December 2020	Tianjin
31	State-owned enterprise in-house lawyer	December 2020	Beijing
32	State-owned enterprise in-house lawyer	December 2020	Henan (Shangqiu)
33	State-owned enterprise in-house lawyer	December 2020	Henan (Zhengzhou)
34	State-owned enterprise in-house lawyer	January 2021	Chongqing
35	Private entrepreneur	January 2021	Chongqing
36	State-owned enterprise in-house lawyer	January 2021	Henan (Luoyang)
37	State-owned enterprise in-house lawyer	January 2021	Beijing
38	State-owned enterprise in-house lawyer	March 2021	Hongkong
39	Private entrepreneur	March 2021	Anhui (Wuhu)
40	Private entrepreneur	March 2021	Inner Mongolia (Baotou)
41	State-owned enterprise in-house lawyer	March 2021	Sichuan (Chengdu)

Appendix B: Questionnaire

Part One: Basic information of party organizations

1. The establishment of party organizations
 - a. When was the party organization established? How was it established? (E.g., Did the company file the application voluntarily, or the local party committee made the decision?)
 - b. Did any other party/government (affiliated) organs play a role in the establishment of party organizations? If so, how?
 - c. What type of party organization is it, and how many CCP members are in the concerned company?
2. The affiliation relationship of party organizations
 - a. What is the upper-level party organization?
 - b. Are there any subordinate party organizations?
3. Members of party organizations
 - a. Who are the members? (**No names are needed**) Please describe the positions they hold in/their relationship with the concerned company, e.g., shareholders, full-time deputy secretaries, directors, general managers, staff.
 - b. Do they serve other positions outside the concerned company? E.g., high-level personnel of affiliated companies, cadres of CCP or government organs.
(For private entrepreneurs) Did they work in the government, party organs, or the state sector?
 - c. Who selected them? Were they elected by party members in the concerned company or appointed/assigned by higher-level authorities?
 - d. Are they paid by the concerned company for their party organization membership, excluding their salaries for other positions? Do they receive allowance from any other institutions for their party organization membership?
 - e. Who do they report to? Any ideas of what they report?
4. Operation of party organizations
 - a. What are the party organization's responsibilities and duties (generally speaking, save the details about corporate governance for the next section)?

- b. What are the secretary's responsibilities and duties, to the party organization (or the CCP) and the company (if different)?
- c. What are the decision-making procedures of the party organization? The party organization always makes resolutions collectively, or the secretary has a decisive role in the decision-making process?

Part Two: Party organizations' role in corporate governance

1. Activities of party organizations
 - a. What activities are carried out by the party organization?
 - b. Are they business related or politically orientated?
2. The interaction between the party organization and management
Besides party organization activities, what are the other ways in which the party organization interacts with management? E.g., regular joint meetings, attending the board of directors' meetings.
3. Decision making
 - a. Does the party organization play any role in the concerned company's decision-making process?
 - b. If so, how? Please detail the procedures.
 - c. What decisions the party organization discusses/decides?
 - d. Is the party organization exerting any of the shareholders' rights?
 - e. What does the party organization take into consideration when making decisions? E.g., political implications (party policy, upper-level party organizations' initiatives/directions/resolutions), social implications (influence on local communities/the mass of workers).
 - f. Will directors and general managers who are also members of the party organization find it difficult to balance the two roles, considering that the party organization and management may consider issues from different or even conflicting perspectives?
 - g. If so, how do they balance the conflicting interests?
 - h. If management made a different decision from the party organization, what would happen? Whose decision would prevail?

- i. If the board of directors are responsible to the shareholders, who is the party organization responsible to? If the shareholders find that the party organization undermines the company's interests, is there any way to pursue remedies?
4. Supervision/evaluation
 - a. Who/what does the party organization supervise/evaluate?
 - b. How is the supervision conducted? E.g., Do directors/general managers have to report to the party organization regularly? Or can the party secretary hold a conversation with directors/general managers at his/her discretion?
 - c. What are the criteria of supervision/evaluation? E.g., the company's financial performance, the implementation of party policy/upper-level party organizations' resolutions.
 - d. What would the consequence be if someone failed an evaluation?
5. Amendments of articles of association
 - a. Has the concerned company written the party organization's duties and responsibilities into articles of association?
 - b. What are the party organization's duties and responsibilities in the articles of association?
 - c. Are there any other internal regulations concerning the party organization? What are they about?
 - d. Did the amendments encounter any doubts or objections? How were they solved?
6. Others

Are there any other ways in which the party organization engages or intervenes in corporate governance?
7. Implications of party organizations (in terms of corporate governance)
 - a. Do you think the party organization has become the de facto leadership of the concerned company?
 - b. What are the pros of incorporating the party organization into corporate governance? E.g., an extra level of supervision on high-level personnel, stakeholder friendly.
 - c. What are the cons of incorporating the party organization into corporate governance? E.g., lower efficiency of decision-making, political interests trump economic interests, influence managerial autonomy.

Part Three: Interaction between the concerned company and the CCP

1. Activities held by upper-level party organizations
 - a. What training/education has been delivered to party secretaries/shareholders/directors/general managers?
 - b. Are secretaries/shareholders/directors/general managers invited to other activities?
2. Upper-level party organizations' role in personnel selection
 - a. Which personnel are subject to upper-level party organizations' approval? E.g., secretaries, directors, general managers, financial officers.
 - b. What are the criteria of candidates?
 - c. What are the procedures of assigning/appointing these personnel?
 - d. Will the concerned company's opinions be solicited? What if the company has a different opinion?
3. Influence on decision-making
 - a. Do upper-level party organizations have any influence on the concerned company's decision-making process? How do they do so?
 - b. What decisions they intervene into?
 - c. Are there any other informal ways through which upper-level party organizations influence the decision-making? E.g., informal interviews with shareholders.
 - d. If the company disobeys upper-level party organizations, will there be any negative consequences?
4. Benefits and burdens brought by the party organization (more generally)
 - a. The service-orientated party organizations have been highly promoted in recent years, what are the benefits of hosting the party organization? E.g., preferential tax rates, easier access to resources (facilities, land, credits, etc.), business opportunities (bidding government procurement, chances to get listed).
 - b. Are any conditions attached to these benefits?
 - c. What are the burdens of hosting the party organization? E.g., Is it a financial burden to organize party activities? Is it interfering with internal affairs?