



**The Promotion of Corporate Social
Responsibility in Chinese High-tech Companies:
Exploring the Unique Institutional Environment
in China**

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**A thesis submitted in partial fulfilment of the requirements of Nottingham Trent
University for the degree of Doctor of Philosophy**

December 2023

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ACKNOWLEDGEMENTS

I would like to express my profound gratitude to the individuals who have been instrumental in the completion of my PhD journey; I am eternally grateful for your unwavering support.

First and foremost, to my parents, Shuxia Wu and Bidan Liu, your continuous support since the start of my overseas study life in 2015 has been invaluable. The foundation of my academic pursuits rests on the love and encouragement you have given me.

To my supervisory team, Professor Jingchen Zhao and Professor Rebecca Parry, your comprehensive guidance, encouragement, and constructive criticism over the past four years have been pivotal to my scholarly growth and the successful completion of this project.

Thank you all for making this journey not only possible but also deeply rewarding.

ABSTRACT

This thesis presents an in-depth exploration of Corporate Social Responsibility (CSR) in the context of Chinese high-tech firms listed on the Shenzhen Stock Exchange's growth enterprise market "ChiNext", with a focus on highlighting the legal aspects of CSR. Through a multi-dimensional lens, it examines the evolving regulatory landscape, ethical concerns, and strategic considerations affecting CSR practices and legislation in China. Utilising the 'Triple U' framework—which focuses on Urgency, Uniqueness, and an Umbrella (Government oversight)—as an analytical tool, the research emphasises the pressing need for attention to CSR. This framework aids in dissecting the distinct roles played by each entity in shaping CSR practices. A key focus is placed on the dynamic interplay between institutional theory and the legal mechanisms that both guide and constrain CSR activities.

In light of emerging trends, the thesis introduces an additional dimension by examining the integration of Artificial Intelligence (AI) within CSR strategies. The research identifies both the transformative potential and the ethical challenges posed by AI, such as data privacy, algorithmic bias, and job displacement. The study underlines the imperative for regulatory adaptability and anticipatory governance in both the realms of CSR and AI.

The thesis concludes with a blueprint for CSR in Chinese high-tech firms, including the need for a flexible and implementable CSR framework that can adapt to technological advances and shifts in socio-cultural norms. It calls for a balanced approach incorporating voluntary standards and legal requirements to promote sustainable development without stifling innovation. The insights from this work aim to enrich our understanding of CSR in the Chinese high-tech sector, offering implications for global CSR strategies and AI governance.

LIST OF ABBREVIATIONS

CSR	Corporate Social Responsibility
CCL	Chinese Company Law
AI	Artificial Intelligence
ESG	Environmental, Social, and Corporate Governance
CSRC	China Securities Regulatory Commission
WTO	World Trade Organization
OECD	Organisation for Economic Co-operation and Development
UN	United Nations
ChiNext	NASDAQ-Style Subsidiary of The Shenzhen Stock Exchange
SZSE	Shenzhen Stock Exchange
SSE	Shanghai Stock Exchange
HKEX	Hongkong Stock Exchange
SASAC	State-owned Assets Supervision and Administration Commission
ROIC	Return on Invested Capital
RRI	Return on Invested Capital
CRM	Customer Relationship Management
NGO	Non-governmental Organization
R & D	Research and Development
CSA	Corporate Social Accountability
GDPR	General Data Protection Regulation
TWCCSR	Two-way Communication Strategy on CSR Information
Triple U	Uniqueness, Urgency, and Umbrella
GRI	Global Reporting Initiative
ISO	International Organization for Standardization

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Word Count: 68914

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CHAPTER 1: INTRODUCTION

1.1 Overview of the Thesis

As technology firms such as WeChat, Huawei, and Alibaba play a pivotal role in the daily lives of Chinese people, their influence extends beyond mere technological advancements. This widespread impact brings Corporate Social Responsibility (CSR) into sharp focus, underlining the necessity for these companies to engage ethically and responsibly with society. In this context, CSR becomes a crucial tool to ensure that the innovations and practices of these tech giants contribute positively to societal well-being. Within this scenario, the purpose of this thesis is to critically examine the CSR practices of Chinese high-tech firms listed on the ChiNext. The main aim of this thesis is to critically examine and understand the dynamics of CSR practices among Chinese high-tech companies, especially those listed on the ChiNext in Shenzhen Stock Exchange. Simultaneously, this thesis is designed to fill the gap in understanding of how these firms navigate the complex interplay between technological innovation, ethical responsibility and regulatory compliance. Utilising a multi-dimensional approach, the study focuses on the regulatory landscape, ethical dilemmas and strategic considerations in China's unique institutional environment. The study further explores the impact and implications of integrating Artificial Intelligence (AI) into CSR strategies, providing a blueprint for reshaping CSR activities in the high-tech industry. This includes a critical assessment of the importance of formalising CSR within a legal framework, scrutinising the discrepancy between theoretical legal provisions ("law on the books") and actual implementation ("law in action"). Meanwhile, provides a unique window into how CSR policies are interpreted and enforced in the real world by comprehensively analysing 99 Chinese legal cases related to CSR, offering a unique window into how CSR policies are interpreted and executed in real-world scenarios. This examination sheds light on the complex interplay between 'law on the books' and

'law in action', highlighting the nuances and challenges faced by Chinese high-tech firms in aligning their CSR strategies with legal expectations. In addition, the analysis provides a comprehensive institutional analysis of CSR practices, considering the historical evolution, cultural underpinnings and political implications of CSR in the high-tech sector. This multifaceted research approach sought to ensure that these CSR activities not only comply with emerging legal standards, but also resonate with the socio-cultural structure and political landscape of China's high-tech industry.

1.2 Background of the Thesis

While technology giants like WeChat, Huawei, have been pivotal in driving economic growth and social development in China, they are not immune to criticism. These firms face scrutiny for social, environmental, and human rights issues, including challenges like child labour and environmental degradation.

With the advent of the 21st century came a spate of corporate controversies and scandals, each highlighting the inadequacy of the CSR governance model on a global scale. As much as the early, catastrophic corporate collapses of Barings Bank, Enron, Royal Ahold and others highlighted the gaps in corporate governance, this series of scandals in the millennium similarly depicted the monolithic questions that exist in the Western model of CSR.¹ For example, Volkswagen, dubbed Dieselgate, admitted to cheating on emissions tests by installing software in its diesel engines that manipulated test results. The furore has seriously damaged the carmaker's image and exposed a serious lack of ethical standards.² It reveals that for a brand that touts environmental responsibility, the scandal exposes a focus on profitability rather than real environmental concerns. There has also been a series of unfortunate crashes of Boeing's 737 Max model planes

¹ Ghulam Abid and Alia Ahmed, "Failing in Corporate Governance and Warning Signs of a Corporate Collapse" (2014) 8 *Pakistan Journal of Commerce and Social Sciences (PJCSS)* 846, 847 <<https://www.econstor.eu/handle/10419/188173>>; Per H Hansen, "Introduction: Special Issue on Scandals and Panics" (2009) 83 *Business History Review* 1, 1-3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1407189>.

² Chris Ziegler, "Volkswagen's Huge Diesel Emissions Scandal: The Full Story" *The Verge* (March 26, 2021) <<https://www.theverge.com/2015/9/23/9384791/volkswagens-huge-diesel-emissions-scandal-the-full-story>> accessed August 17, 2023; Hotten BR, "Volkswagen: The Scandal Explained" *BBC News* (December 10, 2015) <<https://www.bbc.co.uk/news/business-34324772>> accessed August 17, 2023

from 2018 to 2020 due to software issues, all potentially revealing potential lapses in safety standards, corporate transparency, and ethical considerations.³ In parallel, China's tech sector has not been exempt from controversies that have highlighted the need for sound corporate social responsibility governance. For example, Ant Financial Services Group suspended its mega-IPO in late 2020, a high-profile failure that exposed major gaps in China's regulatory framework for tech companies involved in financial services.⁴ The unexpected suspension due to regulatory non-compliance highlights the tension between innovation and governance in China's rapidly growing tech sector. It also raises ethical issues that tech giants must consider, especially when they straddle multiple heavily regulated industries. Another telling case is the Luckin Coffee scandal in 2020. While Luckin Coffee was not a traditional tech company, it made technology and data analytics a core element of its business model.⁵ The company came under intense scrutiny when it was revealed that its COO and several employees had fabricated nearly \$310 million in sales, leading to a severe crisis of investor confidence and eventual delisting from the NASDAQ.⁶ This incident revealed the governance, transparency and business ethics challenges faced by fast-growing Chinese companies using technology for growth.

These Chinese cases emphasise that, like their Western counterparts, Chinese high-tech companies face urgent and complex CSR challenges. The two incidents above show that issues around governance, ethics and regulation are as important in the East as they

³ Joseph R Herkert, Jason Borenstein and Keith Miller, "The Boeing 737 MAX: Lessons for Engineering Ethics" (2020) 26 *Science and Engineering Ethics* 2957 <<https://doi.org/10.1007/s11948-020-00252-y>>; Scott Hamilton, "New Software Issue Delays Some 737 MAX Deliveries/Update - Leeham News and Analysis" (Leeham News and Analysis, March 10, 2023) <<https://leehamnews.com/2023/03/06/new-software-issue-delays-some-737-max-deliveries/>> accessed August 17, 2023.

⁴ Raymond Zhong, "In Halting Ant's I.P.O., China Sends a Warning to Business" (The New York Times, 2020) <<https://www.nytimes.com/2020/11/06/technology/china-ant-group-ipo.html>> accessed September 30, 2023.; Arjun Kharpal, "Alibaba Shares Dive 7% as Ant Group's Record \$34.5 Billion IPO Is Suspended" *CNBC* (November 4, 2020) <<https://www.cnbc.com/2020/11/03/ant-group-ipo-in-shanghai-suspended.html>> accessed September 30, 2023.

⁵ Zhe Peng, Ya-Hui Yang and Renshui Wu, "The Luckin Coffee Scandal and Short Selling Attacks" (2022) 34 *Journal of Behavioral and Experimental Finance* 100629 <<https://doi.org/10.1016/j.jbef.2022.100629>>.

⁶ Reuters, "China's Luckin Coffee to Pay \$180 Million Penalty to Settle Accounting Fraud Charges" *CNBC* (December 17, 2020) <<https://www.cnbc.com/2020/12/17/chinas-luckin-coffee-to-pay-180-million-penalty-to-settle-fraud-case.html>> accessed September 30, 2023.

are in the West. In addition, both incidents illustrate the unique CSR considerations that arise in China's unique institutional and regulatory environment, emphasising the need for Chinese high-tech companies to take a contextualised approach to CSR.

In other words, the exigencies of the competitive marketplace may have overshadowed the CSR principles of ensuring safety first. While these corporate misadventures are different, they have one thing in common: they highlight the shortcomings of the traditional CSR model that focuses too much on shareholder value and short-term profitability. In this context, social and environmental issues often become ancillary to, rather than central to, core business operations. In the aftermath of these scandals, as with the post-Enron shift, there is enhanced recognition that CSR needs to go further, encompassing not only peripheral environmental and social engagement, but also becoming an intrinsic aspect of core business functions ranging from accounting to product development.

As an important means for contemporary businesses to fulfil their social functions and serve public interest objectives, CSR has been discussed from a multidisciplinary perspective, particularly in the legal sphere. The term CSR has been explicitly adopted in the Chinese Company Law, but the nature of the responsibility in Article 5 of the Chinese Company Law is seen as having aspirational but non-mandatory implications.⁷ In this regard, this thesis focuses on the fulfilment of CSR by listed companies in China. I will examine high-tech companies due to their unique stakeholder networks and CSR requirements. The thesis will propose and analyse an implementation methodology based on a mixed-method approach, which includes both hard and soft methods. The focus of the research will be on the Shenzhen Stock Exchange's growth enterprise market (also known as ChiNext) and will draw upon a quantitative study of 99 Chinese

⁷ Ciyun Zhu, "Corporate Social Responsibility: Navigating between Legal Responsibility and Ethics (公司的社会责任: 游走于法律责任与道德准则之间)" (2009) 20 Peking University Law Journal (中外法学) 29, 32; Jiangyu Wang, "CSR as CPR: The Political Logic of Corporate Social Responsibility in China" (2022) 2 USALI East-West Studies 1, 2 <<https://usali.org/asia-pacific-symposium-essays/csr-as-cpr-the-political-logic-of-corporate-social-responsibility-in-china>>.

cases that concern CSR, as well as a unique Triple U model of corporate governance in modern China, developed using institutional theory.

Over the last two decades China has achieved unrivalled economic growth among developing countries.⁸ In particular, China has the world's most extensive industrial output, and plays a dominant role in the world's manufacturing industries.⁹ In addition, Plender has suggested that companies from China have been the largest users of initial public offerings (IPOs) worldwide over the past ten years.¹⁰ However, some surveys have indicated a growing concern with environmental and social responsibility among foreign as well as some domestic companies in China.¹¹ This follows a series of social problems, such as commodity safety (e.g. the milk scandal¹² and the vaccine scandal¹³) and environmental pollution¹⁴. Hence, along with the development of the social economy and the advancement of globalisation, maintaining a balance between economic value and the social responsibility of commercial enterprises is a necessary task that must be part of the development process of contemporary Chinese companies.¹⁵ It is also a requirement in promoting the goal of modern enterprise management in China.¹⁶

⁸ Xiaohui Liu, "Structural Changes and Economic Growth in China over the Past 40 Years of Reform and Opening-Up" (2020) 3 *China Political Economy* 19 <<https://doi.org/10.1108/cpe-05-2020-0010>>.

⁹ Wayne M Morrison, "China's Economic Rise: History, Trends, Challenges, and Implications for the United States" (Congressional Research Service, 2019) <<https://sgp.fas.org/crs/row/RL33534.pdf>> accessed 17, 2023.

¹⁰ John Plender, "China's IPO Dominance over US Highlighted by Small Listings" *Financial Times* (November 8, 2018) <<https://www.ft.com/content/202cfbb2-e2b0-11e8-a6e5-792428919cee>> accessed August 16, 2019.

¹¹ Kun Li, Nasrin R Khalili and Weiquan Cheng, "Corporate Social Responsibility Practices in China: Trends, Context, and Impact on Company Performance" (2019) 11 *Sustainability* 354 <<https://doi.org/10.3390/su11020354>>; Mengjing Guo and Chendi Zheng, "Foreign Ownership and Corporate Social Responsibility: Evidence from China" (2021) 13 *Sustainability* 508 <<https://doi.org/10.3390/su13020508>>.

¹² Jane Parry, "China's Tainted Milk Scandal Spreads around World" (2008) 337 *BMJ* a1890 <<https://doi.org/10.1136/bmj.a1890>>.

¹³ Zhou Min and others, "Trust Collapse Caused by the Changsheng Vaccine Crisis in China" (2019) 37 *Vaccine* 3419 <<https://doi.org/10.1016/j.vaccine.2019.05.020>>.

¹⁴ Zhisheng An and others, "Severe Haze in Northern China: A Synergy of Anthropogenic Emissions and Atmospheric Processes" (2019) 116 *Proceedings of the National Academy of Sciences of the United States of America* 8657, 8658 <<https://doi.org/10.1073/pnas.1900125116>>.

¹⁵ Dongyong Zhang and others, "Evolving Corporate Social Responsibility in China" (2014) 6 *Sustainability* 7646, 7661-7662 <<https://doi.org/10.3390/su6117646>>.

¹⁶ Li, Khalili and Cheng (n 12). 354

This research will delve into the enforcement of CSR in Chinese listed high-tech companies, a pivotal segment of the Chinese business landscape. I will particularly explore their unique interpretations and applications of CSR and examine how innovative technologies can be leveraged to further enhance their commitment to socially responsible practices. According to the distribution of types of Chinese listed companies, it is clear that businesses powered by innovative technologies and domestic consumption have become steadily more important, while the relative role of heavy industry has declined.¹⁷ The movement of zombie companies discussed in Parry and Zhao's study exemplifies this transformation¹⁸. This transformation clearly reflects the principle of creative destruction, as China is actively moving away from its old industrial legacy in favour of a more flexible, technology-driven economic model. Broadly speaking, the evolution of Chinese listed companies demonstrates how much the Chinese economy has changed over the past twenty years.

The research subjects selected for analysis in this thesis are high-tech companies listed in the ChiNext Market. Generally speaking, the ChiNext Market has been referred to as “China’s NASDAQ” and is designed to attract listings from innovative growth-oriented Chinese companies, including many high-technology companies. In addition, the ChiNext Market has grown significantly over the past ten years; today it comprises 751 listings with a total market capital of over \$800 billion, representing nearly a quarter of the Shenzhen Stock Exchange. Hence, it is clear that the companies listed in the ChiNext Market could offer significant potential to push the development of CSR in China in a more progressive direction, due to their unique stakeholder networks and close linkage with the knowledge-based economy.

¹⁷ Ren-En Lim, “Reviewing Recent Developments in China’s Capital Markets and Assessing the Relevance of the Proposed Shanghai International Board” [2017] *Capital Markets Law Journal* kmw025 <<https://doi.org/10.1093/cmlj/kmw025>>.

¹⁸ Rebecca Parry and Jingchen Zhao, “Zombie Companies in China: Policies of Creative Destruction and Their Implementation” (2021) 2 *Corporate and Business Law Journal* 371, 400-401 <<http://irep.ntu.ac.uk/id/eprint/42941/>>.

In addition, the current mainstream CSR literature in China has been focussing on state-owned enterprises (SOEs). Other listed companies and private companies have been neglected in secondary sources. Hence, a study of high-tech companies' CSR is needed. This is particularly the case for listed companies in the ChiNext Market, as they are newly introduced to the market, and there is limited data and history for solid research. However, because of their significant innovation ability and human capital, CSR research on these companies seems significant and impactful.

1.3 Research Questions

The dynamic relationship between regulatory regimes, stakeholder expectations, and the rapid pace of technological advancement poses a unique challenge in the evolving CSR arena of Chinese high-tech firms. In the context of China's complicated cultural and economic background, where the traditional boundaries between hard and soft law are clearly demarcated, this thesis attempts to address the dilemma posed by the following research questions:

- How does the existing CSR regulatory framework in China influence the practices of high-tech companies listed on the ChiNext, and what are the strengths and limitations of this framework in addressing contemporary CSR challenges?
- What unique CSR challenges and opportunities do Chinese high-tech companies face, and how do these shape their strategic and operational approaches to CSR?
- Based on the analysis of 99 legal cases, how is CSR practised and enforced in the Chinese high-tech sector, and what discrepancies exist between the legal mandates and real-world application?
- How is Artificial Intelligence being integrated into the CSR strategies of Chinese high-tech firms, and what are the implications of this integration for ethical, regulatory, and operational aspects of CSR?

- How do historical, cultural, and political factors influence the practice of CSR in China's high-tech industry, and how can these institutional factors be aligned with CSR objectives to promote sustainable and ethical business practices?

Although the principles of CSR are generally accepted, their application, particularly in the Chinese high-tech industry, can be divisive due to the interplay of various country-, culture- and industry-specific factors. Within this divergence, there is an emerging discussion as to whether the global landscape of CSR, influenced by practices in Western countries, is converging towards a more universally accepted model,¹⁹ or whether countries like China are elaborating their unique approaches.²⁰ Similarly, other scholars have argued that global trade, capital flows and ubiquitous technology are leading to a convergence of CSR practices and governance models.²¹ However, China's unique attributes, such as the Guanxi system and the historical Chinese business model embodied in the Mianzi culture, as suggested further on in this thesis, may pose challenges or nuances to this convergence. More importantly, with regard to the corporate governance aspects of CSR, there is a growing consensus on the principles of sound and effective corporate governance, but differences in corporate law and practice across countries remain consistent with path-dependency theory.²²

¹⁹ Tahniyath Fatima and Saïd Elbanna, “Corporate Social Responsibility (CSR) Implementation: A Review and a Research Agenda towards an Integrative Framework” (2022) 183 *Journal of Business Ethics* 105 <<https://doi.org/10.1007/s10551-022-05047-8>>.

²⁰ Hong Fan, “Analysing CSR with Chinese Characteristics (浅析中国特色的 CSR)” (2011) 1 *PR Magazine (国际公关)* 89; Gefei Yin and Feng Chen, “Thoughts on Constructing CSR Legal Systems with Chinese Characteristics (关于构建中国特色企业社会责任法律体系的思考)” (2015) 3 *China WTO Tribune (WTO 经济导刊)* 30, 30-31.

²¹ Rusty O’Kelley and others, “2021 Global and Regional Trends in Corporate Governance” (The Harvard Law School Forum on Corporate Governance, March 3, 2021) <<https://corpgov.law.harvard.edu/2021/03/03/2021-global-and-regional-trends-in-corporate-governance/>> accessed August 17, 2023.

²² Stephanie Maier, “Research Briefing - How Global Is Good Corporate Governance?” (Silo.tips, 2005) <<https://silo.tips/download/how-global-is-good-corporate-governance>> accessed August 28, 2023; According to Sewell, path dependence is the idea that what happens at an earlier point in time affects the likely outcome of a series of events that occur at a later point in time; see William Sewell, “Three Temporalities: Toward an Eventful Sociology” in Terrence J McDonald (ed), *The Historic Turn in the Human Sciences* (University of Michigan Press 1996) pp.262–263.

Therefore, this thesis is consistent with Maroun's view that there is a process of mutual influence and learning between CSR practices and CSR practices in other regions, leading to a diverse and dynamic global CSR landscape.²³ It is important to note that the 'Triple U' framework, introduced earlier, serves as a manifestation of this thinking. It aims to address CSR in a way that is context-specific to Chinese high-tech companies while drawing on universal principles that underpin CSR practices globally. Furthermore, because CSR is not really a fixed concept or standard, but a practice that changes with time, place and context, it requires constant innovation and adaptation. In this vein, the 'Triple U' framework offers a flexible yet robust approach for governing CSR in the dynamic environment of China's high-tech sector. The hybrid nature of this model, fusing Eastern particularities with Western standards, emphasises the feasibility and desirability of an integrative approach to CSR governance that can adapt to diverse socio-cultural and regulatory landscapes.

While it is possible for some to assert that trends in corporate governance, particularly in the West, may guide the direction of CSR in China, controversies such as the corporate scandals that have occurred in Western companies over the years, as described earlier in the Background section, may underline the limitations of a single approach. That is why a hybrid approach that draws on the strengths and lessons of various corporate governance practices may provide a more sustainable and comprehensive approach to CSR. Such an approach not only incorporates elements of traditional Chinese practices and modern Western approaches but also intricately integrates the emerging nuances of high-tech industries, soft law adaptability, and hard law stringency.

In essence, this thesis attempts to explore whether a unique "hybrid pattern" of CSR governance can emerge in China's high-tech sector through the Triple U approach. Such

²³ Warren Maroun, "A Conceptual Model for Understanding Corporate Social Responsibility Assurance Practice" (2018) 161 *Journal of Business Ethics* 187, 189-190 <<https://doi.org/10.1007/s10551-018-3909-z>>.

a pattern could seamlessly combine both the soft and hard aspects of the law, reflect technological and social progress, and resonate with shareholder value and broader social considerations.

1.4 Original Contributions and Potential Solutions

This thesis will focus primarily on contributing new evidence and findings to the investigation of CSR from the perspective of high-tech companies listed in China, rather than merely summarising existing knowledge in a new form.

Firstly, we will discuss a sample of CSR-related cases (comprising 99 cases) to analyse whether Article 5 of the Chinese Company Law has been consistently applied correctly in the existing legal cases and how Article 5 has been used for interpretation in different types of cases. Therefore, by analysing this sample, it is possible to explore original results, such as possible problems and areas for improvement in the legal cases applying Article 5 of the CCL.

Secondly, the thesis will analyse the various types of CSR reports issued by companies listed on the ChiNext board of the Shenzhen Stock Exchange. The purpose of the analysis is to identify the main and potential problems and gaps in the legal framework of CSR of listed companies in China. These problems will be categorised to investigate whether some of the provisions in Article 5 of the China CSR Law and the Corporate Governance Code are mentioned, and if so, in what context. In addition, when discussing the practical application of stakeholder theory, as well as realistic cases of CSR and corporate governance in China, Huawei, a leader of technology companies in China, will be chosen as a case study to comprehensively examine how a representative example of China's high-tech industry would implement relevant strategies and programmes in the real world.

Finally, the potential solution to be addressed in this thesis is a new approach called the Triple U approach, designed especially with China's high-tech companies in mind.

This approach is deeply embedded in institutional theory and provides a structured framework for analysing and understanding the industry's unique CSR challenges, thus responding to the principles of institutional theory. Specifically, the approach is divided into three components: uniqueness, urgency and umbrella. The uniqueness element reflects China's unique national context, such as its unified polity, corporate ownership structure and large population base. As a large and influential economic power, the development of CSR in China should be in line with the pace of socio-economic development and progress. Therefore, it is urgent to regulate the CSR of listed companies in China. Last but not least, the Chinese government should play an "umbrella" role in regulating CSR programmes in China. The government should play a role in guiding, promoting and safeguarding the reference, formulation and implementation of relevant laws and regulations. This thesis will assess and evaluate the potential and effectiveness of this approach in order to understand how to effectively regulate Chinese listed companies and promote CSR programmes to address related issues.

1.5 Layout and Structure of the Thesis

After the introductory chapter, each of the subsequent chapters serves a distinct purpose. In Chapter 2, an in-depth discussion of stakeholder analysis specific to high-tech companies is presented, situating the discourse within the framework of stakeholder theory and providing a basis for analysing CSR in China's particular context from an integrated perspective. Next, Chapter 3 systematically analyses the current legislative framework of CSR in China, explicitly distinguishing between the rigidity of hard law and the adaptability of soft law from a legal perspective.

Following this, Chapter 4 delves into the current legal landscape governing CSR in China. To provide a nuanced and in-depth understanding, this chapter is enriched by an extensive case study that examines 99 individual legal cases from 2019. This comprehensive collection serves to offer a more current snapshot of the legal aspects governing CSR practices in China's high-tech sector. Further on, Chapter 5 explores the area of corporate governance, highlighting the relevance of path dependency and

the impact of China's unique cultural elements and strategic initiatives, as well as the nuances of the adjustments that need to be made. Taking into account the technological trends of recent years, Chapter 6 examines various aspects of AI from a CSR perspective, including the regulatory framework, potential risks and its transformative potential. The purpose is to clarify how the rules between AI and CSR, as well as the intertwined prospective intertwining, are affecting the Chinese tech industry. In Chapter 7, the insights accumulated in the previous chapters are integrated and analysed through the 'Triple U' approach in order to reveal the complexity and the multifaceted nature of CSR practices in China's tech industry. The final chapter of the thesis, Chapter 8, is a reflective conclusion that summarises the key findings and the core insights of this thesis, points out the limitations of the study, and makes suggestions for future research. Through the exploration of this chapter, readers will gain a comprehensive understanding of the trajectory of CSR in China's high-tech sector, a path that is driven by a combination of regulatory cues, stakeholder dynamics, and the undeniable impact of evolving technology.

CHAPTER 2: STAKEHOLDER ANALYSIS OF CSR ASPECTS OF HIGH-TECH COMPANIES

This chapter first delves into the historical evolution and ethical foundations of stakeholder theory. It then examines the role of technological innovation in influencing the dynamic relationship between stakeholders and corporate social responsibility (CSR) initiatives in high-tech firms. In order to ground the theoretical discussion in empirical evidence, the second half of the chapter focuses on a case study centred on Huawei, a leading firm in the high-tech sector.

Among the key areas explored in this chapter are the fundamental aspects of stakeholder theory, its ethical implications for contemporary corporate governance, and its particular applicability to high-tech firms. Subsequent chapters assess the role of technological innovation as a key driver influencing stakeholder dynamics and CSR initiatives. The case study of Huawei helps to illustrate these dynamics, providing real-world insights into how major players in the high-tech industry engage with a wide range of stakeholders, including shareholders, employees, suppliers, customers and government agencies.

2.1 Stakeholder Theory

In terms of the idea of stakeholders, Freeman redefined the concept of the ‘firm’, emphasising the consideration of external stakeholders in addition to taking the internal interests of the company into account.²⁴ From the perspective of organisational practices, companies should be responsible for managing an extended network of stakeholders that crosses the increasingly permeable organisational boundaries, and equally should undertake a duty of care for traditional interest groups and overlooked

²⁴ R Edward Freeman, Jeffrey S Harrison and Stelios C Zyglidopoulos, *Stakeholder Theory* (Cambridge University Press 2018) <<https://doi.org/10.1017/9781108539500>>.

stakeholders²⁵ (e.g. local communities and subsidiary companies). Therefore, stakeholder theory provides a new framework for thinking about organisational responsibility. By implying that the needs of stakeholders are as important as the needs of shareholders, the theory shifts attention to considerations beyond direct profit maximisation. In fact, even if a company seeks to focus on its shareholders, whether its goals can be achieved is also largely influenced by other stakeholders.²⁶ For instance, unfair treatment and an unsafe workplace will significantly reduce the efficiency and morale of employees, while behaviours that disturb market order, such as underpricing of products, will lead to negative public opinion and a decline in corporate reputation.

Once a company is able to skilfully consider and balance the interests of all stakeholders in addition to purely paying attention to shareholders' requirements, it will be able to considerably enhance and promote its corporate governance.²⁷ In terms of corporate governance and corporate management, the stakeholder framework has proven useful in analysing the strategic and regulatory challenges facing organisations, and good stakeholder relationships are key to organisational CSR developments.²⁸ According to a survey and model analysis of Spanish technology companies in terms of their CSR and stakeholders, CSR mediates the relationship between stakeholders and company performance, thereby enhancing the positive role of stakeholders. Companies in the technology sector need to base their activities for their stakeholders on a CSR strategy. This approach will enable technology partners not only to achieve satisfactory financial performance, but also to bring social and environmental benefits to society at large.²⁹

²⁵ John Simmons, "Managing in the Post-managerialist Era" (2004) 42 *Management Decision* 601, 602 <<https://doi.org/10.1108/00251740410518985>>.

²⁶ David J Foster and Jan Jonker, "Stakeholder Relationships: The Dialogue of Engagement" (2005) 5 *Corporate Governance* 51, 56 <<https://doi.org/10.1108/14720700510630059>>.

²⁷ Stephen Brammer and Stephen Pavelin, "Corporate Governance and Corporate Social Responsibility" in Mike Wright and others (eds), *Oxford University Press eBooks* (Oxford University Press 2013) <<https://doi.org/10.1093/oxfordhb/9780199642007.013.0032>>.

²⁸ Nada K Kakabadse, Cécile Rozuel and Linda Lee-Davies, "Corporate Social Responsibility and Stakeholder Approach: A Conceptual Review" (2005) 1 *International Journal of Business Governance and Ethics* 277, 288–289 <<https://doi.org/10.1504/ijbge.2005.006733>>.

²⁹ Carmen de Nieves-Niet and others, "Corporate Social Responsibility and Sustainability's Effect on the Relationship Between Technological Companies' Stakeholders and Performance" (2018) 77 *Journal of Scientific & Industrial Research* 570

Specifically, stakeholder theory can be interpreted as the need to make sustainable business decisions which take into account the interests of all stakeholders, including shareholders, employees, clients, suppliers, the community, the environment and future generations. Stakeholder theory divides companies' stakeholders into two groups, namely internal stakeholders (e.g. employees, managers, owners) and external stakeholders (e.g. suppliers, society, governments, creditors, shareholders, customers).³⁰ The theory also emphasises the importance of business ethics, which addresses the morals and values involved in managing an organisation.

The traditional ultimate goal of an enterprise is to pursue benefits and maximise profits in the interests of its shareholders.³¹ In reality, a company may only develop its CSR on a larger scale only when it is profitable; otherwise the development of CSR will be affected by limited funds. Therefore, to a certain extent, it may be concluded that becoming a profitable company is a relatively important condition for CSR development.

2.2 Stakeholders' Interests and Corporate Pyramid Theory

In 1979, Carroll differentiated between four types of CSR: economic, legal, ethical, and discretionary. The first of these, economic CSR, relates to the return on investment for the company's owners and shareholders, and creating fair employment opportunities and appropriate remuneration for workers. The other types of CSR are based on economic responsibility – that is to say, without the most basic economic responsibility, there is no chance that a company will develop a higher level of responsibility. This reaffirms that companies must be profitable in order to have the opportunity to further

³⁰ Yong Tan, "Corporate Governance in the Banking Sector" in Yong Tan (ed), *Performance, Risk and Competition in the Chinese Banking Industry - A volume in Chandos Asian Studies Series* (Elsevier 2014) 45–46 <<https://doi.org/10.1533/9781780634463.39>>.

³¹ Camelia-Daniela Hațegan and others, "Doing Well or Doing Good: The Relationship between Corporate Social Responsibility and Profit in Romanian Companies" (2018) 10 Sustainability 1041, 1043 <<https://doi.org/10.3390/su10041041>>; Hugh Alexander Grossman, "Refining The Role Of The Corporation: The Impact Of Corporate Social Responsibility On Shareholder Primacy Theory" (2005) 10 Deakin Law Review 572, 573–574 <<https://doi.org/10.21153/dlr2005vol110no2art293>>.

develop CSR.

Legal responsibility is the second type of CSR, encompassing expectations about the company's behaviour in terms of legal compliance and industry rules. In simple terms, societies expect companies to fulfil their economic mission within the framework of the legal requirements they stipulate. Laws and regulations are passive in nature and companies have few opportunities to take the initiative; all they can do is to abide by local laws and industry rules. However, if a government agency relies heavily on regulations to implement and manage a company's social responsibility behaviour, it will be difficult to ensure the fair and equal application of regulations.³² For example, in industries causing heavy pollution or enterprises using old technologies, the costs of upgrading equipment and technology in order to reduce pollution emissions and meet the requirements of environmental regulations will continue to rise, which will eventually limit the companies' ability to achieve major process improvement or capital upgrades.

In fact, ethical or moral responsibility may extend the range of legal responsibility, and at the same time place higher expectations on business owners so that their behaviour is better than that stipulated by law. The previous chapter described business ethics in company law as follows: in the business market environment, individuals and companies should abide by the moral rules of the market and industry rules. In fact, however, ethical responsibility also includes activities that are not necessarily codified into law but are still expected by members of society, such as respecting each individual, producing high-quality products, and so on. In fact, sound ethics will promote the formation of good business to a certain extent, since moral behaviour builds trust and enhances a firm's reputation, and moral actions minimise the costs related to fines and litigation.³³

³² Pratima Bansal, "The Corporate Challenges of Sustainable Development" (2002) 16 *Academy of Management Perspectives* 122, 127–128 <<https://doi.org/10.5465/ame.2002.7173572>>.

³³ Geoffrey P Lantos, "The Boundaries of Strategic Corporate Social Responsibility" (2001) 18 *Journal of Consumer Marketing* 595, 606 <<https://doi.org/10.1108/07363760110410281>>.

The final type of responsibility is that the company utilises the widest range of discretionary judgement and choice in deciding on specific activities or philanthropic contributions aimed at giving back to society. Being discretionary is a very personal voluntary choice, so the goals may be philanthropic, but they can also be the result of personal preferences, such as a change in the law promoting solar technology or funding a political action committee aiming to eliminate the death penalty nationally. This kind of responsibility is relatively controversial among the four kinds of responsibilities, because it can cover a wide range of goals, and its implications may conflict with the economic and profit goals and directions of commercial companies.³⁴

In summary, Carroll redefines the four areas of CSR and organises this multi-factor concept of CSR in a pyramid structure (see Figure 1).³⁵ In this pyramid, economic responsibility is the foundation, and discretionary responsibility is at the pinnacle. From this perspective, economic and legal responsibilities are socially required (i.e. mandatory), while moral responsibilities and philanthropy are social expectations.³⁶ Each of these responsibilities constitutes a basic component of corporate social responsibility.

³⁴ Packianathan Chelladurai, "Corporate Social Responsibility and Discretionary Social Initiatives in Sport: A Position Paper" (2016) 1 *Journal of Global Sport Management* 4, 10–12 <<https://doi.org/10.1080/24704067.2016.1177355>>.

³⁵ Duygu Türker, "Pyramid of CSR" in Samuel O Idowu and others (eds), *Encyclopedia of Corporate Social Responsibility* (Springer 2013) <https://doi.org/10.1007/978-3-642-28036-8_238>.

³⁶ *Ibid* 1964



Figure 1. CSR Pyramid

2.3 Stakeholder Theory and High-Tech Companies

2.3.1 Background

The critical role that technology companies have played in the rise of the digital age is widely recognised. In addition, the technology industry is constantly changing and being reinvented in numerous ways.³⁷ High-tech enterprises are not only one of the fastest-growing industrial sectors, creating millions of jobs, but they are also promoters of social development and innovation. For instance, the versatility offered by high technology and the fast speed of the internet has permeated every part of our lives. As revealed in the Digital 2021 April Global Statshot Report, more than 60 per cent of the world's total population is now online.³⁸ Arguably, this also means that the internet has become one of the essential tools in everyday life. The spread of internet use, one of the main drivers of the globalisation process, has transcended all borders and boundaries, while the internet has provided businesses with new ways to reach

³⁷ Wayne F Cascio and Ramiro Montealegre, "How Technology Is Changing Work and Organizations" (2016) 3 Annual Review of Organizational Psychology and Organizational Behavior 349, 349-351. <<https://doi.org/10.1146/annurev-orgpsych-041015-062352>>.

³⁸ Simon Kemp, "Digital 2021 April StatShot Report — DataReportal – Global Digital Insights" (DataReportal – Global Digital Insights, October 22, 2021) <<https://datareportal.com/reports/digital-2021-april-global-statshot>> accessed August 23, 2023.

customers and increase efficiency.

In order to better provide background support for the following chapters, I will take the listed high-tech companies in China as an appropriate sample in order to analyse the enterprises' stakeholders. Specifically, in combination with stakeholder theory, I will analyse the classification of various stakeholders in these high-tech companies and what impact they have on the companies.

In recent years the business environment has been characterised by a severe economic crisis, which can be attributed to changes in the economic cycle and the absence of values and ethical principles in the functioning of organisations.³⁹ One way to address this crisis may be through social innovation⁴⁰ and corporate social responsibility (CSR).

In 1984, Freeman proposed the stakeholder theory of organisational management and business ethics, which addresses the importance of morals and values in managing an organisation.⁴¹ In short, stakeholder theory argues that a firm should create value for all its stakeholders, not just its shareholders. In terms of corporate governance and corporate management, the stakeholder framework has proven useful in analysing the strategic and regulatory challenges facing organisations, and good stakeholder relationships are key to organisational CSR developments.⁴² Specifically, the theory can be interpreted as the need to make sustainable business decisions considering all stakeholders' interests, including those of shareholders, employees, clients, suppliers, the community, the environment, and future generations.⁴³ Moreover, the theory

³⁹ Domènec Mèlé, Antonio Argandoña and Carlos J Sánchez-Runde, "Facing the Crisis: Toward a New Humanistic Synthesis for Business" (2011) 99 *Journal of Business Ethics* 1, 1–2 <<https://doi.org/10.1007/s10551-011-0743-y>>.

⁴⁰ Stephen Goldsmith, Gigi Georges and Tim Glynn Burke, *The Power of Social Innovation: How Civic Entrepreneurs Ignite Community Networks for Good* (John Wiley & Sons 2010).

⁴¹ R Edward Freeman, Jeffrey S Harrison and Stelios Zyglidopoulos, *Stakeholder Theory (Series: Elements in Organization Theory)* (Cambridge University Press 2018) 1–3 <<https://doi.org/10.1017/9781108539500>>.

⁴² Kakabadse, Rozuel and Lee-Davies (n 28), 295-298

⁴³ Mark Anthony Camilleri, "Corporate Sustainability and Responsibility: Creating Value for Business, Society and the Environment" (2017) 2 *Asian Journal of Sustainability and Social Responsibility* 59, 59–60 <<https://doi.org/10.1186/s41180-017-0016-5>>.

emphasises the importance of business ethics, i.e. the morals and values involved in managing an organisation.

The conventional ultimate goal of an enterprise is to pursue benefits and maximise profits in the interests of its shareholders.⁴⁴ Similarly, in the famous “CSR Pyramid” Carroll placed the economic responsibility of the company as the base and foundation,⁴⁵ emphasising that the premise of the company should be profitable when implementing CSR.⁴⁶

In other words, there may be a correlation between the diversity and expansion of CSR activities and a company’s profitability. In fact, companies that implement CSR activities to a greater extent have been found to be more profitable in economic terms.⁴⁷ Likewise, companies with a higher degree of profitability are undoubtedly able to explore a wider variety of CSR activities.

2.3.2 Stakeholder Theory: A Lens for Examining High-Tech Industries

With valuable solutions such as AI-based tools, advanced web applications and third-party APIs all providing technology solutions for companies, these technological capabilities impact a company’s competitive advantage.⁴⁸ According to Malik,⁴⁹ the successful integration of third-party technologies can generate better products faster, whether this is banking technology, payment automation or environmental, social and

⁴⁴ Milton Friedman, “The Social Responsibility of Business Is to Increase Its Profits” in Walther Ch Zimmerli, Markus Holzinger and Klaus Richter (eds), *Corporate Ethics and Corporate Governance* (Springer-Verlag Berlin Heidelberg 2007) 173–174 <https://doi.org/10.1007/978-3-540-70818-6_14>.

⁴⁵ Archie B Carroll, “The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders” (1991) 34 *Business Horizons* 39, 42 <[https://doi.org/10.1016/0007-6813\(91\)90005-g](https://doi.org/10.1016/0007-6813(91)90005-g)>.

⁴⁶ Archie B Carroll, “Corporate Social Responsibility” (1999) 38 *Business & Society* 268, 286 <<https://doi.org/10.1177/000765039903800303>>.

⁴⁷ Haşegan and others (n 31), 1057-1058.

⁴⁸ Valdir Antônio Vitorino Filho and Roberto Giro Moori, “The Role of Technological Capabilities in the Competitive Advantage of Companies in the Campinas, SP Tech Hub” (2018) 15 *Innovation & Management Review* 247, 252, 257 <<https://doi.org/10.1108/inmr-06-2018-0035>>.

⁴⁹ Sanjoy Malik, “Leveraging Innovative Technology To Gain A Competitive Advantage In Software Development” *Forbes* (December 7, 2021) <<https://www.forbes.com/sites/forbestechcouncil/2021/12/07/leveraging-innovative-technology-to-gain-a-competitive-advantage-in-software-development/>> accessed July 18, 2022.

governance (ESG) management platforms. So to a certain extent, technological innovation is often an indispensable method for high-tech companies to enhance their market competitiveness, and the ability to innovate largely determines the viability of a high-tech company.

In the early twentieth century, there was a trend for companies in high-tech industries to outsource manufacturing completely to third-party contractors or joint venture partners.⁵⁰ By doing this, companies could avoid the risk of investing in expensive manufacturing plants and concentrate on developing what they believe to be their natural source of competitive advantage: product research and technological innovation. Hence, the following discussion will focus on the core competitiveness of high-tech companies in terms of their product research and technological innovation capabilities, in order to analyse their internal and external stakeholders.

To deepen the understanding for the subsequent discussions, I will use the listed Chinese high-tech firms as a representative sample to dissect the intricate web of their stakeholder relationships (as shown in Figure 2). Leveraging the stakeholder theory, I aim to demarcate and examine the assorted stakeholders within these tech companies, gauging the specific influence they bear on the firms. A broadened perspective on the internal and external stakeholder dynamics will enhance the depth of our discussions and provide valuable context to the companies' operations and strategies.

⁵⁰ Gary P Pisano and Steven C Wheelwright, "The New Logic of High-Tech R & D" (1995) 28 Long Range Planning 128, 128 <[https://doi.org/10.1016/0024-6301\(95\)99996-d](https://doi.org/10.1016/0024-6301(95)99996-d)>.

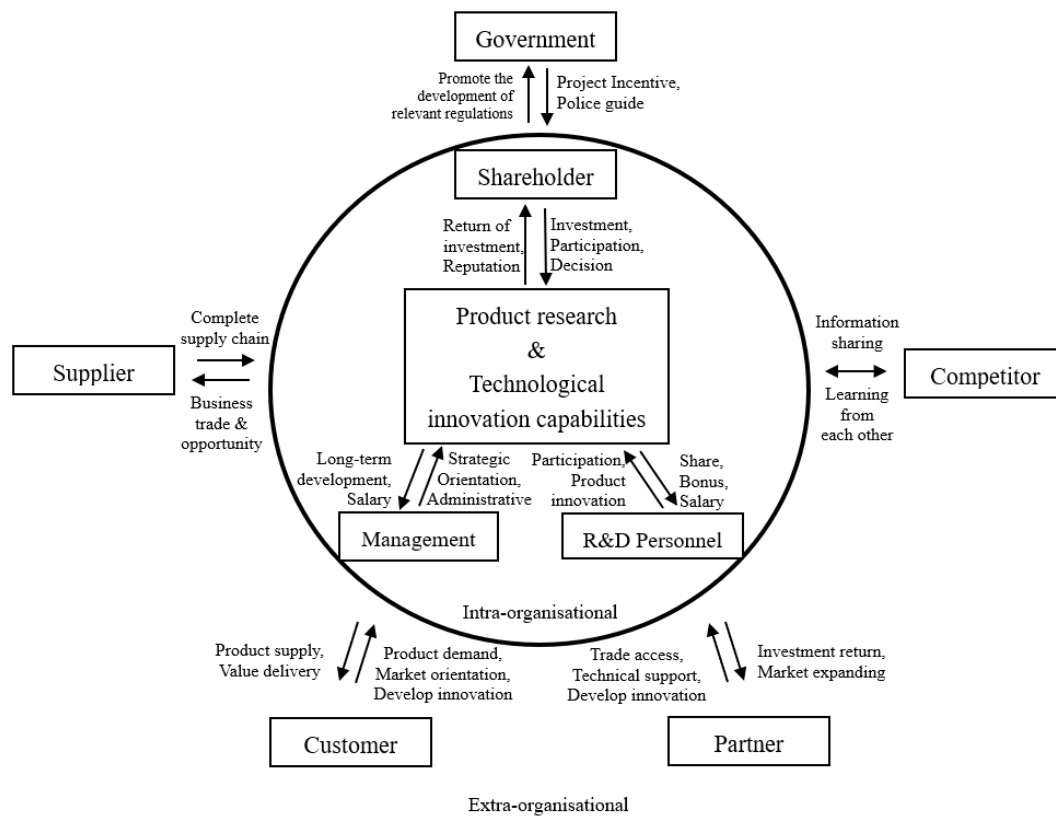


Figure 2. The interaction between stakeholders and technological innovation

2.4 Stakeholder Theory Perspective on High-Tech Companies' CSR Viability

In this section, this thesis chooses to classify stakeholders into internal and external categories in the analysis of high-tech companies using stakeholder insights. The main reason for this categorisation is because of the relevance and trends in the present-day business landscape. High-tech companies are at the forefront of the change, engaging with a wide and diverse range of stakeholders, from employees and shareholders to consumers and regulators.

Particularly in the high-tech industry, companies are uniquely positioned to navigate this ever-evolving landscape. As technology continues to advance at an accelerated pace, high-tech firms engage with a myriad of stakeholders who are affected by or have a vested interest in these technological advancements. A notable instance that highlights

the shift in corporate perspectives towards stakeholder engagement is the 2019 Business Roundtable. The Roundtable's updated statement of corporate governance expanded the definition of stakeholder groups, a stance that resonates strongly with high-tech companies that have long contended with multi-dimensional stakeholder interactions. High-profile high-tech firms such as Apple, Google, and Tencent have similarly been adopting comprehensive stakeholder engagement models that align closely with the revised visions of the 2019 Business Roundtable.

More specifically, in August 2019, the Business Roundtable, a prominent group of CEOs of large US corporations, released a new Statement of Corporate Purpose.⁵¹ This is a significant departure from the previous position of traditional corporations, which largely endorsed the principle that the primary purpose of a company's existence is to serve its shareholders. More importantly, this statement emphasises that beyond shareholders, companies should serve all stakeholders, including employees, customers, suppliers and communities, among others.⁵² This shift reflects a broader recognition that a company's responsibility extends beyond generating profits for shareholders and focuses on creating value for a broader range of other stakeholders. Similarly, a Harvard report highlighted the significance of stakeholder strategy development, where companies, besides focusing on internal stakeholders, argued that confirmation bias could be counteracted, and valuable sources of data could be tapped into by seeking out external perceptions of the company.⁵³

In other words, the transformation of the formal business landscape has led to the fact that each entity has different motivations, influences and stakes in the company's

⁵¹ David Benoit, "Move over, Shareholders: Top CEOs Say Companies Have Obligations to Society" *WSJ* (August 19, 2019) <<https://www.wsj.com/articles/business-roundtable-steps-back-from-milton-friedman-theory-11566205200>> accessed August 16, 2023.

⁵² Maggie Fitzgerald, "The CEOs of Nearly 200 Companies Just Said Shareholder Value Is No Longer Their Main Objective" *CNBC* (August 19, 2019) <<https://www.cnn.com/2019/08/19/the-ceos-of-nearly-two-hundred-companies-say-shareholder-value-is-no-longer-their-main-objective.html>> accessed August 6, 2023.

⁵³ Darrell Rigby, Zach First and Dunigan O'Keeffe, "How to Create a Stakeholder Strategy: A Data-Driven Approach to Design, Measurement, and Implementation" [2023] *Harvard Business Review* <<https://hbr.org/2023/05/how-to-create-a-stakeholder-strategy>> accessed August 6, 2023.

operations, and recognising the different roles and influences played by these individuals becomes crucial. Therefore, this categorises according to the nature of their association with the company, contributing to streamlining interactions and developing targeted strategies to reflect this holistic approach, as endorsed by the 2019 Business Roundtable.

Moreover, because CSR in business is generally implemented in a strategic or practical manner, this internal and external stakeholder categorisation will provide a closer representation of the depth of influence of different individuals. Simply put, internal stakeholders usually have interests that are closely tied to the fate of the company, and their roles and influence are obvious and direct. For example, internal stakeholders such as directors, managers, and employees often have a stronger drive and decision-making power over the strategies and practices adopted by the company.⁵⁴ In contrast, in a CSR study, it has been found that external stakeholder pressures all have a significant and positive impact on the implementation of CSR.⁵⁵

In a nutshell, along with the changing dynamics of the high-tech industry and global corporate strategy, it is paramount to understand this distinction when developing a CSR strategy, as it has the potential to facilitate the management and prioritisation of the different approaches that may be required to address each group's issues, besides the ease of management and prioritisation.

2.4.1 Internal stakeholders

a) Shareholders

Shareholders and investors provide the most vital capital and financial support for high-

⁵⁴ Stephanie Graham, "The Influence of External and Internal Stakeholder Pressures on the Implementation of Upstream Environmental Supply Chain Practices" (2017) 59 *Business & Society* 351 <<https://doi.org/10.1177/0007650317745636>>.

⁵⁵ Tian Qing, Yan Liu and Jie Fan, "The Effects of External Stakeholder Pressure and Ethical Leadership on Corporate Social Responsibility in China" (2015) 21 *Journal of Management & Organization* 388 <<https://doi.org/10.1017/jmo.2015.14>>.

tech companies in the listing, innovation and development stages. However, in recent years several technology companies with a relatively large market value in China have been at the centre of business scandals and operating scams (e.g. LeEco,⁵⁶ Luckin Coffee⁵⁷), resulting in the loss of hundreds of millions in investment capital from investors, consortia and banks. Hence, shareholders and investors, both stakeholders who are relatively directly affected by a company's decisions, should receive significant attention and protection in Chinese high-tech companies. The following sections will focus on two significant points; one relates to the return on investment for shareholders and investors in the company, and the other is the ownership structure (i.e. the basis of corporate governance structure) in the Chinese economic market environment.

In an interview,⁵⁸ Professor Liu Qiao emphasised that among the top ten companies with the largest market capitalisation in the US stock market, about five are high-tech companies that meet the requirements of the board of the ChiNext Market, including Apple, Amazon and Facebook. More importantly, their average return on investment capital (ROIC) over the past 40 years is 11.6%. However, the overall quality of China's listed technology companies does not match these levels, with the average ROIC of high-tech listed companies being only about 3%. ROIC is an indicator that measures a company's fundamentals and value-creation capabilities. In other words, it is a measure of a company's ability to return capital to shareholders and investors, so if a company has a relatively high ROIC, this means that the company can realise profit and return better profit capital to investors.

To some extent, if the Shenzhen Stock Exchange can require listed companies on the ChiNext Market to implement more stringent rules to establish a better registration and

⁵⁶ Meng Jing, "Tencent Co-Founder Brands LeEco a 'Ponzi Scheme'" *CNBC* (July 19, 2017) <<https://www.cnbc.com/2017/07/18/tencent-co-founder-brands-leeco-a-ponzi-scheme.html>> accessed July 18, 2020.

⁵⁷ BBC News, "China's Luckin Coffee Sacks Bosses amid Accounting Scandal" *BBC News* (May 13, 2020) <<https://www.bbc.co.uk/news/business-52643580>> accessed July 20, 2020.

⁵⁸ Caijing Magazine (财经杂志), "Interview with Liu Qiao: How to Make the Science and Innovation Board Select Really Good Companies" (<https://www.gsm.pku.edu.cn/info/1316/20856.htm>, 2019) <<https://www.gsm.pku.edu.cn/info/1316/20856.htm>> accessed August 21, 2022.

delisting system, and relevant laws and regulations can enhance disclosure requirements, this will be a better way to protect the rights and interests of shareholders and investors in companies.

What is more, because of the particular Chinese political environment and path dependence,⁵⁹ the proportion of state-owned enterprises in China is relatively high, which means that the ownership structure of most state-owned enterprises in China is correspondingly concentrated. In China, a relatively concentrated ownership structure is able to guarantee the stable and long-term development of state-owned enterprises by sacrificing the development of risky innovation strategies. However, an overly concentrated ownership structure may have a negative impact on high-tech listed companies, potentially affecting a company's independent research and innovation capabilities and its ability to circulate internal information. In summary, a lower concentration in ownership structure is more suitable for the development of high-tech companies, which may help to bring higher value to the firm to some extent.⁶⁰

b) Boards of directors and managers

The management team of a listed high-tech company includes the directors of different departments of the company, project leaders, senior managers and so on. All of these management staff may be regarded as the main stakeholders who decide on the strategies and direction of the company's development. In what follows, I will use two perspectives (i.e. strategic orientation, director's duties) to analyse the main impacts of the management team on high-tech companies, and which management principles will be the most suitable for such a company's CSR development.

The strategic orientation of firms has attracted widespread attention from scholars in

⁵⁹ Kun Liu and Hanmin Liu, "Path Dependence and Path Breaking in Chinese State-Owned Enterprise" (2013) 2013 International Conference on the Modern Development of Humanities and Social Science (MDHSS 2013) 104 <<https://www.atlantis-pess.com/article/10011.pdf>>.

⁶⁰ Irena Grosfeld, "Large Shareholders and Firm Value: Are High-Tech Firms Different?" (2009) 33 *Economic Systems* 259 <<https://doi.org/10.1016/j.ecosys.2009.05.001>>.

marketing, management and innovation studies.⁶¹ The general concept of strategic orientation may be interpreted as the principles that direct and influence the activities of a firm, and which generate the behaviours intended to ensure its viability and performance.⁶²

In short, the core of this concept is the identification, collection and analysis of intelligence by companies to create new knowledge within the company. Therefore, strategic orientation may be considered a critical element of the innovation process in high-tech companies. From the general management perspective, a strategic-orientated management team will influence the selection of the type of knowledge resources required for search and evaluation and the type of knowledge required for investment, in order to gain a competitive advantage. In this sense, strategic orientation helps to determine whether and how companies engage in intelligence-gathering activities to acquire information that may be used to improve internal decision-making.⁶³ Therefore, a strategic-orientated management team is likely to be suitable for the comprehensive development of high-tech companies.

In addition, the board of directors can be seen as a primary and key component of the company's management. For practitioners, it is recommended to consider norms and strategic planning when selecting directors in order to promote favourable company governance and combat irresponsible activities from the perspective of CSR.⁶⁴ In fact, practical work shows the relevance of the board as an essential resource provider, and adds a new role for the board, in terms of balancing the interests of stakeholders.⁶⁵ In

⁶¹ Pamela Adams, Isabel Maria Bodas Freitas and Roberto Fontana, "Strategic Orientation, Innovation Performance and the Moderating Influence of Marketing Management" (2019) 97 *Journal of Business Research* 129, 129–130 <<https://doi.org/10.1016/j.jbusres.2018.12.071>>.

⁶² Ibid 129

⁶³ Luca Cacciolatti and Andrew Feame, "Marketing Intelligence in SMEs: Implications for the Industry and Policy Makers" (2013) 31 *Marketing Intelligence & Planning* 4, 130–131 <<https://doi.org/10.1108/02634501311292894>>.

⁶⁴ Silvia Ayuso-Siart and Antonio Argandoña, "Responsible Corporate Governance: Towards a Stakeholder Board of Directors?" (2009) 6 *Corporate Ownership and Control* 9, 12–13 <<https://doi.org/10.22495/cocv6i4p1>>.

⁶⁵ KPMG, "Creating Value and Balancing Stakeholder Needs: The Board's Role" (KPMG, 2019) <<https://assets.kpmg.com/content/dam/kpmg/tw/pdf/2019/03/board-role-creating-value-balancing->

short, having stakeholder directors on the board ensures that their rights and legitimate expectations are respected. In addition, the board replicates the company's internal and external stakeholders and promotes their commitment to value creation, as well as ensuring that the risks they assume will be adequately protected.

In terms of director duties, Article 21 of the CCL explicitly states: 'Neither the controlling shareholder, nor the actual controller, nor any of the directors, supervisors or senior management of the company may injure the interests of the company by taking advantage of its connection relationship.' On the contrary, directors who can effectively provide comprehensive and responsible insights into the challenges of company systems may improve the well-being of the organisation, society, and the environment.⁶⁶

However, under a judicial system which differs from the case law system of Anglo-American countries, China's civil law system limits the flexibility of company management in implementing CSR, because the main goals of company directors are still to exercise their duties in the best interests of shareholders and to maximise wealth. In the end, the director of a company may encounter difficulties in considering and balancing CSR matters with the interests of shareholders.⁶⁷

In this case, if a technology company wants to achieve long-term sustainable development, it needs to pay extra attention to the employment and training of the company's management in order to obtain an effective solution to the problem of balancing CSR development with the company's overall economic interests. At the same time, this creates new requirements for China's company law. In this regard, we

stakeholder-needs.pdf> accessed August 31, 2022.

⁶⁶ Humphry Hung, "Directors' Roles in Corporate Social Responsibility: A Stakeholder Perspective" (2011) 103 *Journal of Business Ethics* 385, 397–398 <<https://doi.org/10.1007/s10551-011-0870-5>>.

⁶⁷ Juliette Overland, *A Multi-Faceted Journey: Globalisation, Transnational Corporations and Corporate Social Responsibility* (1st edn, Routledge 2010) 140–143 <<https://www.taylorfrancis.com/chapters/edit/10.4324/9780203836927-14/multi-faceted-journey-globalisation-transnational-corporations-corporate-social-responsibility-juliette-overland>>.

can refer to Section 180, Clause 1 of the Australia Corporations Acts: ‘a director or other officer of the corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they were a director of a corporation in the corporation’s circumstances.’ Strengthening the flexibility and range of directors’ duties will help to protect the legitimate rights and interests of company directors when promoting CSR.

c) Employees

The employees of high-tech companies are the main body of technological innovation, and therefore play an important role. The first thing that needs to be understood is the general transaction process between Chinese high-tech companies and customers, in order to grasp the importance and irreplaceability of employees in such companies. First, companies need to actively capture market information and maintain a stable cooperative relationship with their customers. During the contract period, the research and development department (R&D) will communicate with customers on technical issues and ensure the effective implementation of the next phase of the task. During this period, the R&D department obtains information, searches for related publications and literature issued by well-known foreign companies or academe, combines its efforts and creations, and through continuous modification finally completes a product or service innovation. Then, the company’s own or a cooperating production department will complete the manufacture of the technical innovation according to the drawings and ideas provided by the R&D department. Obviously, in this process of technological innovation, employees are the main participants and implementers, especially employees in the R&D department and the production line in high-tech companies.

In other words, the R&D department plays a leading role in high-tech companies, because its innovation and production efficiency both have a series of effects on the company’s subsequent development. Assuming that the market favours innovative products, the company will be able to obtain better economic returns and reinvest in

new innovative research and development. Therefore, in this circle, the benefits and rights of R&D deserve more attention and promotion.

In China, however, the nature of the company generally determines whether employees can facilitate technological innovation. In state-owned enterprises, the return on innovation for employees in terms of income is relatively low.⁶⁸ Due to the lack of an incentive system for technological innovation based on individual performance, companies generally adopt an egalitarian approach to formulate a compensation system, which also limits the creative enthusiasm of employees.

However, this situation is very different among the listed companies on the Shenzhen Stock Exchange. First, in these high-tech companies the R&D departments or the company's chief engineers and other similar vital employees all hold shares in the company. This is because high-tech companies need to pay attention to long-term training for engineers or designers, and they offer financial incentives such as the distribution of equity and bonus dividends to enhance the loyalty of employees (mostly engineers) to the company. In addition, the technical and skilled employees of technology companies are regarded as core and key personnel of the company, and are usually irreplaceable. Since the profitability and performance of technology companies are usually related to the performance of these core employees, high-tech companies need to pay attention to the benefits and training offered to stakeholders such as these.

However, relying on core employees can also bring disadvantages to the company. A company's development direction can easily be led by core technology employees, and spontaneous strikes by core employees or joint strikes by labour unions are also common and challenging problems for technology companies. For example, Google's global joint strike in 2018 was caused by that company's own employees who were

⁶⁸ Yongwei Sheng and Tao Rui, "The Influence of Stakeholders on Technology Innovation: A Case Study from China" [2006] IEEE International Conference on Management of Innovation and Technology 297 <<https://doi.org/10.1109/icmit.2006.262171>>.

seeking fair gender treatment, causing substantial economic losses to the company. In short, valuable human capital within high-tech companies can be regarded as one of their unique features, and their influence can be either positive or negative.

With this clear understanding of the characteristics and nature of Chinese high-tech companies, the two main issues that need to be discussed are: a) What social responsibilities should the company bear to the company's employees, especially the R&D department, and how can their legal rights be protected? and b) How can R&D departments lead high-tech companies to undertake scientific research with a CSR spirit, and how can such companies maintain better CSR and benefit society?

In fact, the Company Law stipulates in Article 117 that a company limited by shares should establish a board of supervisors which should include shareholder representatives and an appropriate proportion of company employee representatives, wherein the proportion of employee representatives shall not be less than one-third. In addition, Article 108 stipulates that when a company limited by shares establishes a board of directors, it must include representatives of the employees of the company. Even in terms of company liquidation, Article 186 also proposes that when formulating a liquidation plan, the wages of employees, social insurance fees and statutory compensation should be taken into consideration, and confirmation should be made to the People's Court.

However, the above-mentioned related laws and regulations are far from sufficient to protect the rights and interests of employees. Many aspects are not covered, such as workplace requirements, the protection of the lives and health of employees, a guarantee of equal and reasonable treatment in terms of the work and income of employees, and so on.

In terms of the question of how R&D guides companies to make CSR contributions, an

appropriate answer might be Responsible Research and Innovation (RRI).⁶⁹ RRI is a term used in the EU Framework Plan to describe scientific research and technology development processes that take into account potential environmental and social impacts.⁷⁰ Although there have been various slightly different definitions of RRI, the academic community generally believes that social challenges should be the main focus of scientific research.⁷¹ Specifically, RRI involves conducting research with high ethical standards, ensuring gender equality in the scientific community, and enforcing the responsibility of investment decision-makers to avoid the harmful effects of innovation, involve the communities affected by innovation, and ensure that they have the necessary knowledge to understand its impact.⁷²

To a certain extent, it can be said that RRI is a standard that high-tech listed companies in the Shenzhen Stock Exchange can refer to and learn from. After all, the implementation of RRI in European and American countries has reached a very mature stage. If a company can conduct scientific and technological research with high ethical standards and take into account the influence of the surrounding stakeholders, it will undoubtedly be able to push its CSR to a new level.

2.4.2 External stakeholders

d) Suppliers

For high-tech companies, their suppliers can generally be divided into two types. One is suppliers of manufacturing hardware and equipment (e.g. Samsung supplies screens,

⁶⁹ Jeroen Van Den Hoven and Klaus Jacob, *Options for Strengthening Responsible Research and Innovation: Report of the Expert Group on the State of Art in Europe on Responsible Research and Innovation* (Directorate-General for Research and Innovation (European Commission) 2013) <<https://op.europa.eu/en/publication-detail/-/publication/1e6ada76-a9f7-48f0-aa86-4fb9b16dd10c>>.

⁷⁰ René Von Schomberg, “A Vision of Responsible Research and Innovation” in Richard Owen, John R Bessant and Maggy Heintz (eds), *Responsible Innovation: Managing the Responsible Emergence of Science and Innovation in Society* (John Wiley & Sons 2013) 51 <<https://doi.org/10.1002/9781118551424.ch3>>.

⁷¹ Melanie Smallman, “Citizen Science and Responsible Research and Innovation” in Susanne Hecker and others (eds), *Citizen Science: Innovation in Open Science, Society and Policy* (UCL Press 2018) 246–247 <<https://doi.org/10.2307/j.ctv550cf2.24>>.

⁷² Richard Owen, Phil Macnaghten and Jack Stilgoe, “Responsible Research and Innovation: From Science in Society to Science for Society, with Society” (2012) 39 *Science & Public Policy* 751, 755–756 <<https://doi.org/10.1093/scipol/scs093>>.

Toshiba supplies semiconductors), and the other is suppliers of technology and services (e.g. IBM provides consulting services for system architecture and web hosting, Microsoft provides professional office software).

The key components of the products made by high-tech companies generally come from suppliers, who are also called strategic suppliers. Once these key strategic suppliers are selected, they will sign long-term cooperation contracts, so replacement costs will be relatively high. When key suppliers are established and cooperate for a period of time, a relatively complete supply chain will be formed around the company. In addition, because the scale of the suppliers of high-tech companies is generally relatively large, the stakeholders involved will be a relatively wide group. Therefore, high-tech companies' supply chains (where there are long-term and sustainable cooperative development relationships with suppliers) may involve various socially responsibility issues covering different stakeholders. It is therefore necessary to study and promote the CSR of these companies.

In dealing with suppliers or supply chain issues, the practice and implementation of CSR can be split into two questions for analysis and discussion: first, what social responsibilities should the company assume and undertake on behalf of its suppliers, especially long-term suppliers, and how can they protect their legitimate rights and interests? and second, how should suppliers cooperate with high-tech companies and apply, for example, 'Sustainable Supply Chains'⁷³ in order to promote the development of CSR, and how can they better maintain their responsibilities to society?

There is no doubt that supply chains in modern enterprises increasingly involve risks.⁷⁴

⁷³ A sustainable supply chain can be understood as a system that incorporates CSR practices to ensure long-term economic, social, and environmental viability throughout the entire supply chain. This includes considerations of stakeholder interests, adherence to labor laws, environmental protection, and the promotion of sustainable development. See Ting Chi, "Building a Sustainable Supply Chain: An Analysis of Corporate Social Responsibility (CSR) Practices in the Chinese Textile and Apparel Industry" (2011) 102 *Journal of the Textile Institute* 837 <<https://doi.org/10.1080/00405000.2010.524361>>.

⁷⁴ The risk involved in the supply chain is manufacturers' supply disruptions, missed shipments, and sunk costs caused by SDR (Supplier Delivery Reliability). And Different types of risks (e.g.,

With the progress of globalisation and the rise of China as a major manufacturing country, Chinese high-tech companies ought to pay more attention to the relationships and risks in their supply chains. These risks may directly increase the company's operating costs, and long-term unhealthy supply chain relationships may also cause massive losses to the company and damage its reputation. The type and severity of CSR-related risk exposure can vary widely by category or industry, particularly as a result of its business activity (e.g. labour risks in manufacturing,⁷⁵ environmental and health risks in chemicals,⁷⁶ ethical and environmental risks in extraction industries⁷⁷).

In addition to the above-mentioned direct CSR relationship with suppliers (i.e. long-term cooperative relationship with suppliers or sustainable supplier chains), there are a series of indirect CSR issues that may be caused by companies' suppliers. Investigations have found that an increasing number of suppliers of high-tech foreign companies in China have experienced different types of unfair and unethical treatment in terms of labour. For instance, Amazon's supplier, Foxconn illegally uses dispatched workers and interns, and the working environment of its employees has not improved.⁷⁸ More seriously, employees' overtime hours have increased, and their wages have been reduced while they are forced to work overtime. In addition, Foxconn had employee suicides as early as 2010.⁷⁹

environmental, operational, and social) have varying effects on supply chain integration and company performance. See Li Zhao and others, 'The Impact of Supply Chain Risk on Supply Chain Integration and Company Performance: A Global Investigation' (2013) 18 *Supply Chain Management: An International Journal*. See Li Zhao and others, "The Impact of Supply Chain Risk on Supply Chain Integration and Company Performance: A Global Investigation" (2013) 18 *Supply Chain Management* 115 <<https://doi.org/10.1108/13598541311318773>>.

⁷⁵ Bárbara J Fick, "Corporate Social Responsibility for Enforcement of Labor Rights: Are There More Effective Alternatives?" (2014) 4 *The Global Business Law Review* 1 <<https://doi.org/10.2139/ssrn.2601006>>.

⁷⁶ Irina Lock and Peter Seele, "Analyzing Sector-Specific CSR Reporting: Social and Environmental Disclosure to Investors in the Chemicals and Banking and Insurance Industry" (2013) 22 *Corporate Social Responsibility and Environmental Management* 113, 123 <<https://doi.org/10.1002/csr.1338>>.

⁷⁷ Gavin Hilson, "Corporate Social Responsibility in the Extractive Industries: Experiences from Developing Countries" (2012) 37 *Resources Policy* 131 <<https://doi.org/10.1016/j.resourpol.2012.01.002>>.

⁷⁸ BBC News, "Amazon Echo Devices Made by Chinese Teens 'working through Night' - Reports" *BBC News* (August 9, 2019) <<https://www.bbc.co.uk/news/technology-49297190#:~:text=A%20new%20report%20by%20China,a%20week%20and%20night%20shifts.>> accessed October 31, 2020.

⁷⁹ BBC News, "Foxconn Suicides: 'Workers Feel Quite Lonely'" *BBC News* (May 28, 2010)

In addition to Foxconn, Apple⁸⁰ and Walmart's⁸¹ supplier companies in China have also violated China's Labour Law to varying degrees in terms of hiring and treating employees (e.g. by illegally recruiting minors under the age of 16,⁸² or by not providing labour protection products that comply with national safety and health regulations⁸³). In the labour-employment relationship, in addition to meting out unequal and unethical treatment to employees, suppliers of high-tech companies also have to deal with another more serious problem: hiring child labour. In 2018, Apple opened an investigation into claims that high-school students were being forced to help assemble Apple Watch models in a factory operated by one of its suppliers in southwest China.⁸⁴ In related surveys, in 2010, about 7.74% of children aged 10 to 15 were working in China, with these child labourers working an average of 6.75 hours a day.⁸⁵

Hence, it is not enough for Chinese high-tech companies to adopt CSR codes of conduct. They must also ensure that their suppliers conduct business in a socially responsible manner (i.e. treating all employees legally and ethically, not employing child labour etc.). When selecting suppliers, high-tech companies also need to pay attention to whether the suppliers themselves engage in unethical behaviours and activities that are harmful to society. It is also necessary to guide suppliers to jointly engage in relevant CSR measures and practices, such as establishing sustainable supply chains and so on. In addition to analysing high-tech companies' own behaviours, there should also be

<<https://www.bbc.co.uk/news/10182824>> accessed October 31, 2020.

⁸⁰ China Labor Watch, "iPhone 11 Illegally Produced in China: Apple Allows Supplier Factory Foxconn to Violate Labor Laws" (China Labor Watch, September 2, 2022) <<https://chinalaborwatch.org/iphone-11-illegally-produced-in-china-apple-allows-supplier-factory-foxconn-to-violate-labor-laws/>> accessed October 31, 2020.

⁸¹ China Labor Watch, "Labor Rights Violations in Walmart and Home Depot's Supplier Factory" (China Labor Watch, September 2, 2022) <<https://chinalaborwatch.org/labor-rights-violations-in-walmart-and-home-depots-supplier-factory/>> accessed October 31, 2020.

⁸² Labor Law of the People's Republic of China, Article 15

⁸³ Labor Law of the People's Republic of China, Article 54

⁸⁴ E&T, "Apple Investigating Claims of Illegal Child Labour at Watch Factories in China" (E+T Magazine, October 30, 2018) <<https://eandt.theiet.org/content/articles/2018/10/apple-investigating-claims-of-illegal-child-labour-being-used-at-apple-watch-factories-in-china/>> accessed October 31, 2020.

⁸⁵ Chaoli Tang, Liqiu Zhao and Zhong Zhao, "Child Labor in China" (2018) 51 China Economic Review 149, 150 <<https://doi.org/10.1016/j.chieco.2016.05.006>>.

corresponding standards in terms of voluntary CSR rules, such as China's market industry regulations. For example, the establishment of a CSR managerial system (CSC9000T) in the Chinese textile and apparel industry is a pioneering guide for CSR practices in this traditionally labour-intensive manufacturing industry. The system provides a solution to industry-specific CSR problems in the supply chain. As well as providing an example for the high-tech companies to refer to, it also emphasises the urgent need for CSR management system standards in other industries.

e) Customers

For high-tech companies, their customers drive not only the demand for goods and services but also the market direction. In fact, most of the customers of high-tech companies are relatively stable,⁸⁶ including organisational strategic customers who engage in long-term cooperation with the company, or individual customers with strong customer loyalty. High-tech companies are more likely to operate in a customer-centric manner compared to manufacturing companies,⁸⁷ as stable customer relationships can potentially lead to significant technological innovation.⁸⁸ Importantly, customer experience and customer relationships often have a relatively strong impact on the company's reputation and customer loyalty.⁸⁹

In addition, high-tech companies give customers not only their own products but also the companies' values and culture. At the same time, positive brand recognition and a stable customer base can promote the continuous progress and development of the innovative capabilities of high-tech companies. This innovative capability may include

⁸⁶ Naveen Kumar Yadav, Sanjeev Swami and Prosanto Pal, "High Technology Marketing: Conceptualization and Case Study" (2006) 31 *Vikalpa* 57 <<https://doi.org/10.1177/0256090920060204>>.

⁸⁷ Jonathan Hughes, "What Is Customer-Centricity, and Why Does It Matter?" (California Management Review, September 26, 2021) <<https://cmr.berkeley.edu/2021/09/what-is-customer-centricity-and-why-does-it-matter/>> accessed October 31, 2022.

⁸⁸ Yan Cao and others, "The Impact of Stable Customer Relationships on Enterprises' Technological Innovation Based on the Mediating Effect of the Competitive Advantage of Enterprises" (2021) 13 *Sustainability* 3610 <<https://doi.org/10.3390/su13073610>>.

⁸⁹ Pantea Foroudi and others, "Influence of Innovation Capability and Customer Experience on Reputation and Loyalty" (2016) 69 *Journal of Business Research* 4882 <<https://doi.org/10.1016/j.jbusres.2016.04.047>>.

patented technology, the acquisition of difficult skills and accumulated institutional knowledge.⁹⁰ With this capability, the company is able to deliver more and better products to its customers through its manufacturing and production processes.⁹¹ In other words, there is an interactive relationship between customers and innovation capabilities. Therefore, paying more attention to the interests of customers can bring a series of different positive effects to the company, such as enhancing customers' understanding of company culture, brand loyalty and company reputation.

According to data from the National Bureau of Statistics,⁹² China's high-tech industry-added value growth rate in 2019 was 8.8%, and high-tech industry investment increased by 17.3% year-on-year. In terms of the current 5G industry, since the business license was issued in the middle of the year the country had established and opened more than 130,000 5G base stations with the largest number of base stations worldwide.⁹³

However, in the context of the rapid development of 5G, being able to obtain more information also means that companies should assume greater responsibility for the proper use of data, the protection of customer privacy, and the effective management of network security. In other words, among the many risks of CSR in the current high-tech industry, "data and privacy protection" from the customer perspective should be a significant concern.⁹⁴

In addition to the development background of the new era of 5G, high-tech CSR

⁹⁰ Gary Knight and S Tamar Cavusgil, "Innovation, Organizational Capabilities, and the Born-Global Firm" (2004) 35 *Journal of International Business Studies* 124 <<https://doi.org/10.1057/palgrave.jibs.8400071>>.

⁹¹ Tang Guo-Xiang and others, "Impact of Innovation Culture, Organization Size and Technological Capability on the Performance of SMEs: The Case of China" (2020) 12 *Sustainability* 1355 <<https://doi.org/10.3390/su12041355>>.

⁹² National Development and Reform Commission, "2019 China High-Tech Industry Economic Operation Report" (High-tech Industry Department of National Development and Reform Commission, 2020) <<http://lwzb.stats.gov.cn/pub/lwzb/zxgg/202005/W020200528770641822026.pdf>> accessed October 31, 2020.

⁹³ BBC News, "China Rolls out 'one of the World's Largest' 5G Networks" *BBC News* (November 1, 2019) <<https://www.bbc.co.uk/news/business-50258287>>.

⁹⁴ Asunción Esteve, "The Business of Personal Data: Google, Facebook, and Privacy Issues in the EU and the USA" (2017) 7 *International Data Privacy Law* 36, 45–47 <<https://doi.org/10.1093/idpl/ipw026>>.

considerations for customers can involve Customer Relationship Management (CRM). CRM is one of a number of different methods that enable companies to manage and analyse their interactions with past, current and potential customers. It applies data analysis about the company's customer history to improve business relationships with customers, with a particular focus on customer retention and ultimately on driving sales growth.⁹⁵ Importantly, CSR and CRM have similar positive effects on customer attitudes. If CRM is used effectively to analyse and manage companies, to a certain extent it can compensate for negative CSR in the market's causal relationship segmentation.⁹⁶

Based on the discussion above, high-tech companies should pay more attention to protecting customer information and privacy to promote the development of their own CSR. Furthermore, different market management methods, such as CRM, may be applied to find solutions that can adapt to the diverse needs of existing and future customers.

f) Governments

It is clear that the government's role in the Chinese economy is pivotal. As a one-party country, the Chinese government plays a vital role in shaping and guiding the practice and culture of CSR in China, generally through regulations and policies. This trend is the most obvious and representative among state-owned enterprises, whose chief executives have ties to the Chinese government and which are therefore more likely to accept government CSR requirements. These enterprises are deeply embedded in the political bureaucracy, so they are normally censored and supervised by the

⁹⁵ Diana Lück, "Customer Relationship Marketing and Corporate Social Responsibility: Not Just Ethical Standpoints or Business Strategies" [2006] *Social Responsibility Journal* 83, 84–85 <<https://doi.org/10.1108/eb045825>>.

⁹⁶ If a company has a negative image as a result of poor CSR practices (be it environmental degradation, unethical labour practices, or any other issue), the effective use of CRM can go some way to counteracting this negative impact. See Sana-ur-Rehman Sheikh and Rian Beise-Zee, "Corporate Social Responsibility or Cause-related Marketing? The Role of Cause Specificity of CSR" (2011) 28 *Journal of Consumer Marketing* 27 <<https://doi.org/10.1108/07363761111101921>>.

government.⁹⁷ Hence, top-performing companies are likely to follow the government's leadership and react according to its agenda.

This type of institutional CSR is almost inseparable from government policies, and the unique Chinese bureaucracy impacts on corporate governance in significant measure. The current corporate governance practices adopted in China can be described as a 'control-based model'⁹⁸, in stark contrast to the market-oriented model commonly used in the United States and the United Kingdom. This control-based corporate governance model shows stronger performance and is more likely to make decisions based on the interests of shareholders. Also, the control-based model is rooted in the 'administrative governance' approach adopted by Chinese regulatory agencies, and is closely related to China's specific institutional environment. However, many commentators recommend that the Chinese government should detach itself from the control-based model of corporate governance, since this governance model damages investor confidence and the development of a fair market.

For Chinese high-tech companies, cooperation between enterprises or with the governments is crucial. In particular, emerging 5G technology support policies and related import and export regulations play a role in promoting and restricting the overseas 5G business of high-tech companies. Sometimes, the government will even provide part of the funds for technological innovation in SMEs. In other words, the government has played a leading and guiding role in the development of some Chinese high-tech companies, usually imposing policy guidance or offering project incentives to encourage their growth. As early as 2014, the Chinese government put forward the slogan and concept of 'Mass Entrepreneurship and Innovation', which aims to support the development of innovative enterprises and provides favourable conditions for start-

⁹⁷ Christopher Marquis and Cuili Qian, "Corporate Social Responsibility Reporting in China: Symbol or Substance?" (2014) 25 *Organization Science* 127, 134 <<https://doi.org/10.1287/orsc.2013.0837>>.

⁹⁸ The control-based model refers to a corporate governance system in which control of a company is concentrated in the hands of a small number of key stakeholders or decision-makers. See Qiao Liu, "Corporate Governance in China: Current Practices, Economic Effects and Institutional Determinants" (2006) 52 *CESifo Economic Studies* 415, 418–420 <<https://doi.org/10.1093/cesifo/ifl001>>.

ups in terms of financial investment, tax incentives⁹⁹ and talent attraction.¹⁰⁰

However, in terms of the regulatory environment there is a significant gap in China compared with developed countries. Policymakers should consider opening up more economic regions, and introduce competitive markets for other types of companies besides state-owned enterprises.¹⁰¹ At the same time, they should strengthen the protection of intellectual property rights and formulate coordinated policies, for example by improving the credit reporting system of SMEs and listed companies, in order to provide more legal protection for Chinese high-tech industry.

Capital markets, led by the ChiNext Market, provide full support for the continuing optimisation of the Chinese innovation ecosystem. The ChiNext Market Committee was launched in 2019 and focuses on supporting high-tech industries and strategic emerging industries, such as new generation information technology, high-end equipment, new materials, new energy, energy-saving and environmental protection. More importantly, the capital market also plays a supporting role in Chinese innovation and development. The ChiNext Market Board is a branch of the secondary market, which is a symbol of growing capital support for the Chinese innovation ecosystem as capital markets respond to the call for innovation-driven development and capture new opportunities brought by technological innovation. Therefore, how the government guides the capital market is critical in the CSR development of high-tech companies. On the one hand, the government should macro-control capital markets to further enhance their inclusiveness and adaptability to technological innovation enterprises,

⁹⁹ Substantive innovation can be fostered. See Kai Zhao, Wanshu Wu and Junmei Ye, “The Impact of ‘Mass Entrepreneurship and Innovation’ Policy on SMEs’ Innovation: Using Quasi-natural Experiments” (2022) 75 *Bulletin of Economic Research* 348 <<https://doi.org/10.1111/boer.12359>>.

¹⁰⁰ Ministry of Public Security, “The Ministry Of Public Security Issues Immigration And Entry-Exit Facilitation Policies To Encourage Foreign Talents To Come To China For “Double Innovation (公安部出台移民与出入境便利政策 鼓励外籍人才来华‘双创’)” (2019) <https://www.gov.cn/xinwen/2019-07/18/content_5410730.htm>.

¹⁰¹ Deloitte, “China Innovation Ecosystem Development Report 2019: Rising Innovation In China” (Deloitte, 2019) <<https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/innovation/deloitte-cn-innovation-china-innovation-ecosystem-report-en-191101.pdf>> accessed October 31, 2020.

and enhance the leading role of capital in technological innovation and stimulating the vitality of market entities. On the other hand, the government should also increase enterprises' information transparency, improve screening mechanisms, and prevent 'false innovation' and capital overheating.¹⁰²

g) Competitors

The analysis of competitors among stakeholders in terms of CSR can be roughly divided into two areas. The first is the mutual influence of competitors on the company, and the other is the improvements that the company needs to make in the market. Competitors can generally be classified as companies with the same or similar businesses in the same industry. Among typical high-tech companies, for example, Apple and Samsung are in a state of competition in the market, whether in terms of mobile phones or tablet computers, and each has a certain market share. High-tech companies with various competitive relationships are generally guided by market demand, constantly innovating their own services and products and developing better product quality to achieve market competitiveness. This innovative model can also be a motivation for the company's sustainable development, and can further promote CSR development.¹⁰³

CSR practices bring a series of benefits to companies under most circumstances, such as better working environments, friendlier and stronger relationships with stakeholders, closer ties with the community, and a more significant commitment to the environment. These benefits can then be transformed into competitive advantages over competitors. In particular, these competitive advantages may be based on better employee

¹⁰² Lingyi Wang, "Analysis of the Causes of China's Real Estate Bubble" (2023) 154 SHS Web of Conferences 02010 <<https://doi.org/10.1051/shsconf/202315402010>>; Yongsheng Zhang, "To Achieve Economic Balance Is the Fundamental Step to Prevent China's Economic Overheating" (The Development Research Center of the State Council (DRC), 2008) <https://www.chinadaily.com.cn/m/drc/2008-05/06/content_22619358.htm> accessed October 31, 2020.

¹⁰³ Johan Graafland and Niels Noorderhaven, "Technological Competition, Innovation Motive and Corporate Social Responsibility: Evidence from Top Managers of European SMEs" (2019) 168 De Economist 1 <<https://doi.org/10.1007/s10645-019-09351-z>>.

involvement and more confidence,¹⁰⁴ since more employee involvement will reflect a better workplace environment, and more participation will reflect the development of the community.

Specifically, for individual high-tech companies, social responsibilities for competitors in the same industry include fair competition, the growth rate of company scale, and innovation in products, technologies and services. In addition to improving companies' long-term healthy development (especially sustainable development), these factors can also enable a fair and harmonious growth environment for high-tech industries, thereby attracting more capital investment.

h) NGOs

Non-governmental organisations (NGOs) play a critical role in influencing multinational corporations to voluntarily adopt codes of ethics and legal standards for CSR.¹⁰⁵ However, the Chinese state-led CSR model does not seem to provide a suitable environment for the participation of NGOs. This is due to two important factors. The first is structural issues (i.e. state-owned enterprises still account for the majority in China). Second, as mentioned above, government policies have a more visible guiding and influencing role than the slogans or concepts advocated by NGOs. Historically, Chinese NGOs have had little opportunity to influence policy, because political decisions made by the government rarely involve public input, and political actors have been sceptical of public interest groups and strictly monitor them.¹⁰⁶ Generally speaking, domestic NGOs can be divided into two categories: top-down governmental NGOs, and grassroots (or private) NGOs.¹⁰⁷

¹⁰⁴ Juan Andrés Bernal Conesa, Carmen De Nieves Nieto and Antonio Juan Briones Peñalver, "CSR Strategy in Technology Companies: Its Influence on Performance, Competitiveness and Sustainability" (2017) 24 *Corporate Social Responsibility and Environmental Management* 96, 98 <<https://doi.org/10.1002/csr.1393>>.

¹⁰⁵ Morton Winston, "NGO Strategies for Promoting Corporate Social Responsibility" (2002) 16 *Ethics & International Affairs* 71, 71 <<https://doi.org/10.1111/j.1747-7093.2002.tb00376.x>>.

¹⁰⁶ Jude Howell, "An Unholy Trinity? Civil Society, Economic Liberalization and Democratization in post-Mao China" (1998) 33 *Government and Opposition* 56, 77 <<https://doi.org/10.1111/j.1477-7053.1998.tb00783.x>>.

¹⁰⁷ Yiyi Lu, "The Autonomy of Chinese NGOs: A New Perspective" (2007) 05 *China: An International*

Therefore, NGOs should analyse the development of CSR for Chinese companies in two directions. Top-down government-organised NGOs should maintain the CSR-related policies and regulations formulated by the government, and also play a role of supervision and control to ensure the correct implementation of this type of CSR. Meanwhile, private (or grassroots) NGOs should consider CSR from a non-policy perspective. For example, they can use the power of brands to influence the behaviour of Chinese suppliers.¹⁰⁸ At the same time, they should consider as much as possible how to address their own limitations as key stakeholders in terms of company strategy, because if Chinese companies are unwilling to recognise the role of NGOs as stakeholders, these groups will have very limited influence on the practice of CSR compared with top-down NGOs. In other words, when these NGOs participate in CSR activities and practices, they should support national policies and systems rather than oppose the government. It is clear that taking further steps to enable domestic NGOs to carry out their tasks effectively may be beneficial for the country, such as by expanding and promoting environmental disclosure laws and regulations and explicitly supporting interaction and cooperation between NGOs and enterprises.

Compared with Chinese NGOs, international NGOs have particular advantages in establishing alliances with companies to promote CSR. This is because companies, especially multinational companies, are generally seen as more credible, transparent and accountable.¹⁰⁹ There are particular differences in the frameworks and strategies adopted by international NGOs and Chinese NGOs. Therefore, analysis of a company's initiative and actual situation can help it choose better what type of NGOs to cooperate with and understand other participants in the field of CSR and their motivations and resources.

Journal 173, 177–176, 199–200 <<https://doi.org/10.1142/s021974720700012x>>.

¹⁰⁸ Susannah M Davis and Dirk C Moosmayer, “Greening the Field? How NGOs Are Shaping Corporate Social Responsibility in China” (2014) 43 *Journal of Current Chinese Affairs* 75 <<https://doi.org/10.1177/186810261404300404>>.

¹⁰⁹ Breet Gerson, “CSR Best Practices” (2007) 34 *China Business Review* 20.

2.5 Stakeholder Analysis of The Typical High-Tech Company

2.5.1 Introduction

In 1984, R. Edward Freeman developed a pioneering theory, Stakeholder Theory, which aimed to reformulate the way organisations are managed and refocused attention on business ethics.¹¹⁰ It has brought attention to the moral and ethical considerations that must be adhered to in the management of organisations. In essence, stakeholder theory challenges the traditional approach to business management by asserting that companies should create value not only for shareholders but also for all stakeholders. Stakeholder theory has also been noted by a number of scholars as helping to reshape the corporate landscape.¹¹¹ More importantly, the theory is particularly effective in analysing the strategic and regulatory challenges faced by firms. The main reason for this is that the theory provides a roadmap for corporate governance and management, and is able to outline how organisations can navigate through these complex issues.¹¹² At the same time, it highlights the critical role of robust stakeholder relationships in the development of an organisation's CSR initiatives.

An intensive research on stakeholder theory shows that the theory advocates the incorporation of sustainable business practices.¹¹³ This means that organisations must consider the interests of all stakeholders when making business decisions. These stakeholders include shareholders, employees, customers, suppliers, local communities, the environment, and so on. In short, a business must not only consider profitability, but also the positive impact on society and the environment. Freeman's stakeholder

¹¹⁰ Freeman, Harrison and Zyglidopoulos (n 41). 1-2

¹¹¹ Kakabadse, Rozuel and Lee-Davies (n 28). 287-288

¹¹² Sergiy Dmytriiev, R Edward Freeman and Jacob Hörisch, "The Relationship between Stakeholder Theory and Corporate Social Responsibility: Differences, Similarities, and Implications for Social Issues in Management" (2021) 58. 58-60 *Journal of Management Studies* 1441 <<https://doi.org/10.1111/joms.12684>>.

¹¹³ Stefan Schaltegger, Jacob Hörisch and R Edward Freeman, "Business Cases for Sustainability: A Stakeholder Theory Perspective" (2017) 32 *Organization & Environment* 191 <<https://doi.org/10.1177/1086026617722882>>; Jacob Hörisch, R Edward Freeman and Stefan Schaltegger, "Applying Stakeholder Theory in Sustainability Management" (2014) 27 *Organization & Environment* 328 <<https://doi.org/10.1177/1086026614535786>>.

theory divides stakeholders into two main categories, namely internal stakeholders and external stakeholders.¹¹⁴ By distinguishing between these two types of stakeholders, the theory emphasises the wide range of interests that firms need to consider and balance in their decision-making process.

Furthermore, the stakeholder theory highlights the importance of business ethics in the field of organisational management.¹¹⁵ This is because the theory argues that ethical values and principles must underpin every decision and action within an organisation. Such a focus on ethics is essential in fostering trust, respect and transparency with all stakeholders. Throughout history, the traditional goal of business has always been to maximise benefits and profits for its shareholders, as this is the lifeblood as well as the foundation of any for-profit organisation.¹¹⁶ However, stakeholder theory suggests that a company's ability to develop and implement CSR initiatives depends on its profitability. Therefore, profitability is not only the ultimate goal but also necessary for the broader goals of CSR. So in other words, it emphasises the view that financial success can, and indeed should, pave the way for positive social and environmental contributions.

2.5.2 Technological Innovation, Stakeholder Dynamics and CSR

Technological innovation as a primary tool is crucial for high-technology companies that are constantly striving to become more competitive in the marketplace. These companies are well aware that their survival and future development are closely linked to their ability to innovate. This is because they believe that innovation and the speed with which they bring new or improved products to market often determine their potential for success and long-term profitability.¹¹⁷

¹¹⁴ Mara Del Baldo, "To the Roots of Entrepreneurial Values: The Relationship with the Territory as a Driver for the Development of Corporate Social Responsibility—An Analysis of the Experiences of Italian SMEs," *Springer eBooks* (2013) <https://doi.org/10.1007/978-3-642-37620-7_9>.

¹¹⁵ Ritika Mahajan and others, "Stakeholder Theory" (2023) 166 *Journal of Business Research* 114104 <<https://doi.org/10.1016/j.jbusres.2023.114104>>.

¹¹⁶ Haşegan and others (n 31). 1057-1058

¹¹⁷ Michael W Lawless and Robert J Fisher, "Sources of Durable Competitive Advantage in New Products" (1990) 7 *Journal of Product Innovation Management* 35 <<https://doi.org/10.1111/1540->

With the advent of the 21st century, there has been a paradigm shift in the landscape of the high-tech industry.¹¹⁸ The main feature of this shift has been a significant change in the operational strategy of these companies, whereby more and more companies have started outsourcing production tasks to external contractors or have started entering into joint venture agreements.¹¹⁹ The main objective of this strategic shift is to reduce the risks associated with making large investments in setting up and maintaining manufacturing plants.

In this case, the outsourcing strategy allows the company to devote resources to focusing more on its core strengths, mainly product research and technological innovation, as these aspects of its operations have always been seen as the real source of its competitive advantage.¹²⁰ Therefore, given the importance of these core competencies, our analysis will focus on assessing the competitiveness of high-tech firms in terms of product research capabilities and technological innovation. This exploration will provide a solid foundation for a comprehensive examination of the firm's interactions and relationships with its various stakeholders.

In order to effectively demonstrate how stakeholder theory can be utilised to understand the current status and dynamics of CSR in high-tech firms, this thesis will adopt a case study approach. It will focus on Huawei, a leading high-tech company in China. Huawei is widely known for its important role in the field of communication equipment and its

5885.710035>; Seungku Ahn, Kwon-Sik Kim and Kwang-Hoon Lee, “Technological Capabilities, Entrepreneurship and Innovation of Technology-Based Start-Ups: The Resource-Based View” (2022) 8 *Journal of Open Innovation: Technology, Market, and Complexity* 156 <<https://doi.org/10.3390/joitmc8030156>>.

¹¹⁸ Julie Beardsell, “The Global Outsourcing Medley of the 21st Century” (2007) 11 *SMC Working Paper* 1 <<https://doi.org/10.2139/ssrn.1302006>>.

¹¹⁹ Shishir Bhargava, “Research: Joint Ventures That Keep Evolving Perform Better” (*Harvard Business Review*, September 17, 2021) <<https://hbr.org/2021/04/research-joint-ventures-that-keep-evolving-perform-better>> accessed October 31, 2022.

¹²⁰ Bevan Brittan, “Outsourcing and Joint Ventures - Legal Challenges and Opportunities for Smarter Government and Operational Efficiency | Bevan Brittan LLP” (Bevan Brittan, 2019) <<https://www.bevanbrittan.com/insights/articles/2010/outsourcingandjointventures/>> accessed October 31, 2022.

large number of consumer electronics products, including but not limited to smartphones. Indeed, Huawei's robust corporate structure, coupled with its aggressive global expansion strategy, allows the company to interact with a broad and diverse group of stakeholders. Given Huawei's position as an industry leader and its extensive engagement with a wide range of stakeholders, Huawei is a suitable subject for this case study. An in-depth exploration of Huawei's CSR initiatives using stakeholder theory as an analytical lens will provide unique insights into the ways in which high-tech firms fulfil their CSR. More importantly, this understanding will shed light on how these companies effectively manage their relationships with different stakeholders while maintaining a focus on innovation and market competitiveness.

2.5.3 High-tech Companies With Stakeholders: A Huawei Case Study

➤ General stakeholders:

Huawei's stakeholders mainly include internal shareholders, senior management and employees, and external customers, suppliers, partners, competitors, and governments.

➤ Specific stakeholders (see table below):

Stakeholder	Major specific units, groups or individuals
Shareholders	Huawei Investment & Holding Co., Ltd. Trade Union Committee
Employees	R&D (research and development) personnel; sales personnel; implementation personnel
Upper (Senior) Management	CEO; Chief Engineer; Product Director; Marketing Director; Customer Service Director
Government	Ministry of Industry and Information Technology; Innovation and Technology Bureau; State Economic and Trade Commission
Competitors	Xiaomi, Apple, Samsung etc.
Suppliers	Intel, Foxconn, Qualcomm, Analog Devices etc.
Customers	Mainly young men
Partners	DHL, China Post, EE etc.

Huawei's product development and technological innovation activities also involve different forms of interaction with various stakeholders (analysed using the aforementioned Figure 2). As can be seen from the figure, Huawei is generally closely connected with various stakeholders.

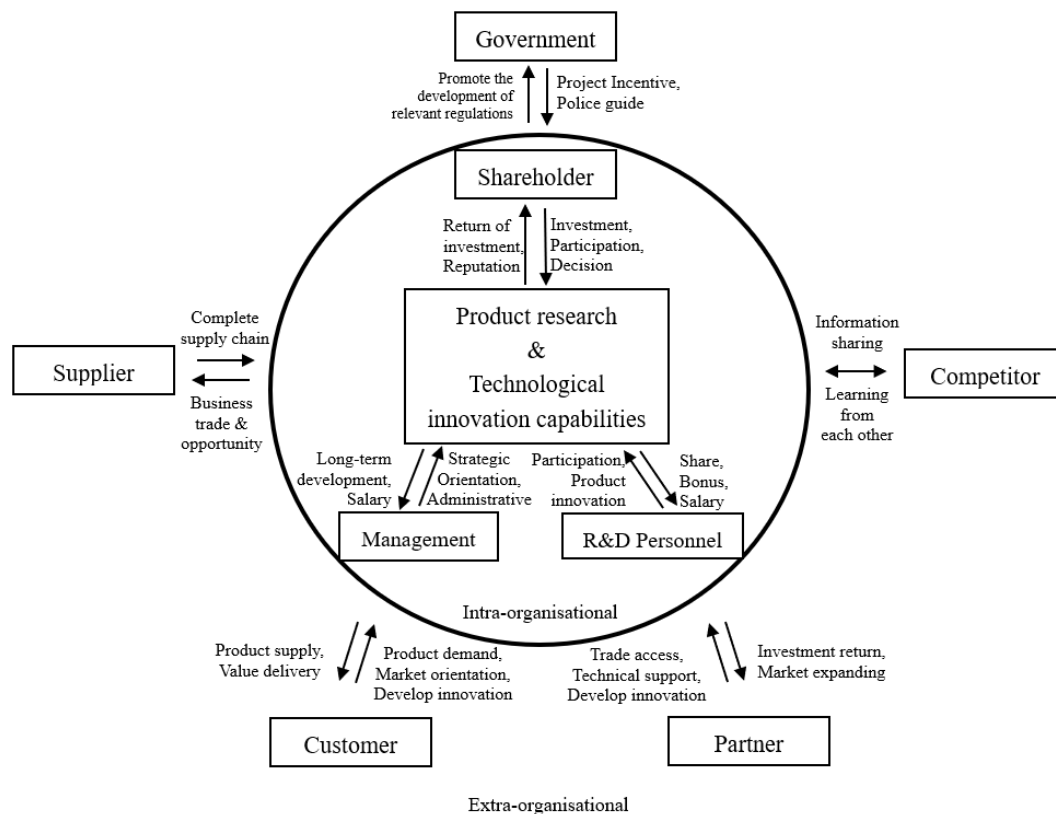


Figure 2. The interaction between stakeholders and technological innovation

The largest shareholder in Huawei is the Trade Union Committee of Huawei Investment Holdings Co., Ltd. (which owns about 99% of the equity), and also the company's top management, who are responsible for management decisions. The Trade Union Committee is formed of the company's own employees, and its characteristics and advantages are its stable shareholding structure and the employees' attention to the company's decision-making and long-term development. In general, Huawei's shareholders have a very strong influence on the company's product development, enterprise and technology innovation, and play a guiding role in development directions

and decision-making.

The high-tech industry is an environment where products are updated very quickly, and market positions will change rapidly due to opportunities and ideas.¹²¹ Therefore, employees in high-tech companies need to collect many kinds of information, thinking and innovating constantly. There is a growing consensus that human capital is an important determinant of productivity at the individual and general levels.¹²² In today's knowledge-based economy, the role of human capital is particularly important; skilled workers with strong problem-solving and communication abilities should perform better than less skilled counterparts on any tasks that are more demanding than manual labour, and they will learn faster. Therefore, in any particular production process, the productivity of skilled workers may be higher than that of unskilled workers, and they can operate and deal with higher requirements and more sophisticated technologies. One of the most important factors in Huawei's success is that in addition to being able to quickly capture sensitive information as an information technology company, it also regards its employees as its primary stakeholders.¹²³

In this context, R&D personnel play a vital role in Huawei's product development and technological innovation. They are not only mainly responsible for pre-technical innovation and planning work; they are also involved in the entire process of product development. In many contemporary high-tech companies, the research and technical departments, as well as the company's chief engineer and/or other similar key employees, all hold shares in the company.¹²⁴ This is because high-tech companies

¹²¹ Jiemei Ou and Jingchen Zhao, "Progressive Trajectory of Company Law to Employees' Interests under the New Economy: An Analysis of UK and Chinese Company Law" (2020) 15 *University of Pennsylvania Asian Law Review* 382, 388 <<https://scholarship.law.upenn.edu/alr/vol15/iss3/2/>>.

¹²² Antonio Ciccone and Ángel De La Fuente, "Human Capital in a Global and Knowledge-Based Economy" (2023) <<https://op.europa.eu/en/publication-detail/-/publication/5fcdeb9d-1724-45b6-8608-49be429cd9b4>> accessed August 31, 2023.

¹²³ Xiaobo Wu and others, *The Management Transformation of Huawei: From Humble Beginnings to Global Leadership* (2020) 31–33.

¹²⁴ Feiyan Du and others, "The Effects of Employee Stock Ownership in Chinese Listed Companies" in Menggang Li and others (eds), *IEIS2019* (Springer Nature 2020) <https://doi.org/10.1007/978-981-15-5660-9_13>.

need to pay attention to the long-term training of engineers or designers, and they use financial incentives such as the distribution of equity and bonus dividends to enhance employees', and especially engineers', loyalty to the company. Moreover, technical and skilled employees in technology companies are regarded as the core and key staff of the company, and they are often irreplaceable. Because the profitability and performance of technology companies are generally related to the performance of these core employees,¹²⁵ high-tech companies need to pay attention to the benefits and training offered to stakeholders such as their core and key employees.

However, core employees can also bring disadvantages to the company. A company's development direction can be easily led by core technology employees, and spontaneous strikes by core employees or joint strikes by labour unions are also common and difficult problems for technology companies. For example, Google's global joint strike in 2018 was caused by that company's own employees who were seeking fair gender treatment,¹²⁶ causing huge economic losses to the company. In short, valuable human capital within high-tech companies can be regarded as one of their unique features, and it can be either positive or negative.

Customers are also important stakeholders in high-tech companies. Huawei's market director stated in 2019 that the company's success over the past 30 years was grounded in its success in engineering, technology, product and solution innovation, all based on customer needs.¹²⁷ In other words, customers drive the company's technological innovation in terms of consumer philosophy and consumer demand. In this situation, Huawei has established a complete information transmission channel in the company,

¹²⁵ Raluca Ioana Vosloban, "The Influence of the Employee's Performance on the Company's Growth - A Managerial Perspective" (2012) 3 *Procedia. Economics and Finance* 660, 662–665 <[https://doi.org/10.1016/s2212-5671\(12\)00211-0](https://doi.org/10.1016/s2212-5671(12)00211-0)>.

¹²⁶ Kathy Durkin, "'Time's Up, Google!' As Tech Workers Walk out in Global Rolling Strike" (*Workers World*, November 8, 2018) <<https://www.workers.org/2018/11/39753/>> accessed October 31, 2020.

¹²⁷ Wenwei XU, "From Catch Up To Take Lead-Innovative Road Of Huawei" (2019) 34 *Bulletin of Chinese Academy of Sciences* 1108, 1108 <<https://bulletinofcas.researchcommons.org/cgi/viewcontent.cgi?article=1370&context=journal>>.

including a dedicated after-sales and customer service department. Customers' questions and opinions are reflected and considered through these specialised channels.

Suppliers are regarded by Huawei as part of the company, and play an indispensable role in product sales promotion and information feedback. The cooperation of suppliers in high-tech companies plays an auxiliary role in technological innovation, because most of the suppliers' technological updates are guided by the technology companies and market trends. Furthermore, the technological innovation of its suppliers can also bring better profit margins and improved product replacement speed for Huawei.

Huawei's competitors mainly include foreign technology companies such as Samsung in South Korea and Apple in the United States. The products in high-tech industries are rapidly updated, and the market environment also changes rapidly. Every company must pay attention to the development trends and competitive dynamics in the industry, and learn about the trends being followed by competitors.

For high-tech companies, cooperation between enterprises or with the government is essential. For example, in the 5G era Huawei has reached a strategic partnership agreement with the British mobile network operator EE. In addition, as mentioned above, the practice of outsourcing product design to service providers is common among fast-growing high-tech companies. Huawei outsources its major mobile phone manufacturing to large technology product manufacturing companies such as Foxconn. This approach can largely avoid unnecessary manufacturing risks and allow companies to pay more attention to developing their own R&D and innovation capabilities.

The government's influence on Huawei's technological innovation is slightly weaker than that of other stakeholders, but it cannot be ignored. In particular, supportive policies for emerging 5G technology and related import and export regulations have played a role in promoting and limiting Huawei's overseas 5G business. Sometimes the

government will even provide partial funding for Huawei's technological innovations. Therefore, the government has played a significant role in the development of Huawei.

Based on the above analysis of Huawei's various stakeholders, it may be concluded that key employees (such as technical engineers or product designers) are unique stakeholders in high-tech companies. Because they play a vital role in the company's long-term development, their performance and personal capacities are often linked to the business performance of their company. Furthermore, because of the trend towards manufacturing outsourcing, high-tech companies should begin to consider their mutual supervision of partners or suppliers. In addition to avoiding manufacturing risks, it is also necessary to pay attention to social and employee problems that may be caused by their cooperating manufacturing corporations, and companies should take responsibility for the long-term and sustainable development of their own industrial chains.

CHAPTER 3: CSR IN THE CURRENT LEGISLATIVE FRAMEWORK IN CHINA

This chapter aims to shed light on the legislative underpinnings of CSR in China, with a special focus on listed companies, including those in the high-tech sector. The discussion is bifurcated into 'Hard Law' and 'Soft Law,' examining relevant legislation and regulatory codes that guide CSR practices. Starting with a detailed scrutiny of Article 5 of the Chinese Company Law (CCL), the chapter will later traverse through the Code of Corporate Governance for Listed Companies 2018, offering an analytical framework for CSR that intertwines with corporate governance. This serves as a theoretical groundwork for the forthcoming chapters and provides a lens through which to examine how CSR is integrated into, enforced, and has potentially evolved within the Chinese legislative context.

3.1 Hard Law

3.1.1 Article 5 of the Chinese Company Law (CCL)

The term CSR is explicitly adopted in Article 5 of the CCL, where it is stated that ‘when conducting business operations, a company shall comply with the laws and administrative regulations, social morality, and business morality. It shall act in good faith, accept the supervision of the government and the general public, and bear social responsibilities’. In order to give a more detailed analysis of specific CSR-oriented issues related to listed companies, the chapter will offer an explanation and analysis of Article 5 of the CCL 2006, in order to provide a sound theoretical basis for subsequent chapters.

In detail, the following paragraphs will interpret sub-sections of Article 5 of the Chinese Company Law individually, analysing and demonstrating the meaning of each component through primary sources such as related cases collected from two databases,

*Beida Fabao*¹²⁸ and *China Judgments Online*,¹²⁹ and secondary sources which will be discussed in detail in Section 3.

3.1.1.a Comply with the laws and administrative regulations

First, a company shall comply with all relevant laws and administrative regulations when conducting its business operations. For example, Article 1.4 of the Shenzhen Stock Exchange ChiNext Market (also known as the Growth Enterprise Market) Listing Rules states: ‘Directors, supervisors, senior managers, shareholders, actual controllers, purchasers and other relevant personnel of ChiNext listed companies should abide by laws, administrative regulations, departmental regulations...’

At the most basic level, companies should comply with the rules and regulations of the countries where they operate, as the most fundamental requirement when conducting business activities. In addition to complying with local hard laws, companies should also consciously abide by relevant soft laws, such as treaties of international organisations and local industry regulations. For instance, in the natural gas industry, China promulgated the Regulation on the Administration of Urban Gas in 2011, which clarified the relevant responsibilities of gas pipeline companies and operators.

Besides operating in compliance with the law, companies should not conduct commercial activities outside the scope of the industry in order to achieve the premise of legality and compliance. More precisely, the company must not conduct commercial activities outside the commercial scope provided by local laws, and in particular, it must not use places listed in the catalogue of prohibited areas, such as residences and business workplaces.¹³⁰ In addition to legal operation and business activities within the

¹²⁸ Beida Fabao, “Database of Laws and Regulations - Beidaifaobao V6 Official Website” (Beida Fabao (北大法宝), 2020) <<http://www.pkulaw.com/>> accessed October 31, 2020.

¹²⁹ China Judgments Online, “China Judgments Online (裁判文书网)” (China Judgments Online, 2020) <<https://wenshu.court.gov.cn/>> accessed October 31, 2020.

¹³⁰ *Guangzhou Jucan Trading Co., Ltd., v Xinfeng County Administration for Industry and Commerce* (2018 Yue 02 Line End 110) [广州市淦灿贸易有限公司、新丰县工商行政管理局工商行政管理(工商)二审行政判决书(2018)粤02行终110号].

prescribed scope, companies must hold relevant licences and operate legally when engaging in any commercial activities. For Chinese high-tech or internet companies, the State Council stipulates that ‘such companies need to register for business firstly and file on record as an Internet Content Provider (ICP), then apply for corresponding licenses in accordance with the regulations of relevant departments before they can start the business’.¹³¹

For different stakeholders, different substantive laws in China also provide corresponding solutions to cope with various situation, such as the Environmental Protection Law and Social Insurance Law, focusing on the social environment, and the Product Quality Law 2009 (revised), which concentrates on the customer. In terms of the research subject of this thesis, namely high-tech companies, the Scientific and Technological Progress Law 2008 (revised) established a guidance framework and basic requirements, and the Cybersecurity Law 2016 and the E-Commerce Law 2018 also provide additional legal guidelines and regulatory functions to enable high-tech companies to achieve CSR.

In general, a company must not only comply with the Company Law but must also pay attention to other areas (e.g. lawful workplaces, business licences) and external laws.¹³² More specifically, the company should engage in legal business activities within the scope of its legal business, under the premise of having relevant operating licences and business certificates.

The goal of corporate compliance is to establish a relatively complete legal system and refine the existing legal requirements. Hence, relevant regulations and standards should make the scope of CSR clear, and clarify the corresponding legal responsibilities and

¹³¹ Regulation on Internet Information Service 2000, Articles 3,4 and 5.

¹³² *Wuhan Municipal Market Supervision and Administration Bureau v Wuhan Zhongtian Wanjia Real Estate Brokerage Co., Ltd.* (2019 E 0103 Xingsheng No. 99) [武汉市市场监督管理局、武汉中天万家房地产经纪有限公司非诉执行审查行政裁定书(2019)鄂 0103 行审 99 号].

consequences that enterprises should bear.

3.1.1.b Social morality

Second, the use of the term ‘social morality’ refers to the codes of conduct that people should abide by in social interaction and the public environment.¹³³ It can also be interpreted as defining whether the social behaviour of individuals is meaningful within the collective life of the society.¹³⁴ Morality indicates the ‘right’ and ‘wrong’ ways to behave – for instance, the expectation that one should be fair and not unfair to others.¹³⁵ It is the minimum moral requirement, i.e. the obligation we have to promote each other’s benefits and interests,¹³⁶ in order to maintain the fundamental order of social relations between members of society and ensure social harmony and stability. In short, morality exists in social communities, and it is also a customary code of conduct in society.¹³⁷ From the CSR perspective, social morality may be achieved through different business activities and behaviours, such as environmental protection, community building, enhancement of employee value, and benefits and philanthropy.

However, in some CSR-related cases in China when Chinese courts have tried enterprise disputes, most of them have applied the term ‘humanitarian’ to mean ‘social morality’ in their judicial interpretations. For example, in a recent CSR-related case a company failed to pay social insurance for its employees, which meant that its employees had to spend significant amounts of money during periods of illness, and they were unable to obtain social insurance or social security protection and assistance. The court finally declared that the company must compensate its disabled and injured

¹³³ Thomas A Mappes and Jane S Zembaty, *Social Ethics: Morality and Social Policy* (7th edn, McGraw-Hill 2007) <<https://www.worldcat.org/zh-cn/title/social-ethics-morality-and-social-policy/oclc/654797589?referer=di&ht=edition>>.

¹³⁴ Bernard Gert, *Morality: A New Justification of the Moral Rules* (Oxford University Press, USA 1988).

¹³⁵ Selin Kesebir and Jonathan Haidt, “Morality” in Susan T Fiske, Daniel T Gilbert and Gardner Lindzey (eds), *The Handbook of Social Psychology*, (5th edn, Wiley 2010) <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1598293_code552647.pdf?abstractid=1534423&mirid=1>.

¹³⁶ Barbara Herman, “The Scope of Moral Requirement” (2001) 30 *Philosophy & Public Affairs* 227, 227 <<https://doi.org/10.1111/j.1088-4963.2001.00227.x>>.

¹³⁷ Bernard Gert and Joshua Gert, “The Definition of Morality” (Stanford Encyclopedia of Philosophy, 2017) <<https://leibniz.stanford.edu/friends/preview/morality-definition/>> accessed October 31, 2020.

employees for humanitarian reasons.¹³⁸ In this case, the company failed to purchase basic social insurance and work-related injury insurance for its employees, which resulted in a series of effects and injuries to the employees; the court decided that this should be regarded as negligent conduct. In fact, the negligence of the company led to a series of problems, such as injuries and unemployment among its employees, which may be better interpreted as ‘social morality’. Also, it may have been possible to find more reasonable and appropriate explanations for the negligence of this company in legislations other than Company Law, such as Labour Law¹³⁹ and Social Insurance Law.¹⁴⁰ However, the court applied the term ‘humanitarian’ and Article 5 of the CCL to interpret and clarify the social responsibility of the company.

In addition to the description of social morality that can be found in Article 5 of the CCL, in recent years, some high-tech companies in China have also adopted social CSR practices, especially social morality. By 2019, poverty alleviation had become a significant trend and an efficient way to achieve CSR in China. For instance, high-tech companies engage in CSR practices through ‘targeted poverty alleviation’ (i.e. activities supported and guided by leading enterprises in poverty-stricken areas, partially aiming to bring higher economic and social benefits to the enterprises)¹⁴¹ or through ‘intelligent poverty alleviation’ (i.e. schemes whereby people living in cities can engage in one-on-one paired relationships with rural farmers, using funds and other methods to provide support and help to the poor farmers they engage with).¹⁴²

¹³⁸ *Dai Ping v Tang De Electronics (China) Co., Ltd.* (2011 Hui Zhong Fa Min Yi Zhong Zi No. 113) [戴平、唐德电子(中国)有限公司劳动合同纠纷二审民事判决书(2011)惠中法民一终字第 113 号].

¹³⁹ Article 72, Labour Law of the People’s Republic of China.

¹⁴⁰ Article 33, Social Insurance Law of the People’s Republic of China.

¹⁴¹ Xiaotong Jiang, “Ping An Insurance Yu Yunwen: Intelligent Poverty Alleviation Helps Local Leading Enterprises To Make Blood (中国平安俞蕴文:智能扶贫助当地龙头企业‘造血’)” (Finance.Sina, August 27, 2019) <<https://finance.sina.com.cn/meeting/2019-08-27/doc-ihytcitn2285115.shtml>> accessed October 31, 2020.

¹⁴² Xiaotong Jiang, “Creditease Corp. Xu Xiuling: The Internet Enables Everyone To Participate In Targeted Poverty Alleviation (宜信公司徐秀玲:互联网使人人都是可以参与精准扶贫)” (Finance.sina, August 27, 2019) <<https://finance.sina.com.cn/meeting/2019-08-27/doc-ihytcern3924463.shtml>> accessed August 31, 2022.

In summary, the scope of social morality is very broad, ideally including the consideration of employees' interests,¹⁴³ the production of high-quality products or the provision of quality services,¹⁴⁴ value training for employees,¹⁴⁵ the promotion of the sustainable and long-term development of the company,¹⁴⁶ the establishment of good corporate culture¹⁴⁷ within the company, and so on.

3.1.1.c Business Morality

Before exploring the nature and scope of business morality, it may be helpful for us to discuss the term 'ethics'. Based on the discussion in Section 1.1, morality indicates the 'right' and 'wrong' ways to behave in society, and this is very similar to the definition of ethics. Hence, the interpretation of the concept of ethics is very similar to the analysis of morality. Ethics can enable a balance between what is profitable and what may be good in other respects,¹⁴⁸ particularly where there are loopholes in the law.¹⁴⁹ Further, business ethics basically covers areas such as moral principles and decision making, governance issues, and codes of conduct for a business, as well as other areas that laws may not consider or be involved in.¹⁵⁰

¹⁴³ Thomas L Carson, "Self-Interest and Business Ethics: Some Lessons of the Recent Corporate Scandals" (2003) 43 *Journal of Business Ethics* 389, 390–393 <<https://doi.org/10.1023/a:1023013128621>>.

¹⁴⁴ Jeffrey Moriarty, "Business Ethics" (Stanford Encyclopedia of Philosophy, June 8, 2021) <<https://plato.stanford.edu/entries/ethics-business/#FirmGovePoliCS>> accessed October 31, 2022.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Hu Sha, "Social and Moral Practices of the Organizations and Employee-Based Brand Equity: Female Digital Labor Perspective" (2022) 13 *Frontiers in Psychology* 3 <<https://doi.org/10.3389/fpsyg.2022.910483>>.

¹⁴⁸ Phil Davison, "Stalwart of Capitalism Who Pushed for Ethical Business" (Financial Times, 2011) <<https://www.ft.com/content/b0ce73b8-6792-11e0-9138-00144feab49a>> accessed October 31, 2022..

¹⁴⁹ Daniel T Ostas, "The Ethics of Corporate Legal Strategy: A Response to Professor Mayer" (2011) 48 *American Business Law Journal* 765 <<https://doi.org/10.1111/j.1744-1714.2011.01124.x>>; Daniel T Ostas, "Legal Loopholes and Underenforced Laws: Examining the Ethical Dimensions of Corporate Legal Strategy" (2009) 46 *American Business Law Journal* 487 <<https://doi.org/10.1111/j.1744-1714.2009.01084.x>>; R M Thomas, 'To what extent is it possible to legislate for good behaviour in business (that is, create 'hard law'). Or, to what extent should we rely on non-binding guidance, principles, and codes of conduct (known as 'soft law') to encourage good behaviour in business?', see Rosamund Thomas, *Business Ethics and Corporate Social Responsibility: Cambridge-Gourlay-Trinity Lectures* (Ethics International Press 2015) 58.

¹⁵⁰ Kristen Bell DeTienne and others, "Moral Development in Business Ethics: An Examination and Critique" (2019) 170 *Journal of Business Ethics* 429 <<https://doi.org/10.1007/s10551-019-04351-0>>.

Business ethics, which is a concept similar to social morality, also plays a vital role in CSR.¹⁵¹ Corporate social morality is concerned with external moral responsibility, while business morality is biased toward ethical codes of conduct within a particular industry or company.¹⁵² Among a number of critically related topics are the company's own business decisions, corporate governance, conflicts of interest between different shareholders,¹⁵³ the company management's fiduciary duties, and a series of stakeholder issues. These related topics will be analysed and summarised in detail in later parts of the thesis.

However, it is worth noting at this stage that there is an undeniable connection between the business goals of enterprises and CSR. Companies should consider their own ethics and responsibility issues. In terms of internal development, companies should treat employees fairly, pay attention to their personal safety and physical health, improve the working environment, protect their legitimate rights and interests, and facilitate their career development. In other words, the company should purchase employee insurance for employees on its own initiative, since offering corporate benefits to employees is arguably conducive to the company's own sustainable development.¹⁵⁴ More importantly, practices such as the improvement of employee security can also reduce the risk of employee accidents and associated expenditure, stabilise the employee base and attract talent.¹⁵⁵

¹⁵¹ Włodzimierz Sroka and Richárd Szántó, "Corporate Social Responsibility and Business Ethics in Controversial Sectors: Analysis of Research Results" (2018) 14 *Journal of Entrepreneurship, Management and Innovation* 111, 114–115 <<https://doi.org/10.7341/20181435>>.

¹⁵² Stephen Wilmot, "Corporate Moral Responsibility: What Can We Infer from Our Understanding of Organisations?" (2001) 30 *Journal of Business Ethics* 161, 161 <<https://doi.org/10.1023/a:1006346125667>>.

¹⁵³ *Zheng Ju et al. v Xinjiang Ruixin Automobile Sales & Service Co., Ltd. and Xinjiang Ourunqi Real Estate Development Co., Ltd.* (2019 Xinmin End No. 219)[郑千、周小煜等与新疆瑞鑫汽车销售服务有限公司、新疆欧润琪房地产开发有限公司公司解散纠纷二审民事判决书(2019)新民终219号].

¹⁵⁴ Robert G Eccles, Ioannis Ioannou and George Serafeim, "The Impact of Corporate Sustainability on Organizational Processes and Performance" (2014) 60 *Management Science* 2835, 2880–2882 <<https://doi.org/10.1287/mnsc.2014.1984>>; Paul Polman and CB Bhattacharya, "Engaging Employees to Create a Sustainable Business" (SSIR, 2016) <https://ssir.org/articles/entry/engaging_employees_to_create_a_sustainable_business> accessed October 31, 2021.

¹⁵⁵ Tao Liu and Chao Wang, "The Institutional Development of Employment Protection and the

In specific industrial settings, the basic principles of equal transactions, honesty and trustworthiness should be achieved to promote and maintain market order as much as possible. In recent years business morality has been changing and progressing as a concept, continually evolving to include new technologies, new methods of resource mobilisation and utilisation, evolving social practices, and the development of a permanently connected global business network. Through techniques such as Big Data and cloud computing, people are increasingly aware of the limitations of natural resources, the growing wealth divide, and problems caused by businesses in the lives of individual citizens, putting business ethics at the forefront of increasingly relevant social norms.¹⁵⁶

An example of business morality can be found in the case of a leading Chinese shared cloud computing and blockchain technology company, the Wangxin Company. This company is committed to business morality practices to strengthen its CSR development. Relying on its blockchain technology and cloud computing services, it provides free high-tech support to a well-known public welfare organisation called ‘One Foundation’, helping it to achieve intelligent and comprehensive general welfare reporting and other information integration, and empowering the public welfare industry with innovative technologies. For the Wangxin Company itself, this provision of technical support not only strengthens the CSR awareness of the company’s own employees, but also optimises the company culture of sustainable development. For society as a whole, it brings lower supervision costs for the government and the public, and higher circulation efficiency to the market.¹⁵⁷

Perception of Western Concepts and Values in China” (2019) 11 Sustainability 480, 480–482 <<https://doi.org/10.3390/su11020480>>.

¹⁵⁶ Mridula Goel and Preeti E Ramanathan, “Business Ethics and Corporate Social Responsibility – Is There a Dividing Line?” (2014) 11 Procedia. Economics and Finance 49 <[https://doi.org/10.1016/s2212-5671\(14\)00175-0](https://doi.org/10.1016/s2212-5671(14)00175-0)>.

¹⁵⁷ New Technology Line (科技新线), “Wangxin Technology Won The 2019 China Corporate Social Responsibility Best Mode Innovation Award (网心科技荣获 2019 中国企业社会责任最佳模式创新奖)” (Xueqiu, 2019) <<https://xueqiu.com/1441926761/131921711>> accessed October 31, 2022.

3.1.1.d Acting in Good Faith

The term ‘act in good faith’ is also a significant element in Article 5 of the CCL. Continuing the analysis of business morality in the previous paragraph, the principle of good faith may actually be regarded as one of the essential components of business morality. Applying contract law as an example to interpret the term may be helpful for us to understand the term in the corporate law context.

In contract law, both parties usually owe each other an express duty to act in the utmost good faith.¹⁵⁸ Specifically, the express duty of good faith is different and flexible in individual cases, and mostly depends on practice or the actual situation. For instance, express duties of good faith may be achieved through a requirement for the disclosure of material facts to the other party,¹⁵⁹ or the prohibition of knowingly providing false information on which the other party will rely.¹⁶⁰ Another aspect of good faith is the duty of rationality, which is an implied obligation, in the absence of clear language to the contrary, to exercise contractual discretion in good faith rather than arbitrarily or capriciously.¹⁶¹

In summary, the principle of good faith, as a moral rule and legal principle for economic activities, is not only applicable to the conclusion, performance and interpretation of contracts, but also extends to the practices of all civil rights and the performance of public obligations. Companies should abide by the principle of good faith when signing contracts,¹⁶² clarifying corporate property rights, performing information disclosure,¹⁶³

¹⁵⁸ *CPC Group Ltd v Qatari Diar Real Estate Investment Company* [2010] EWHC 1535 (CH).

¹⁵⁹ *Horn and others v Commercial Acceptances Ltd* [2011] EWHC 1757 (CH).

¹⁶⁰ *Yam Seng Pte Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QB).

¹⁶¹ *British Telecommunications plc v Telefónica O2 UK Ltd* [2014] UKSC 42.

¹⁶² *Yang Yongpeng v Leadbetter Sports Culture Development (Sanya) Co., Ltd.* (2018 Qiong 0271 No. 6691) [杨永鹏与利百特体育文化发展(三亚)有限公司承揽合同纠纷一审民事判决书(2018)琼0271民初6691号].

¹⁶³ *Ningxia Huiye Technology Co., Ltd. v Ningxia Huiye Magnesium Group Co., Ltd.* (2018 Ning 02 Minchu 188) [宁夏惠冶科技有限公司与宁夏惠冶镁业集团有限公司股东出资纠纷一审民事判决书(2018)宁02民初188号].

and managing corporate debt¹⁶⁴ (especially in corporate insolvency).

3.1.1.e Accept The Supervision of The Government and General Public

The last section of Article 5 of the CCL requires companies to accept the supervision of the government and the general public. In 2015, the China National Institute of Standardisation¹⁶⁵ advocated that listed companies should disclose their efforts related to social responsibility, including their human and financial investment; that is, they should produce social reports on their social and environmental issues and related policies and practices. The announcement of this decree has dramatically increased companies' provision of statutory disclosures, thereby making government and social supervision more convenient. More importantly, these disclosure obligations related to social responsibility information are in line with the regulation of 'accepting the supervision of the government and the general public' as required by the Company Law.

However, the disclosure level and reputation of Chinese scientific and technical companies are relatively low in comparison to high-technology companies elsewhere in the world. Based on the 2019 Corporate Accountability Index,¹⁶⁶ typical examples of Chinese high-tech companies, such as Tencent (one of the most valuable internet-related services and products, entertainment, artificial intelligence and technology companies in China) and Baidu (the biggest and most popular Chinese search engine), have failed to obtain good reviews and ratings in terms of their corporate social accountability. What is more, for Chinese high-tech companies, especially internet companies, privacy issues related to security practices and user information processing

¹⁶⁴ Civil Judgment of the Second Instance of the *Shuangxiang Beauty Cosmetology Salon* in Chancheng District, Foshan City (2018 Yue 06 Min Wan No. 10474) [佛山市禅城区丝享美丽美容美发馆、执行案外人执行异议之诉二审民事判决书(2018)粤06民终10474号]; *Guohai Securities Co., Ltd. v Han Ge and Tang Zuoyao* (2013 He Min Er Zhong Zi No. 29) [国海证券股份有限公司与韩革、唐作耀民间借贷纠纷一案民事判决书 (2013)河市民二终字第29号].

¹⁶⁵ China National Institute of Standardization, "Interpretation of GB/T36000-2015, Guidance on Social Responsibility" (STANDARD SCIENCE 2015).

¹⁶⁶ RDR, "2019 RDR Corporate Accountability Index" (Ranking Digital Rights, 2019) <<https://rankingdigitalrights.org/index2019/assets/static/download/RDRindex2019report.pdf>> accessed October 31, 2021.

will be essential CSR-related issues following the Ranking Digital Rights (RDR) report. However, China already released the ‘Regulation on Security Assessment of Internet Information Services Having Public-Opinion Attributes or Social Mobilisation Capabilities in 2018’.¹⁶⁷ To a certain extent, this regulation monitors and blocks problematic online speech and statements that endanger society, or which are thought to threaten the views of the government. In the same year, a stricter regulation called ‘Information Security Technology – Personal Information Security Specification’ was issued in China, requiring companies to develop a cyber-security response plan, including user notification procedures.¹⁶⁸

Therefore, to facilitate CSR in high-tech and internet companies, China should not be limited to relying on existing laws and regulations (e.g. the Cybersecurity Law 2016), but should monitor CSR in such companies from the point of view of particular aspects such as customer privacy and information protection. Other aspects should also be given more attention, such as whether social responsibility disclosure should be mandatory or voluntary, what kind of information needs to be disclosed in social reporting, and what the disclosure requirements are. Also, the subsequent chapter will have a corresponding table of contents to briefly discuss these two important issues.

3.1.2 Evaluation of Article 5

In fact, the interpretation of corporate social responsibility in Article 5 of the CCL is not appropriate or complete. For instance, the participation of employees in corporate governance and the protection of employees’ interests are also significant parts of CSR, but Article 5 does not explicitly list or describe them. CSR is closely related to corporate governance, but different details and stakeholders can only be interpreted and included

¹⁶⁷ Cyberspace Administration of China, “Regulation On Security Assessment Of Internet Information Services Having Public-Opinion Attributes Or Social Mobilization Capabilities (具有舆论属性或社会动员能力的互联网信息服务安全评估规定)” (Cyberspace Administration of China, 2018) <http://www.cac.gov.cn/2018-11/15/c_1123716072.htm> accessed October 31, 2020.

¹⁶⁸ Standardization Administration of China, “GB/T 35273—2017: Information Security Technology – Personal Information Security Specification” (National Information Security Standardisation Technical Committee (TC260.org), 2020) <<https://www.tc260.org.cn/upload/2018-01-24/1516799764389090333.pdf>> accessed October 31, 2020.

through the meaning of the term ‘social responsibility’. This is problematic because in most cases of corporate dispute (based on the original case sample), this depends on the judge’s decision and interpretation. To mitigate some of the shortcomings of Article 5, the Chinese legal system could refer to the UK Companies Act 2006, which provides comprehensive and detailed guidance and regulations on corporate governance (e.g. Section 172) and employee rights (e.g. Section 1166). Although Section 172 itself is not perfect, at least it represents an initial attempt to promote CSR through the duties of directors.

In terms of corporate governance, Article 5 of CCL may need to be reformed to improve the shareholder voting mechanism and apply a shareholder proposal system to increase the effectiveness of corporate governance. A shareholder proposal system requires minority shareholders to be given the right to propose actions to protect their interests. It is a powerful measure, giving them the right to convene an extraordinary shareholders’ meeting to discuss and vote on issues that minority shareholders have discovered through the exercise of supervisory powers over a company’s operation. According to Article 100 of the CCL, shareholders who represent more than 10% of the voting rights in a company can request the board of directors to call an extraordinary general meeting. However, in high-tech companies with small share capital and decentralised equity, the 10% shareholding ratio is obviously too strict. Because the majority of the shareholders who own more than 10% of the voting shares are already major shareholders, most of the small and medium shareholders will be excluded from exercising this right.

In terms of employee rights and interests, Article 5 may promote corporations to implement democratic management and encourage employees to participate in company management and decision-making. As far as employee participation in corporate management decisions is concerned, the Provisions of the Democratic Management of Enterprises 2012 already explicitly recognises that enterprises should implement democratic management. Although the Company Law has provisions for

employee participation in corporate governance (i.e. Article 50 to Article 56), there are ambiguities and loopholes in these. For example, when the performance of employee supervisors is poor, the procedures for dismissing them are unclear, and there is a lack of detailed and specific regulations on the rights of employee supervisors.

In general, Article 5 should be supplemented and revised in terms of reforms to corporate governance structure, in order to enhance corporate social responsibility and promote the implementation of corporate social responsibility within the organisational governance structure framework. In addition, while they do compensate for the inadequacy of the provisions in Article 5, the company's economic benefits and social impact must be taken into consideration, and the economic price paid by the company for implementing corporate social responsibility measures needs to be considered. For example, an overemphasis on the decision-making status and welfare privileges of employees in corporate governance may place a heavy burden on companies and reduce their competitiveness to some extent. Specific examples of existing legislation should be referred to and compared; for example, Section 135 of the India Companies Act 2013 requires companies to perform mandatory CSR and spend 2% of their average net profits on such activities.

The previous paragraph mentioned the performance and practice of mandatory CSR enforcement in India. In other words, India is a country where the government adopts a mandatory CSR approach. In fact, this is not just a regulation that promotes or helps companies that want to undertake social responsibility. In India, the level of awareness and implementation of CSR is still relatively low compared to developed countries, so the feasibility of voluntary CSR is relatively low in this jurisdiction. Mandatory CSR can be regarded as a solution to the country's inability to reach its goals on its own. Therefore, the government turned to companies and required them to contribute to society.

Another example of a country where large companies have been obliged to publish mandatory sustainability reports since 2010 is Denmark. However, in Denmark companies are not forced to use a certain amount of their profits for CSR practices.¹⁶⁹ In other countries, such as the United Kingdom or France, listed companies must report on CSR or sustainability in their annual reports. However, this begs the question of whether this guarantees that companies in these countries are more socially responsible than companies in other countries with voluntary CSR.

Therefore, whether mandatory CSR can become a global norm is still an issue that needs to be studied and verified. After all, CSR can be seen as a way of managing a company, potentially defining the dialogue with various stakeholders. Therefore, whether the company chooses to be responsible must be determined by the company itself. At the same time, this consideration also offers a significant suggestion for China's Company Law and other CSR-related laws: should such a section (voluntary CSR) be embedded in statute, considering the voluntary nature of CSR based on the traditional understanding of the concept?

For Chinese listed companies, voluntary CSR could be embedded in the Company Law or corresponding Chinese laws and regulations as a section or sub-section. Voluntary CSR-related regulations can play a role in guiding, encouraging and motivating companies within the legal framework, thereby enhancing the awareness of enterprises to independently plan and implement CSR. Some studies have shown that in China, non-state-owned enterprises (non-SOEs) with more highly rated voluntary CSR performance or longer CSR reports are associated with lower audit fees and less earnings management.¹⁷⁰ Also, in non-SOEs, especially listed companies, state subsidies have a significant impact on the voluntary disclosure option of CSR, mainly

¹⁶⁹ i.e. Denmark Government encourage and incentivize companies to join the U.N. Global Compact or U.N. Principles for Responsible Investment, and the Danish government also will allow members to refer in the annual reports to their Communication on Progress.

¹⁷⁰ Peter Carey, Li Liu and Wen Qu, "Voluntary Corporate Social Responsibility Reporting and Financial Statement Auditing in China" (2017) 13 *Journal of Contemporary Accounting & Economics* 244, 261 – 263 <<https://doi.org/10.1016/j.jcae.2017.09.002>>.

in the case of subsidies provided through non-tax rather than tax channels. Further analysis also shows that the state's economic subsidies are more obvious in companies domiciled in areas with higher political cost factors (such as the degree of corruption).¹⁷¹

In general, although most Chinese companies will use voluntary CSR reports as a strategic tool for window-dressing, the legislative institution still needs to consider how to promote the autonomy of enterprises in assuming social responsibilities in terms of the cost factor, such as the provision of government subsidies and other policy incentives or guidance, or by writing relevant voluntary reporting standards into laws and regulations.

3.1.3 Criticism of The Enforcement of Chinese CSR

In the implementation of CSR, the Chinese Company Law promotes corporate autonomy and constitutional autonomy to a greater extent and level than ever before in China, but it still appears inadequate in terms of the legislation related to and the enforcement of CSR.

3.1.3.a Legislative provisions are too conceptual and principled

Although Article 5 of the Company Law clearly states that companies need to bear and undertake social responsibility, the provision is still too principled and lacks executability and manoeuvrability.¹⁷² It is regrettable that in reviews of Chinese Company Law, the manoeuvrability of the specific system for social responsibility is rarely involved, and there are no corresponding provisions on how to achieve corporate social responsibility.

¹⁷¹ Edward Lee, Martin Walker and Cheng Zeng, "Do Chinese State Subsidies Affect Voluntary Corporate Social Responsibility Disclosure?" (2017) 36 *Journal of Accounting and Public Policy* 179, 179–181 <<https://doi.org/10.1016/j.jaccpubpol.2017.03.004>>.

¹⁷² Jiangyu Wang, "Overview of the Chinese Company Law," *Company Law in China: Regulation of Business Organizations in a Socialist Market Economy* (Edward Elgar 2015) <<https://doi.org/10.2139/ssrn.1222061>>.

In comparison with the legislation in other jurisdictions, Section 135 of the Indian Companies Act stipulates that the content of CSR obligations is mainly reflected in Indian companies by a prescribed level of contribution (at least 2% of companies' average net profits), and companies must undertake socially dedicated activities within the scope of the law.¹⁷³ In an amendment to the Indian Corporation Law, in February 2014, the Indian Ministry of Corporate Affairs introduced the Companies Corporate Social Responsibility Policy Rules. These consists of 9 articles aimed at ensuring that enterprises have a clear understanding of the amendments to Section 135. Also, this rule clarifies the section's legislative purpose and the scope of CSR activities, obligations related to CSR, and the content of the CSR publicity system.

In addition, Article 5 of the Company Law still needs to supplement and respond to a couple of issues related to social responsibility that are not mentioned: a) how different types of companies can bear legal responsibility (e.g. for high-tech companies, how to fulfil CSR in a targeted and efficient way); and b) the specific explanation and classification of the business ethics and social ethics of a company (e.g. through integrating CSR into the company's business philosophy or corporate culture to drive the long-term sustainable development of the company). In addition, the Company Law should attempt to list and state the contents of social responsibility requirements to stakeholders within the scope of social responsibility, and further supplement areas that have not been adequately covered (such as vulnerable parties). In this way, government regulatory authorities can clearly determine whether a company has fulfilled its social responsibility, and society can monitor these requirements more effectively.

3.1.3.b Deficiencies in the implementation mechanism of CSR

A comprehensive legal mechanism would allow the system to perform better.¹⁷⁴ Establishing a CSR system also requires a legal mechanism to provide a legal basis. Currently, CSR is mainly achieved through information disclosure, derivative action

¹⁷³ Indian Companies Act 2013, s135.

¹⁷⁴ Lin Li, *Building the Rule of Law in China* (Social Sciences Academic Press 2017) 319.

(i.e. shareholder representative litigation), and shareholders' proposal rights and remedies.¹⁷⁵ Specifically, derivative action, as a unique legal remedy, can enable shareholders who meet the statutory conditions to bring suits against wrongdoers on behalf of the company, especially when directors or controllers of the company may be damaging the company's interests. Therefore, from the perspective of CSR, the possibility of derivative action strengthens the positive incentives for directors and managers to perform their duties in accordance with the law, and protects the rights of minority shareholders. According to Article 1 of the Company Law concerning the purpose of the establishment of the Company Law, the Chinese Company Law was enacted for the purposes of regulating the organisation and operation of companies, and protecting the legitimate rights and interests of companies, shareholders and creditors. Hence, to some extent, Article 5 is already based on balancing the interests of shareholders and protecting the interests of minority shareholders. Therefore, it is difficult to conclude that the provisions related to these mechanisms are solely for the purpose of improving CSR towards stakeholders more generally.

First, in terms of the information disclosure mechanism, Article 5 and other parts of the Company Law (e.g. Article 116 etc.) are mainly related to the disclosure of information between company shareholders and creditors, and this type of information disclosure is mainly financial disclosure (i.e. according to Article 116, companies shall regularly disclose information to shareholders about the remuneration paid to directors, supervisors and senior officers), and there is no right to be informed for other stakeholders. The Company Law should refer to other laws, such as the Securities Law or Code of Corporate Governance for Listed Companies 2018 issued by the China Securities Regulatory Commission (CSRC) to supplement the information disclosure mechanism, and this should not be limited to financial information disclosure. For instance, disclosure guidelines should emphasise the disclosure of environmental

¹⁷⁵ Daniel J Morrissey, "The Riddle of Shareholder Rights and Corporate Social Responsibility" (2015) 80 Brooklyn Law Review 353, 372-374, 378
<<https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1008&context=blr>>.

information or social responsibility-related matters, in accordance with Article 95 of the Code of Corporate Governance for Listed Companies 2018.

Second, in terms of shareholder derivative action, the Company Law does not explain how the mechanism can serve CSR, which makes Company Law seem like it was originally designed to privilege the interests of the company's shareholders over those of other stakeholders. Currently, stakeholders such as creditors cannot bring derivative actions in relation to acts that are unfair or harm the interests of the company. Although it is possible to ensure that the interests of shareholders are not damaged under the condition that the company's interests are not infringed, it is not possible to protect the interests of other stakeholders (e.g. employees, customers) when the company's interests are not damaged. This is obviously also against the legislative purpose of CSR.

3.1.3.c Insufficient safeguarding mechanisms in related organisations

The organisational security of CSR is insufficient; that is, corporate governance structures are not perfect.¹⁷⁶ From the perspective of internal governance, the rights of minority shareholders to participate in corporate governance are not guaranteed.¹⁷⁷ Before the stock market split, the equity of Chinese listed companies was very concentrated. The equity controlled by the state (in the form of state-owned enterprises) could not be circulated, and the tradable public shares were too scattered. In this situation, a dominant shareholder or actual controller could easily cause infringements related to minority shareholders. In other words, the board of directors has actually become a tool for dominant shareholders to issue orders and arrange actions, and the interests of minority shareholders cannot be taken into account. Stakeholders are the objects of corporate social responsibility, and the rights and interests of small shareholders in SMEs are a serious corporate governance and CSR issue.¹⁷⁸

¹⁷⁶ Fuxiu Jiang and Kenneth Kim, "Corporate Governance in China: A Modern Perspective" (2015) 32 *Journal of Corporate Finance* 190, 206–207, 210, 212 <<https://doi.org/10.1016/j.jcorpfin.2014.10.010>>.

¹⁷⁷ Shaowei Lin and David Cabrelli, "Legal Protection for Minority Shareholders in China" (2013) 8 *Frontiers of Law in China* 1, 10, 18–20 <<https://ssrn.com/abstract=2447132>>.

¹⁷⁸ Yajing Ma, "Analysis of the Protection and Improvement of the Rights and Interests of Shareholders of Small and Medium-Sized Enterprises under the Company Law (公司法对中小企业股东权益的保护

From the perspective of co-governance,¹⁷⁹ the Chinese Company Law seems to put too much emphasis on the shareholder standard, ignoring the protection and security of stakeholders. Under the guiding principle of shareholders' rights and interests, the interests of a large number of stakeholders, including employees and creditors, appear to be unimportant, and few systems consider their right to participate. There are very few stakeholder clauses or provisions in the Chinese Company Law; although there have been a small number of improvements in employee participation in the corporate governance system,¹⁸⁰ it is still not enough.

3.2 Soft Law

3.2.1 Code of Corporate Governance for Listed Companies

In order to promote the establishment and improvement of modern corporate systems by listed companies, standardise the operation of listed companies, and promote the healthy development of the Chinese securities market, the China Securities Regulatory Commission (CSRC) issued the Code of Corporate Governance for Listed Companies in January 2002.

In 2018, the CSRC made a series of revisions to the Corporate Governance Code, with adjustments related to the CSR of listed companies specifically including the following four aspects.¹⁸¹ First, the new Code requires listed companies to implement innovatory, coordinated and sustainable development concepts in order to strengthen the leading role of listed companies in environmental protection and social responsibility. Second,

与完善分析)” (2017) 1 Rule by Law and Society (法制与社会) 86.

¹⁷⁹ Weiqi Cheng, “Protection of Minority Shareholders after the New Company Law: 26 Case Studies” (2010) 52 International Journal of Law and Management 283 <<https://doi.org/10.1108/17542431011059340>>; Shuliang Wang, “Issues in the Protection of Minority Shareholders' Rights and Interests under China's Company Law,” *Palgrave Macmillan UK eBooks* (2008) <https://doi.org/10.1057/9780230595156_4>.

¹⁸⁰ Company Law of the People's Republic of China, s18 and s44.

¹⁸¹ CSRC, “CSRC Issues Revised Code Of Governance For Listed Companies (证监会发布修订后的《上市公司治理准则》)” (China Securities Regulatory Commission (CSRC), 2019) <http://www.csrc.gov.cn/pub/newsite/ssgsjgb/ssszt/201901/t20190115_349835.html> accessed October 31, 2022.

the Code aims to strengthen restrictions on controlling shareholders, actual controllers, and their related parties further in accordance with the characteristics of the investor structure of the Chinese capital market, paying more attention to the protection of small and medium investors. Third, the Code is designed to promote institutional investors to participate in corporate governance, strengthen the role of audit committees within boards of directors, and establish a basic framework for environmental, social responsibility and corporate governance (ESG) information disclosure. Finally, the Code puts forward new requirements for the stability of control rights in the governance of listed companies, the performance of independent directors, evaluation of the directors and supervisors of listed companies, incentives and restraint mechanism, and the strengthening of information disclosure.

Corporate governance refers to the relationships between various stakeholders, used to decide on and control an organisation's strategic direction and corporate performance.¹⁸² Its core purpose is to seek ways to ensure the effectiveness of strategic decisions,¹⁸³ and therefore a competent corporate governance system can bring competitive advantage to the enterprise. As the core of corporate governance, the board of directors bears the dual responsibility of formulating corporate strategies and supervising management. In addition, based on previous discussions and analyses of stakeholder theory and CSR development, to a certain extent, corporate governance also has an interaction effect with CSR.

In detail, the following paragraphs will select and interpret a couple of CSR enforcement-related sections in the Code of Corporate Governance for Listed Companies 2018, analysing component each individually and demonstrating its meaning as well as discussing related secondary resources.

¹⁸² Amy J Hillman, Gerald D Keim and Rebecca A Luce, "Board Composition and Stakeholder Performance: Do Stakeholder Directors Make a Difference?" (2001) 40 *Business & Society* 295, 297 <<https://doi.org/10.1177/000765030104000304>>.

¹⁸³ Philip Stiles, "The Impact of the Board on Strategy: An Empirical Examination" (2001) 38 *Journal of Management Studies* 627 <<https://doi.org/10.1111/1467-6486.00252>>.

The Chinese Corporate Governance Code is a guiding and non-binding arrangement between legal regulations and articles of association. It is built on the premise of ‘compliance’, but it also reflects certain levels of flexibility and difference. Its goal is to become an effective way to promote the sustainable development of the Chinese securities market.¹⁸⁴ In Chinese judicial practice, especially in corporate dispute cases, parties and courts seldom choose to apply the Corporate Governance Code as a legal basis. The primary cause of its adverse treatment is that the top-down formulation and implementation mechanism of the courts is at odds with the self-discipline logic and endogenous attributes of the Corporate Governance Code.¹⁸⁵

As a kind of social norm, the Code of Corporate Governance for Listed Companies is actually used in the judicial adjudication of corporate disputes. However, as a self-discipline standard, it should be used more widely in the judicial activities of corporate disputes.¹⁸⁶ In fact, searching for ‘公司治理准则 (Code of Corporate Governance for Listed Companies)’ as a legal-basis keyword in China Judgments Online (Database of Legal Documents) only returns 46 relevant cases so far. Similarly, the same search method on the Lawsdata website (把手案例) produced only 47 related cases.

¹⁸⁴ OECD, “Corporate Governance of Listed Companies in China: Self-Assessment By the China Securities Regulatory Commission” (OECD-China Policy Dialogue on Corporate Governance, 2011) 55–56 <<https://www.oecd.org/corporate/ca/corporategovernanceprinciples/48444985.pdf>> accessed October 31, 2022.

¹⁸⁵ Xingquan Cao, “Judicial Application of Corporate Governance Codes (公司治理准则的司法适用)” (2018) 2 *Investor (投资者)* 31.

¹⁸⁶ *ibid* 39-41

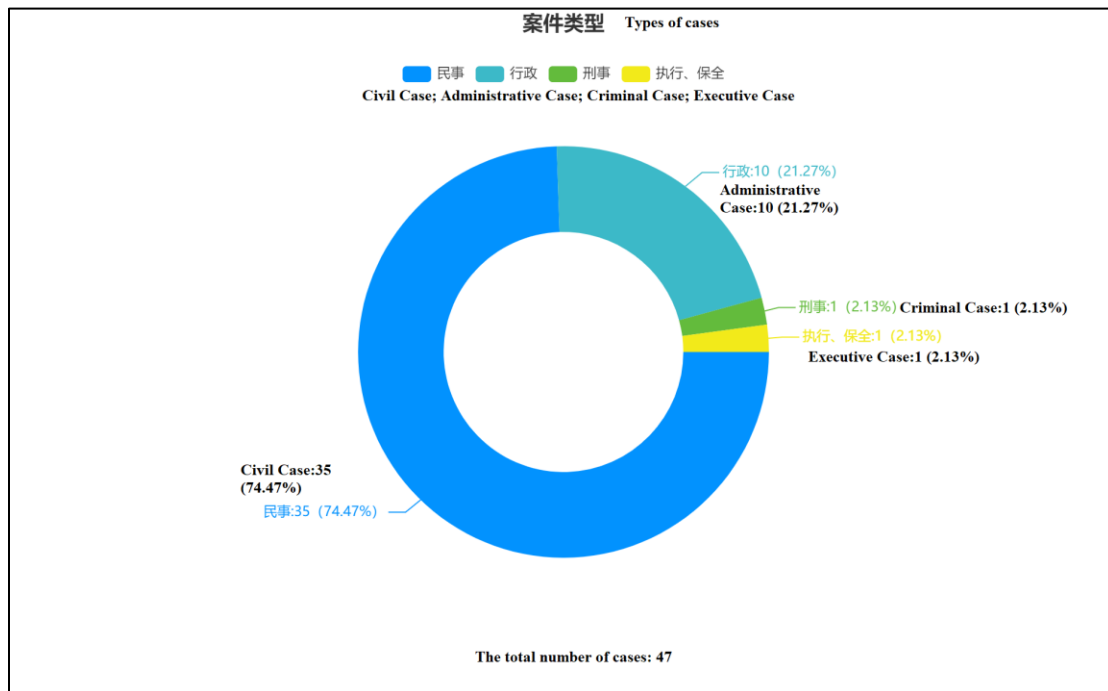


Figure 3. Distribution of Legal Cases Pertaining to the Code of Corporate Governance for Listed Companies Found on Lawsdata



Figure 4. Distribution of Legal Cases Pertaining to the Code of Corporate Governance for Listed Companies Found on China Judgments Online

It, therefore, seems clear that the frequency of the application of the Chinese Code of Corporate Governance for Listed Companies is still relatively low. If the existing legal system adheres to the original version of the Code, the judicial system ought to take the initiative to test and promote judicial activities. In addition, the policymakers

responsible for the Code of Corporate Governance for Listed Companies should also pay attention to judicial demands for self-discipline norms and review positions to improve the revision mechanism.

In a corporate dispute case¹⁸⁷ in which the court did proactively apply the Code of Governance for Listed Companies, the court defined a positive opinion on the interpretative provisions of Articles 34 to 37 of the Code related to the directors' duty of diligence, according to which a director is required to 'ensure sufficient time and effort' in making business decisions, 'attend shareholders' meetings diligently' and 'participate in training and acquire knowledge'. If a director has engaged in all these activities, he can be said to have fulfilled his duty of diligence. Further, if there is no conflict of interest directors cannot be held liable for the outcome of all decisions. In this case, the court's decision to apply the specific standard of diligence in the Code could be seen as a test of the reasonableness of the judicial application.

3.2.1.a CSR Committees and Duties to Implement CSR Policy

Article 38 of the Code of Corporate Governance for Listed Companies 2018 states that the board of directors of a listed company should establish an audit committee and may establish other specialised committees for corporate strategy, nomination, and remuneration and assessment if necessary. The reasons for the establishment of this series of committees and their benefits are considered by some scholars to be as follows: to assist in assuming some of the responsibilities of the board of directors, to protect non-executive directors to a certain extent, to avoid problems such as fraudulent financial statements, and so on.¹⁸⁸

Among these company committees, the corporate strategy committee is the most

¹⁸⁷ *Beijing Yihe Baisheng Technology and Trade Co., Ltd. v. Liu Qiuman* (2011 Dongminchuzi No. 00883) [北京怡和百生科贸有限公司诉刘秋曼损害公司利益责任纠纷案 (2011) 东民初字第 00883 号].

¹⁸⁸ Tingliang Yu and Jianxin Wang, "A Review of International Research on Corporate Audit Committee Systems (公司审计委员会制度的国际研究综述)" (2006) 09 *China Chief Financial Officer* (中国总会计师杂志) 20, 22–23.

relevant and practical in terms of CSR. In detail, the main duties of the corporate strategy committee are to conduct research and make recommendations related to the long-term development strategies and major investment decisions of the company.¹⁸⁹ From the perspective of CSR, the strategy committee can develop a sustainable and long-term development plan for the company, which will benefit a series of stakeholders since the company will be able to provide stable and fixed operating posts and workplaces to employees, the company's shareholders can obtain healthy and positive investment returns, and so on.

In a WTO economic report Chinese researchers pointed out that in recent years in China the practice of CSR has often been disconnected from corporate strategy, and there has been a lack of correlation between the various CSR practices.¹⁹⁰ In this context, if a board of directors decided to establish a corporate strategy committee, it would be possible to set up a dedicated department to assess major development goals and the investment plans proposed by the company's management, and then submit their analyses to the board of directors for adjudication and review.¹⁹¹ The authority of such a corporate strategy committee is delegated by the board of directors, and it is also accountable to the board of directors. Particularly in the specific Chinese context, companies often need to align their strategic development objectives with CSR documents issued by the state in order to develop their CSR practices more efficiently.¹⁹² Hence, to a certain extent the corporate strategy committee can be seen as the 'think tank'¹⁹³ of the board of directors, and the basic department for promoting the development of the company's CSR strategy.

¹⁸⁹ Article 40 of Code of Corporate Governance of Listed Companies 2018

¹⁹⁰ Hongjun Xiao and Rujuan Zheng, "The Main Problems of CSR Promotion Mechanism Construction and Response (CSR 推进机制建设的主要问题及应对)" (2014) 9 WTO Economic Guide (WTO 经济导刊) 59.

¹⁹¹ Zhiqiang Tang, "Ultimate Controllers, Ultimate Ownership and the Governance Needs of Strategic Committees: An Empirical Study Based on Chinese Listed Companies (终极控制人、终极所有权与战略委员会治理需求: 基于中国上市公司的实证研究)" (2012) 3 Journal of Zhongnan University of Economics and Law (中南财经政法大学学报) 9., 9-10.

¹⁹² Hongjun Xiao and Rujuan Zheng (n 190) 60

¹⁹³ Yunfang Wei, "The Think Tank of the Board of Directors: Preparation of the Strategy Committee (董事会的智囊团——筹建战略委员会)" [2007] Directors & Boards (董事会) 100.

In addition to the relatively intuitive and direct impact of the establishment of a corporate strategic committee, the special composition of the board of directors can also be a reflection of the company's CSR development. Generally speaking, board members may be divided into three types: internal directors, related external directors, and independent directors. According to the Code of Corporate Governance for Listed Companies, for special committees such as remuneration and assessment committees, independent directors should be the majority, and one of them should serve as the convener.¹⁹⁴ The establishment of a special committee creates a platform for communication between the board members and the management team. The main purpose of the introduction of independent directors to such committees is to protect the interests of small and medium shareholders, as well as supervising the management's business behaviour. Therefore, independence becomes a prerequisite for their effective performance in this role. According to Article 36,¹⁹⁵ independent directors should carry out their duties independently and should not be influenced by the company's major shareholders, actual controllers, and other entities or persons that have a stake in the listed company. A listed company should ensure that its independent directors can perform their duties in accordance with the law.

In terms of soft law governance structures, the Code of Corporate Governance for Listed Companies provides corresponding legal protection and support for independent directors within the strategy board, enabling them to make objective and independent evaluations of the development of the enterprise. However, it also puts forward higher standards for the selection of the board's constituent members, because independent directors not only need to accurately grasp the competition pattern and development trends of the industry in which the company is located, but also need to have sufficient information about the company's own development. The most important challenge that independent directors in the strategy committee often face is that they cannot obtain

¹⁹⁴ Article 38 of Code of Corporate Governance for Listed Companies 2018

¹⁹⁵ Article 36 of Code of Corporate Governance for Listed Companies 2018

complete information on the operation and development of the company, because they are normally separated from the company's operations and decision-making.

Regarding the issue of independent directors in the strategy committee, most Chinese independent directors are able to promote company performance, and there is a positive correlation between performance and the presence of independent directors on the strategy committee.¹⁹⁶ Nevertheless, whether independent directors can ever be truly independent may be key to determining the success of the company's internal supervision system centred on the board of directors.¹⁹⁷

In conclusion, a strategy committee can not only further protect the rights and interests of minority shareholders in listed companies and strengthen the degree of corporate governance; it can also play a positive regulatory role in the disclosure of company information.¹⁹⁸ This also creates new requirements for the relevant regulatory agencies, which can stipulate that listed companies should regularly disclose the composition of the strategic committee, remuneration, discussion methods and the performance of duties in the form of annual reports.¹⁹⁹

3.2.1.b Mandatory Information Disclosure for CSR-Related Issues

Over the past two decades, the idea that companies should be responsible for their own social performance has become increasingly accepted.²⁰⁰ This has led to debates about

¹⁹⁶ Yuetang Wang, Ziye Zhao and Xiaoyan Wei, "Does Independence of the Board Affect Firm Performance? (董事会的独立性是否影响公司绩效?)" (2006) 5 *Economic Research Journal (经济研究)* 62.

¹⁹⁷ Rongzhan Yang, "A Brief Discussion on Several Issues of the Independence of Independent Directors (简论独立董事独立性之若干问题)" (2011) 6 *Legal and Economy (法制与经济)* 70, 71.

¹⁹⁸ Rongzhan Yang, "On the Origin and Development of Independent Director System from Several Different Perspectives (从几个不同的视角论独立董事制度的起源与发展)" (2020) 4 *Legal System and Society (法制与社会)* 24.

¹⁹⁹ Yuanping Luo and Changlong Pan, "Research on the Governance Effect of the Strategic Committee of Listed Companies (关于上市公司战略委员会的治理效果研究)" (2015) 8 *Business Management (企业管理)* 201, 201–202.

²⁰⁰ Mauricio Latapí, Lára Jóhannsdóttir and Brynhildur Davíðsdóttir, "A Literature Review of the History and Evolution of Corporate Social Responsibility" (2019) 4 *International Journal of Corporate Social Responsibility* 1, 1–2 <<https://doi.org/10.1186/s40991-018-0039-y>>.

how companies should express their CSR, and what constitutes best practice in social accounting, auditing and reporting.²⁰¹ The main principle of the best practice concept is that socially responsible companies should be in dialogue with their stakeholders and produce a social report reflecting their social performance.²⁰²

In China, the Code of Corporate Governance for Listed Companies 2018 provides theoretical support and a basis for board accountability²⁰³ in companies, stipulating for example, that listed companies should establish and implement a management system for information disclosure, and individuals with responsibility for disclosure should disclose information in a truthful, accurate, complete, timely and fair manner in strict accordance with laws, regulations, self-regulatory rules and the company's articles of association.²⁰⁴ What is more, in addition to mandatory disclosures, listed companies are encouraged to voluntarily disclose information that may affect shareholders' and other stakeholders' decisions.²⁰⁵ The theory of board accountability in corporate governance suggests that boards are responsible for all activities of the company, and for presenting to stakeholders a fair, balanced and understandable assessment of the status and prospects of the organisation.²⁰⁶ Combined with the unique cultural factors and corporate culture in China, an effective accountability system (i.e. corporate social accountability, CSA) may be seen as another effective way for corporate governance to solve the CSR problem.²⁰⁷ Zhao²⁰⁸ proposed that CSA can, to a certain extent, fill the

²⁰¹ Simon Zadek, Peter Mark Pruzan and Richard Evans, *Building Corporate Accountability: Emerging Practices in Social and Ethical Accounting, Auditing and Reporting* (Routledge 2013) 3–4.

²⁰² Charles Jackson and Torben Bundgaard, "Achieving Quality in Social Reporting: The Role of Surveys in Stakeholder Consultation" (2002) 11 *Business Ethics: A European Review* 253, 253–254 <<https://doi.org/10.1111/1467-8608.00283>>.

²⁰³ Ray Shi, "Corporate Governance Laws and Regulations Report 2023 China" (International Comparative Legal Guides International Business Reports, 2023) <<https://iclg.com/practice-areas/corporate-governance-laws-and-regulations/china>> accessed October 31, 2023.

²⁰⁴ Article 88 of Code of Corporate Governance of Listed Companies 2018

²⁰⁵ Article 91 of Code of Corporate Governance of Listed Companies 2018

²⁰⁶ Andrew Keay (n 154) 271-273

²⁰⁷ Andrew Keay and Jingchen Zhao, 'Accountability in Corporate Governance in China and The Impact of Guanxi as A Double-Edged Sword' (2017) 11 *Brooklyn Journal of Corporate, Financial & Commercial Law* 377.

²⁰⁸ Jingchen Zhao, "Regulation of Corporate Social Responsibility through the Lens of Board Accountability and the Case of China" in Jean J Du Plessis, Umakanth Varottil and Jeroen Veldman (eds), *Globalisation of Corporate Social Responsibility and its Impact on Corporate Governance* (Springer International Publishing 2018) 145–146 <https://doi.org/10.1007/978-3-319-69128-2_6>.

gap caused by the lack of an effective regulatory framework for companies at the national and international levels, as well as the inadequacy and slow development of remedial mechanisms and acquisition mechanisms related to corporate responsibility in social and environmental issues. Indeed, the concept of CSA may strengthen voluntary initiatives related to CSR.

The newly revised 2018 version of the Corporate Governance Code includes a separate chapter on Information Disclosure and Transparency, and emphasises that companies should disclose all the necessary information that might affect the decision-making of stakeholders. This is undoubtedly one of the most important forms of CSR in the governance of listed companies in China, since company information should be disclosed to all accountors, especially banks and other creditors.

3.2.1.c Stakeholder Dialogues and Participation

In addition to the chapters mentioned above, which were added separately for the purpose of information disclosure and transparency, the Corporate Governance Code also includes a section on stakeholders, environmental protection and social responsibility. For instance, Article 83 states that ‘[a] listed company should respect the legitimate rights of stakeholders ... and maintain effective communication and cooperation with stakeholders to jointly promote the sustainable and healthy development of the company.’ In short, this requirement encourages the company’s management to directly listen to the voices of stakeholders, because different employees take account of different risks and strategic information in their opinions. Furthermore, the CSRC advocates the importance of stakeholder communication channels,²⁰⁹ which may give the board the opportunity to explain the rationale for their decisions. For instance, policymakers may find possible solutions in a ‘two-way communication strategy on CSR information’ (TWCCSR),²¹⁰ which aims to promote

²⁰⁹ Article 85 of Code of Corporate Governance of Listed Companies 2018

²¹⁰ Hua Chen and Haibin Zhang, “Two-way Communication Strategy on CSR Information in China” (2009) 5 Social Responsibility Journal 440 <<https://doi.org/10.1108/17471110910995311>>.

better CSR performance by obtaining strong support from stakeholders in the company during different stages of CSR activity. In general, the main goal of this chapter is to contribute to a more diverse board structure in the company.

3.2.1.d Imposition of Directors' Liabilities and Rewards

Theoretically speaking, Articles 149 and 151 of the CCL stipulate the prepositive procedure, the qualification of the plaintiff, the subject scope of the defendant and the exceptional procedure of the shareholder derivative action system in China. This is of great significance for safeguarding the interests and improving the corporate governance structure of the company. Similarly, the Code of Corporate Governance for Listed Companies 2018 also gives stakeholders the right to bring derivative litigation on behalf of the company when their legitimate rights and interests are violated.²¹¹

3.2.2 Rules Governing the Listing of Shares on the Shenzhen Stock Exchange

In addition to the soft law aspects of CSR in the Corporate Governance Code for Listed Companies mentioned above, the environment of the subject of this thesis, the Shenzhen Stock Exchange (SZSE), also provides its own soft law support for CSR.

Stock exchanges generally tend to take on social responsibility when conducting their business in order to create better value.²¹² For example, the SZSE has demonstrated the following characteristics in assuming CSR:

- a) Broadening the scope of social responsibility
- b) More comprehensive content related to social responsibility
- c) Diverse forms of social responsibility disclosure²¹³

²¹¹ Article 84 of Code of Corporate Governance of Listed Companies 2018

²¹² Changjiang Zhang and others, "Corporate Social Responsibility Regulation in Capital Market and Environmental Information Disclosure of Listed Companies: A Quasi-Natural Experiment from China" (2022) 10 *Frontiers in Environmental Science* <<https://doi.org/10.3389/fenvs.2022.1015061>>.

²¹³ Yisheng Liu and Yingjie Xu, 'Research on Social Responsibility Information Disclosure of Listed Companies in China (中国上市公司社会责任信息披露研究)' (2017) 6 *Modern Management Science*

As of June 2020, a total of 961 listed companies on the stock exchanges in Shanghai and Shenzhen had released 2019 social responsibility reports (including ESG (environmental, social and governance) reports and corporate governance reports).²¹⁴ These two stock exchanges together include nearly 4,000 listed companies, which means that 24% of the listed companies had taken the initiative to disclose their corporate social responsibility reports. It is worth mentioning that in the face of the sudden outbreak of the COVID-19 pandemic in 2020, a total of 311 listed companies (162 in Shanghai and 149 in Shenzhen) disclosed in their CSR reports information about donations and the stable resumption of production and work during the pandemic. For example, in the CSR report of China Merchants Bank²¹⁵ the company disclosed that it had played the role of a financial institution in helping to stabilise the economic market in the fight against the pandemic, undertaking a series of practical initiatives such as donations, online and offline linkages, and increased financial support for the prevention and control of the disease.

However, in the SZSE only 74 listed companies in the ChiNext Market disclosed their social responsibility reports for the previous year, accounting for only 9% of the listed companies in that market.

3.2.2.a The development of CSR in the SZSE

In recent years the SZSE has undertaken a series of meaningful activities and projects to promote CSR and has made some progress – for instance, in setting standards for listed companies to enhance their awareness of social responsibility. Awareness and fulfilment of CSR directly reflect a company’s ethical philosophy and social image in

(现代管理科学) 118.

²¹⁴ Ideacarbon, “2019 Annual Listed Companies Social Responsibility Report Disclosure Overview (2019 年度上市公司社会责任报告披露总览)” (Ideacarbon.org, 2020) <https://www.ideacarbon.org/news_free/52280/> accessed October 31, 2021.

²¹⁵ China Merchants Bank, “China Merchants Bank Corporate Social Responsibility Report 2019” (China Merchants Bank, 2019) <<https://file.cmbimg.com/cmbir/202004/ffc68994-af90-40fd-a55b-f5a9b3ef7438.pdf>> accessed October 31, 2022.

society,²¹⁶ so that information disclosure related to CSR may be the most important way for investors and potential investors to understand the company's situation. By enhancing transparency and improving disclosure standards, the Stock Exchange can assist investors to understand the value of companies and make better investment decisions.²¹⁷ In particular, the non-financial reporting categories of environmental, social responsibility and corporate governance (ESG) need to be strengthened and given more attention.²¹⁸

As early as 2006, the SZSE had already drafted action guidelines specifically for CSR, namely the Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies.²¹⁹ This Instruction consists of seven chapters and 38 articles, requiring listed companies to pay attention to fulfilling their relevant responsibilities while pursuing economic benefits and protecting the interests of shareholders, so as to promote the harmonious and coordinated development of the company itself and society as a whole. Specifically, with respect to the protection of shareholders' rights and interests, the instructions emphasise that listed companies should formulate long-term and relatively stable profit distribution policies and methods, and formulate practical and reasonable dividend payment plans to actively reward shareholders.²²⁰ In terms of environmental protection and sustainable development, the instructions require that listed companies should formulate an overall environmental protection policy based on the extent of their impact on the environment, and assign specific personnel to be responsible for the establishment, implementation, maintenance and improvement of the company's environmental protection system.²²¹

²¹⁶ Latapí, Jóhannsdóttir and Davíðsdóttir (n 200) 15–16.

²¹⁷ Rehana Anwar and Jaleel Ahmed Malik, "When Does Corporate Social Responsibility Disclosure Affect Investment Efficiency? A New Answer to an Old Question" (2020) 10 SAGE Open 1, 10–11 <<https://doi.org/10.1177/2158244020931121>>.

²¹⁸ Yixiang Fang, "Social Responsibility Information Disclosure by Companies with Listed A-Shares (如何衡量企业的社会担当: A 股上市公司社会责任信息披露概览)" (2020) 98 Financial Market Research (金融市场研究) 56, 65.

²¹⁹ Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies 2006 (深圳证券交易所上市公司社会责任指引)

²²⁰ Article 10 of Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies 2006

²²¹ Article 27 of Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies 2006

In general, the scope of fulfilling social responsibility as emphasised by the SZSE can be summarised in the three aspects of environmental protection, corporate governance and community service, which collectively correspond to the values of ESG (Environment, Social and Governance).²²² Therefore, most stock exchanges will focus on comprehensive ESG information disclosure when requiring CSR reports from listed companies.

On the one hand, the outbreak of the COVID-19 pandemic in 2020 raised particular concerns about CSR and objectively accelerated the development of ESG. On the other hand, the strong performance of ESG investment in the capital market also drove the process of adding ESG factors to the scope of regulation of listed companies, both domestically and internationally. In response, in September 2020, the SZSE issued newly revised information disclosure assessment methods, which mentioned ESG disclosure for the first time and included a scoring mechanism for the fulfilment of ESG content.²²³ With this assessment and scoring mechanism, the SZSE encourages listed companies to promote ESG development mainly in the following two aspects: take the initiative to disclose social responsibility reports, with content that should be adequate and complete; and proactively disclose information to demonstrate that the social activities practised by the company are in line with major national strategic guidelines, such as poverty alleviation, epidemic prevention and control, etc.²²⁴

The expansion of the scope and content of company disclosure and the inclusion of ESG and other assessment methods are not only in line with international and Chinese

²²² UNEP, “Managing Environmental, Social and Governance Risks in Non-Life Insurance Business” (United Nations Environment Programme (UNEP), 2020) 10–18 <<https://www.unepfi.org/psi/wp-content/uploads/2020/06/PSI-ESG-guide-for-non-life-insurance.pdf>> accessed October 31, 2021.

²²³ Article 16 of Measures for the Assessment of Information Disclosure of Listed Companies on the Shenzhen Stock Exchange (Revised in 2020) (深圳证券交易所上市公司信息披露工作考核办法(2020年修订))

²²⁴ Shenzhen Stock Exchange, 'Notice On The Issuance Of The "Assessment Measures For Information Disclosure Work Of Listed Companies On Shenzhen Stock Exchange (Revised In 2020) (关于发布《深圳证券交易所上市公司信息披露工作考核办法(2020年修订)》的通知)' (2020).

mainstream market trends, but also improve companies' relationships with investors and enhance the corporate value of listed companies, thereby better promoting their CSR development.

3.2.2.b Regulatory rule improvements on the ChiNext Market of the SZSE

The listed companies on the ChiNext board have healthy growth and independent innovation capabilities. However, the ChiNext Market is dominated by privately-owned companies with a relatively concentrated shareholding. In other words, the controlling power is in the hands of a small proportion of the shareholders, which ultimately leads to a weak level of 'checks and balances' among shareholders.²²⁵ Additional factors such as a short history of development and imperfect board structures²²⁶ also result in a relatively weak foundation for corporate governance and internal control in the listed companies in the ChiNext Market. In order to regulate the organisation and conduct of ChiNext listed companies and to guide companies to improve their corporate governance structure, the SZSE formulated some Guidelines on Standardised Operation in 2009,²²⁷ to promote the continuous improvement of the quality of its listed companies, protect the legitimate rights and interests of listed companies and investors, and promote the healthy and stable development of the ChiNext Market.

In June 2020, the SZSE made significant changes to this Standardised Operational Guideline in relevant areas.²²⁸ The revised guidelines represent a refined supplement to the Listing Rules and follow these principles. First, the guidelines still adhere to the

²²⁵ Ge Zhang, "A Study on the Governance Structure and Corporate Performance of ChiNext Listed Companies in China (我国创业板上市公司治理结构与公司绩效研究)" (2019) 11 *Modern Business (现代商业)* 143, 143.

²²⁶ Pengjun Dai and Guo Li, "An Empirical Study on Governance Structure and Corporate Performance of ChiNext Listed Companies (创业板上市公司治理结构与公司绩效的实证研究)" (2012) 09 *Market Modernization Magazine (商场现代化)* 5.

²²⁷ The Guidelines of the Shenzhen Stock Exchange for Standardized Operation of Companies Listed on the ChiNext Board 2009 (深圳证券交易所创业板上市公司规范运作指引(2009年10月15日深证上〔2009〕106号))

²²⁸ Revision Note: "Guidelines for the Standardized Operation of Companies Listed on the ChiNext Market of the Shenzhen Stock Exchange (Revised in 2020)" (《深圳证券交易所创业板上市公司规范运作指引(2020年修订)》 修订说明)

core of information disclosure and follow the reform direction of marketisation and legislation. The second principle is to strengthen regulation and deregulation at the same time, and enhance precise regulation. The final point involves the further improvement of the relevance and differentiation of the rules and regulations based on the positioning and characteristics of the ChiNext Market, to better accommodate the development needs of innovative enterprises.

The Guidelines on Standardised Operation require ChiNext listed companies to establish a standardised corporate governance structure and a sound internal control system, improve the rules of procedure of their general meeting, board of directors and supervisory committee and the mechanism of their checks and balances of power, and regulate the conduct, selection and appointment of directors, supervisors, and senior management.²²⁹ In addition, listed companies are required to fulfil their obligations of fair information disclosure, strictly manage the funds raised, actively undertake social responsibilities, and take effective measures to protect the legitimate rights and interests of investors, especially small and medium-sized investors.²³⁰

In response to the phenomenon of over-raising of funds by ChiNext companies, the Guidelines for Standardised Operation stipulate that over-raised funds should be deposited in the company's special account for fund-raising and should be invested in the central business of the company, and must not be used to carry out derivatives investment, venture capital or other high-risk investments.²³¹ Strict control of the funds raised is the main manifestation of the protection of investors' funds safety. It also prevents the abuse and misappropriation of the company's operating funds.

Similarly, in order to guard against the significant risk of appropriation of funds by

²²⁹ Chapter 3 of Rules Governing the Listing of Shares on the ChiNext Market of Shenzhen Stock Exchange (2020 Revision)

²³⁰ Chapter 5,6 and 9 of Rules Governing the Listing of Shares on the ChiNext Market of Shenzhen Stock Exchange (2020 Revision)

²³¹ Section 6.5.1 & 6.5.2, Chapter 5 of The Guidelines of the Shenzhen Stock Exchange for Standardized Operation of Companies Listed on the ChiNext Board (Revised in 2020)

listed companies, the Guidelines stipulate that the internal audit departments of companies should inspect the internal control system for monetary funds every quarter, focusing on whether the authorisation and approval procedures for large non-operating monetary fund expenditures are sound, whether there is any overstepping of authority in approval and whether there are weaknesses in internal control.²³² Internal corporate governance and the role of the regulator are also important manifestations of listed companies' efforts to improve their corporate governance structure, with the same ultimate aim of promoting the long-term healthy development of the ChiNext Market.

In 2017, the SZSE also standardised the format of announcements for the disclosure of listed information on the ChiNext board in the Information Disclosure Practice Memorandum.²³³ In order to enhance the quality of information disclosure by companies listed on the ChiNext, the SZSE has provided precise and comprehensive details of the disclosure requirements, which cover 43 different perspectives and situations faced by various companies in their operations (e.g., the announcement of unusual fluctuations in share trading of listed companies, the announcement of material contracts of listed companies, the announcement of approval of bankruptcy reorganisation plans). The disclosure of specific information on internal adjustments and specific operations of each type of company is not only conducive to the long-term and healthy sustainable development of the company itself, but also to the protection of the right to information and the interests of small and medium-sized shareholders in the market.²³⁴ Likewise, it allows investors in the market to have a clearer and more convenient understanding of the investment value and development direction of listed

²³² Section 6.5.4, Chapter 5 of The Guidelines of the Shenzhen Stock Exchange for Standardized Operation of Companies Listed on the ChiNext Board (Revised in 2020)

²³³ ChiNext Information Disclosure Practice Memorandum No. 2: Form of Information Disclosure Announcement for Listed Companies (No. 1-43) (Revised June 2017) (创业板信息披露业务备忘录第 2 号:上市公司信息披露公告格式 (1-43 号)(2017 年 6 月修订))

²³⁴ Étienne Farvaque, Catherine Refait-Alexandre and Dhafer Saïdane, "Corporate Disclosure: A Review of Its (Direct and Indirect) Benefits and Costs" (2011) 128 *International Economics* 5, 8 <[https://doi.org/10.1016/s2110-7017\(13\)60001-3](https://doi.org/10.1016/s2110-7017(13)60001-3)>; Mostafa I Elfeky, "The Extent of Voluntary Disclosure and Its Determinants in Emerging Markets: Evidence from Egypt" (2017) 3 *The Journal of Finance and Data Science* 45, 48–49 <<https://doi.org/10.1016/j.jfds.2017.09.005>>.

companies, which also is a comprehensive expression of the promotion of CSR in such companies.

3.2.2.c Challenges Arising from Discrepancies in Information Disclosure

As mentioned above in the analysis of the series of rules for listed companies issued by the Stock Exchange, it can be seen that the Stock Exchange relies on information disclosure and other requirements to promote the CSR development of listed companies. Therefore, it will be particularly valuable to analyse the problems and challenges brought by information disclosure at this stage. In fact, the degree of voluntary information disclosure by listed companies varies in different industries. Companies in high technology and high information transparency industries have a relatively high level of voluntary disclosure, while listed companies in industries with a high level of competition (e.g. real estate companies) have a relatively low level of voluntary disclosure.²³⁵

First of all, there are differences in the requirements for information disclosure between investors and listed companies. This difference is generally reflected in the contradiction between the supply and demand of disclosed information, which is mainly manifested in the quantity and quality of disclosure. In terms of quantity of disclosure, listed companies want to provide less information (reduce the cost of information disclosure²³⁶) to obtain more trust from investors, but investors are looking for companies to provide more information to save their cost of information collection in order to receive better speculation opportunities. In terms of disclosure quality, listed companies tend to provide historical information or make selective and ambiguous disclosures with motives such as protecting trade secrets, preserving competitiveness

²³⁵ Changyin Huang and Tianxi Zhang, "Industry Differences in Voluntary Disclosure by Listed Companies: A Quantitative Perspective Based on the XBRL (上市公司自愿性信息披露的行业差异: 基于 XBRL 分类标准的定量化视角)" (2011) 07 Securities Market Herald (证券市场导报) 56, 60.

²³⁶ Information disclosure costs are all the expenses that a supplier of information may incur when disclosing information, including explicit costs that can be measured in monetary terms and implicit costs that cannot be measured in monetary terms. See Oved Yosha, "Information Disclosure Costs and the Choice of Financing Source" (1995) 4 Journal of Financial Intermediation 3, 4–5 <<https://doi.org/10.1006/jfin.1995.1001>>.

or avoiding litigation, or else they might disclose a lot of general and known information in place of important personalised information, which in turn misleads investors with a wealth of redundant information, making it difficult for them to judge their investment objectives.

In addition, the regulatory approach and the intensity of regulation by market regulators can have a number of effects on the supply of and demand for information. For example, under a substantive audit approach dominated by administrative regulation, listed companies may tend to disclose more ‘compliance’ and ‘regulatory’ information, while non-regulatory information that reflects the values and risks of their development may be under-disclosed. In this process, both legal disclosure norms and regulatory practice tend to require issuers and listed companies to disclose a great deal of information about the nature of their business, financial leverage, organisational structure, the number of issues and their prices, in order to measure and judge the quality of the issued securities. To some extent, this financial bias of disclosure requirements is likely to limit listed companies from voluntarily disclosing more CSR-related information (i.e. ESG reporting).

While listed companies disclose information in accordance with a defined code, different types of investors have different needs for the company’s information, with a particularly obvious difference in information demand between institutional and public investors. Institutional investors are adept at secondary processing and analysis of information, and therefore, they have a high demand for depth, breadth and timeliness of information disclosure, and a greater need for access to a large amount of raw information, mainly in the form of real data, in order to draw different quantitative and qualitative conclusions.²³⁷ In comparison, public investors are relatively weak in terms

²³⁷ Matthijs Breugem and Adrian Buss, “Institutional Investors and Information Acquisition: Implications for Asset Prices and Informational Efficiency” (2018) 32 *Review of Financial Studies* 2260, 2262–2264 <<https://doi.org/10.1093/rfs/hhy103>>; Xiaoli Gong and Zhiqiang Du, “Institutional Investor Information Sharing, Stock Market Extreme Risk, and Financial Systemic Risk” (2020) 2020 *Complexity* 1, 1–2 <<https://doi.org/10.1155/2020/5745916>>.

of their information mining, analysis and understanding. In fact, public investors are keen to invest in short-term projects as well, but broadly speaking they may prefer factual and conclusive information that is processed from raw information in an easy-to-understand, graphical or indexed format.

In summary, conflicts between the supply and demand of information not only exist between listed companies and investors, but even the needs of different entities are not entirely consistent. The essence of this kind of conflict can be regarded as a kind of ‘expectation gap’ since the supply and demand sides cannot bring corresponding benefits to each other through their own costs. Therefore, differences in the information disclosed by listed companies create particular new requirements for the Stock Exchange.

3.2.3 Guidance on Social Responsibilities Designated by Industry Associations

Globally, the reporting framework should be in accordance with the UN Global Compact principles or should adopt the Global Reporting Initiative GRI (i.e. the ISO26000 guidelines on social responsibility). However, at present, there are no uniform requirements for social responsibility disclosure standards or unified standards for CSR reports in China. Some multinational companies, NGOs, and especially industry associations have developed various social responsibility standards and corporate guidelines in order to promote social responsibility, but this has also led to different disclosure methods and uneven application in the domestic capital market stock exchange.

Wide variation in formats and uneven provision of information are the most significant problems with CSR report disclosure in China today. According to recent statistics, in 2019 there were as many as 11 categories of rules and standards for the preparation of CSR reports for listed companies in Shanghai and Shenzhen, which may be divided into four main:

- a) Reports referring to and quoting relevant guidelines issued by regulatory agencies in the place of listing – for example, the ‘Notice on Strengthening the Social Responsibility Undertaking of Listed Companies’ and the ‘Guidelines on Environmental Information Disclosure of Listed Companies’ issued by the Shanghai Stock Exchange, or the ‘Guidelines on Social Responsibility of Listed Companies’ and the ‘Guidelines on the Standardised Operation of Listed Companies’ issued by the SZSE.
- b) Reports referring to the ‘Sustainability Reporting Standards’ (GRI G5/G4/G3) issued by the Global Reporting Initiative and the ‘Chinese Corporate CSR Reporting Guidelines’ (CASS-CSR4.0, CASS-CSR3.0, CASS-CSR2.0) issued by the Chinese Academy of Social Sciences.
- c) Reports adopting standards of preparation corresponding to the industry to which the company belongs or the nature of the enterprise. For example, central enterprises, state-owned enterprises and listed companies under their control may choose to apply the ‘Guidance on the Fulfilment of Social Responsibility by Central Enterprises’ issued by the State-owned Assets Supervision and Administration Commission of the State Council, while banks and non-bank financial listed companies can choose to apply the ‘Guidelines on Corporate Governance of Commercial Banks’ issued by the China Banking and Insurance Regulatory Commission and the ‘Guidelines on Corporate Social Responsibility of Financial Institutions in the Banking Sector in China’ issued by the China Banking Association.
- d) Some large-cap companies choose to adopt the ISO 26000 ‘Guidance on social responsibility’ (2010), published by the International Organization for Standardization (ISO), as the basis for their report preparation.

In addition to the above-mentioned rules and standards, some domestic industries have issued comprehensive industry guidelines and CSR guidelines over many years, which have been adjusted and updated every so often to bring them in line with current market

conditions. CSC9000T is the first Chinese CSR management standard based on Chinese laws, regulations and relevant international conventions, while some of the better-known guidelines include the ‘China Social Responsibility Guidelines for Foreign Mining Investment’ issued by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, and the ‘China Social Responsibility Guidelines for the Electronic Information Industry’ issued by the Committee on Social Responsibility of the China Electronics Standardisation Association.

However, there are several problems with these guidelines, particularly in that some listed companies typically devote most of their reports to product or service promotion rather than social- or environment-related disclosures. In contrast, others lack coherence or are even contradictory. In terms of the actual CSR reports prepared by listed companies, there are often stark differences so that it can be challenging to compare listed companies even within the same industry. These problems not only hinder investors’ investment decisions and value judgements, but also seriously affect the utility of Chinese CSR reports.

Therefore, taking into account the variability in the management level of listed companies and the affordable cost of disclosure, regulators would be well advised to draw on the more mature mechanisms in industry disclosure rules (e.g., differentiation arrangements)²³⁸ and unify the disclosure reporting requirements and specifications for listed companies as early as possible. Some companies are unable to prepare and publish CSR reports independently, and regulators should encourage this group of companies to engage a third party for assurance to enhance the value and reliability of

²³⁸ Measuring the risk level of listed companies based on a number of indicators and assigning risk ratings is the unfolding dimension of differentiated disclosure. For example, for lower risk listed companies, the mandatory requirement for disclosure through paper media is removed, leaving them free to choose between a single disclosure in online form or a dual disclosure using both methods. It is also permissible for lower-risk listed companies to use the company's website as a statutory form of disclosure. See Gan Yang, “The Logical Rationale and Institutional Development of Differentiated Information Disclosure by Listed Companies (上市公司差异化信息披露的逻辑理路与制度展开)” (2016) 1 Securities Market Herald (证券市场导报) 72, 77.

their CSR reports. Of the listed companies that published CSR reports in 2019, approximately 25 engaged external third-party assurance; these were mainly from the banking and non-banking financial sectors, with the third-party external assurance taking the form of advisors such as accounting firms. The implementation of third-party assurance procedures to enhance the identification of stakeholder concerns and the assurance of non-financial performance data will not only increase the readability of reports, but also will contribute to their transparency.²³⁹

What is more, listed companies in all sectors should treat the preparation of CSR reports as a routine task. CSR reports can be seen as a summary of the results of a company's social responsibility commitment, with the information reported coming from a wide range of sources. This means that the collection of data for CSR reports is not an instantaneous process; if companies do not focus on daily accumulation, it will be difficult to arrange and organise environmental data, for example in situations requiring real-time monitoring. It is recommended that listed companies should establish and improve their CSR management systems and allocate CSR reporting concerns as internal control management indicators within their organisation, division of responsibilities and work content, in order to promote the sustainability of listed companies' social responsibility activity.

²³⁹ Paolo Perego and Ans Kolk, "Multinationals' Accountability on Sustainability: The Evolution of Third-Party Assurance of Sustainability Reports" (2012) 110 *Journal of Business Ethics* 173, 184–186 <<https://doi.org/10.1007/s10551-012-1420-5>>.

CHAPTER 4: THE PRESENT SITUATION OF LEGAL PRACTICE OF CSR IN CHINA: A COMPLETE SAMPLE OF 2019 CASES

In Chapter 4, I delve into the legal landscape of corporate social responsibility (CSR) in China and provide a comprehensive study of a sample of cases from 2019. The chapter begins with an introduction to China's case reporting system and outlines the methodology I used to build an extensive sample of corporate dispute cases related to Article 5 of China's Company Law (CCL). At the same time, I explore the significance of China's case reporting system and how it enhances the transparency and accountability of judicial decisions. Promoted mainly through platforms such as the China Judgement and Documentation Network (CJDN), the system has played a key role in promoting consistency in court judgements and increasing public trust in the legal process. I will discuss how increased transparency provides an ideal basis for empirical research on the application of CSR under Article 5 of the Chinese Civil Procedure Law.

For the case studies, I will go on to explore the selection process of the 99 cases that make up the sample. These cases were carefully collected from the China Judicial Instruments Network (CJIN) using specific keywords related to CSR. I offer my insights into the geographical diversity of these cases, which cover all regions of China and focus mainly on limited liability companies. The chapter then presents the main findings and reflections that emerge from my empirical analyses of these cases. I discuss the direct and indirect application of Article 5 of the Company Law in cases of corporate disputes, emphasising how this legal provision can be invoked to address a range of issues from shareholder disputes to creditor interests. I also address the nuances of the legal infrastructure and macro-socio-political conditions that affect the adjudication of CSR-related cases in China.

Finally, this chapter provides an overview of the technology companies in the sample. It identifies and analyses twelve cases involving high-tech or technology-based firms, revealing how these firms have dealt with CSR issues within a broader corporate governance framework.

4.1 Case Analysis in China

In this section, I will briefly introduce the case reporting system in China, and introduce the methodology for establishing a relatively complete sample of company dispute cases related to Article 5 of CCL.

4.2 The Case Reporting System in China and its Functions

China Judgments Online is a unified platform for the publication of judicial documents established by the Supreme People's Court (SPC) of China in 2013. The total number of cases contained in the *China Judgments Online* database was more than 55 million as of November 2018.

Since 2014, the Supreme People's Court has issued regulations requiring all judicial decisions to be published online. Subsequently, a series of high-quality online electronic databases of legal documents has gradually emerged, such as Beida Fabao (<http://www.pkulaw.com/>) and Bashou Anli (<http://www.lawsdata.com/>).

To some extent, this enhanced judicial decision reporting system is part of the SPC's efforts to strengthen judicial institutions and improve the quality and accountability of judicial decisions.²⁴⁰ 'Accountability' refers to the performance of the responsibilities and obligations of organisations and members at all levels within the jurisdiction of the accountable subject, and requires them to bear negative consequences. As far as the judiciary is concerned, safeguards are needed to ensure that judges can freely make

²⁴⁰ Björn Ahl and Daniel Sprick, "Towards Judicial Transparency in China: The New Public Access Database for Court Decisions" (2017) 32 *China Information* 3, 5-9, 11 <<https://doi.org/10.1177/0920203x17744544>>.

judicial decisions without fear or favour, thereby maintaining their independence. Specifically, an open database can reinforce the consistency of court judgements because a court or judge is able to cite and compare with previous cases. In addition, a convenient online database also allows society at large to recognise the accuracy and fairness of judgements in legal cases. As well as providing convenient search channels for legal scholars, online access to judgements may arouse interest in different aspects of legal research and academic discussions.

With this improvement in the transparency and consistency of judicial judgements in China, it is now feasible and meaningful to conduct empirical research on cases by applying Article 5 of the Company Law to evaluate the application of CSR in the Chinese legal framework.

4.3 Selection of 99 Cases

The author determined that 99 cases related to CSR will constitute the sample in this thesis, all obtained from *China Judgments Online*.²⁴¹ These 99 cases of corporate disputes were obtained by applying the search system of the *China Judgments Online* and inputting the keywords ‘corporate social responsibility’, removing repetitive and unrelated cases. The sample includes cases concerning corporate disputes in 2019, all of which mentioned or applied Article 5 of the CCL. What is more, the cases cover all regions of China, and about 95% of them involved limited liability companies.

When the CSR applications in Article 5 of the Company Law that are directly cited or applied in these cases were classified, it was found that there were many cases with similar or roughly the same cause of action, which could be divided into the following categories:

- a) Abuse of shareholders’ rights to avoid debt (e.g. amendment of articles of association)

²⁴¹ China Judgments Online, “China Judgments Online (裁判文书网)” (China Judgments Online, 2020) <<https://wenshu.court.gov.cn/>> accessed October 31, 2020.

- b) Dissolution of the company
- c) Acting in good faith/fiduciary duty
- d) Using company names to engage in behaviours that endanger society
- e) Holding shareholders' or board meetings without informing stakeholders
- f) The content of the resolutions of the shareholders' meeting or board of directors is illegal
- g) The company acquires equity to protect the interests of minority shareholders

For 68% of the corporate dispute cases in the sample, it can be inferred that Article 5 of the Company Law applies to different types of company cases and covers a comprehensive range of stakeholders and areas. Although this is also reflected in the internal governance of the company, there is not much explanation and application for the company's external stakeholders (such as customers, communities etc.).

In addition to the above classifications, about 32% of the cases in the sample only roughly explain or indirectly cite Article 5 of the Company Law as the legal provision, rather than applying Article 5 as the primary interpretation legal source. As above, we can categorise the cases according to their cause of action, so these cases indirectly applying Article 5 can be roughly divided into the following categories:

- h) Corporate real estate rights disputes (including tort liability/removal of obstruction)
- i) Pawn loan disputes
- j) Shareholder contribution that is lower than required under the company's articles of association
- k) Contract disputes (such as labour contracts)
- l) Equity allocation
- m) The company's legal rights are damaged
- n) An employee's legal rights are damaged
- o) Unclassifiable

4.4 Key findings and reflections

This section presents some key research findings of the empirical analysis, and some reflections.

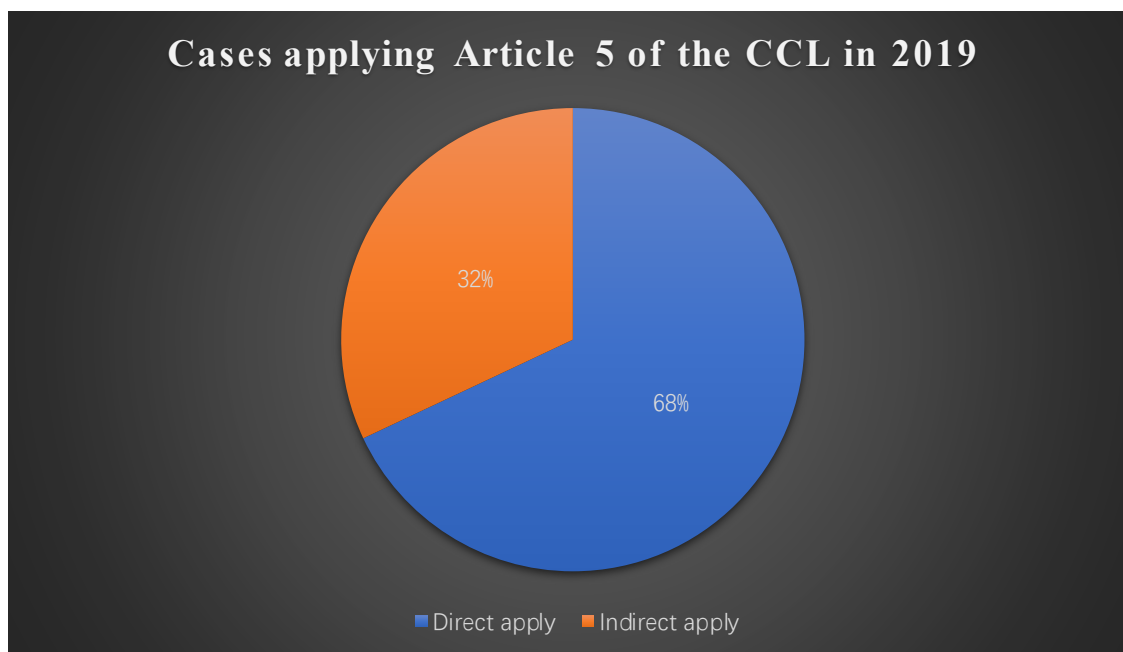


Figure 5. Proportion of cases classified by direct and indirect application of Article 5

In the sample, about 68% of the cases directly cited or applied Article 5 of the CCL, usually meaning that at least one section in Article 5 was mentioned in the case, and at least one paragraph was used to explain in detail what kind of scenarios and what illegal acts exist. For instance, the case may cite a shareholder's abuse of their rights as being against the provision of 'acting in good faith' in Article 5,²⁴² since shareholders should act within the limits of social and business ethics. In this example, if a company's shareholders are allowed to extend the publicly announced period of subscribed capital contribution when the company's debts are not paid off, this will lead to the failure of the capital subscription system. Such a malicious extension of the period of subscribed capital could seriously damage the interests of creditors, and is not in line with social

²⁴² Zhejiang Deling Technology Co., Ltd. v. Gong Xiangzhong (2018 Lu 03 Minzhong No. 4259)[浙江德菱科技股份有限公司、巩向忠申请执行人执行异议之诉二审(2018)鲁 03 民终 4259 号]; Tianjin Import Commodity Center Co., Ltd. v. Tian Shaokun (2018 Jin 0103 Minchu No. 16156)[天津进口商品中心有限公司与田少鲲、李在森申请执行人执行异议之诉(2018)津 0103 民初 16156 号].

and business ethics. The shareholders of the company should bear responsibility according to the law within the scope of unpaid capital contributions.

In another example, a corporate dispute case²⁴³ involving a real estate company where there were differences among the shareholders and a general meeting of shareholders had not been held for many years, it was impossible to form effective resolutions on major issues of the company. Therefore, the shareholders finally chose to apply to the court for the dissolution of the company to facilitate the liquidation of assets, but the court refused to accept the appellant's defence of the dissolution of the company because the business of the real estate company could still operate normally without any serious business difficulties. Also, commercial housing construction under development has been processed, and the relevant administrative permit has been obtained. Therefore, if the company were to be dissolved, the benefit of the cooperative builders and the customers who had signed up would not be protected. From the perspective of shareholders, safeguarding the public interest and corporate social responsibility, the company should not be dissolved without careful consideration.

According to Article 13 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of the Company Law of China (III), the People's Court shall support the regulation if the creditor of the company requests the shareholder who fails to fulfil or fails to fully perform the obligation of capital contribution to bear the supplementary liability for the part of the company's debts that cannot be paid off within the scope of the principal and interest of the capital contribution. In this case, the creditor can break the privity of contract when the shareholder has not fully fulfilled their capital contribution obligation and can directly claim compensation from the shareholder, so that the liability of the shareholder and the promoter to the company can be directly extended to the creditor.

²⁴³ Sui Zhanhui v. Hengshui Hongyuan Real Estate Development Co., Ltd. (2018 Ji 11 Min Zhong No. 1806) [随占辉、衡水宏源房地产开发有限公司公司解散纠纷二审民事判决书 (2018)冀 11 民终 1806 号]

Another representative example may be found in corporate dispute cases concerning the dissolution of a company.²⁴⁴ In some of the cases belonging to this category, the shareholders of a company tried to demand the dissolution of the company on the grounds of conflicts among the shareholders or damage to their own interests. However, the court often considered the interests of stakeholders, because the dissolution of the company at the behest of the shareholders not only violates the principle of ‘acting in good faith’ in Article 5, but also infringes on the rights of other related stakeholders such as creditors, customers and society, since the careless dissolution of a company can be regarded as the company not undertaking social responsibility on its own initiative. In other words, the exercise of shareholders’ personal rights is seen to be constrained by the company’s wider social responsibilities.

Regarding the protection of vulnerable parties, the courts have stated that the practice of ‘the company’s acquisition of natural person shareholders’ equity to make minority shareholders withdraw from the company’²⁴⁵ is consistent with the provision of “taking social responsibility” in Article 5 of the CCL, because the company may be able to properly resolve disputes to protect the interests of the company and employees. Protecting the interests of minority shareholders is conducive to resolving

²⁴⁴ Tao Shangjiu et al. v. Zhangjiajie Yunyu Land Development Co., Ltd. (2019 Xiang 0822 No. 1940) [陶尚九、颜重汉、何伟奇与张家界云玉土地开发有限责任公司公司解散纠纷案(2019)湘 0822 民初 1940 号]; Qiu Zhixin v. Qingdao Borun Real Estate Co., Ltd. (2019 Lu Minzhong No. 79) [仇志新、青岛博润置业有限公司公司解散纠纷案 (2019)鲁民终 79 号]; Wei Fei v. Anyang Lantian Industrial Park Co., Ltd. (2019 Yu 05 Min Zhong No. 1040) [魏飞、安阳蓝天产业园有限公司公司解散纠纷案 (2019)豫 05 民终 1040 号].

²⁴⁵ Wei Wenyu v. Guangxi Ascend (Group) Tiandong Cement Co., Ltd. (2019 Gui 10 Min Zhong No. 201) [韦文钰、广西登高(集团)田东水泥有限公司请求公司收购股份纠纷案(2019)桂 10 民终 201 号]; Huang Caiying v. Guangxi Ascend (Group) Tiandong Cement Co., Ltd. (2019 Gui 10 Min Zhong No. 202) [黄彩英、广西登高(集团)田东水泥有限公司请求公司收购股份纠纷案(2019)桂 10 民终 202 号]; Huang Zhigan v. Guangxi Ascend (Group) Tiandong Cement Co., Ltd. (2019 Gui 10 Min Zhong No. 203) [黄志感、广西登高(集团)田东水泥有限公司请求公司收购股份纠纷案(2019)桂 10 民终 203 号]; Liu Meilan v. Guangxi Ascend (Group) Tiandong Cement Co., Ltd. (2019 Gui 10 Min Zhong No. 204) [刘美兰、广西登高(集团)田东水泥有限公司请求公司收购股份纠纷案(2019)桂 10 民终 204 号].

contradictions and conflicts within a company's internal equity issues. Resolving disputes using proper methods not only protects the interests of the company and its employees, but also represents the performance of the company's responsibilities in its business activities.

In addition to the above-mentioned direct references or interpretations of Article 5 of the CCL, there is a small number of other cases that also reflect Article 5 for interpretation, such as applying the company name to engage in behaviours that endanger society²⁴⁶ (social ethics), holding shareholders' or board meetings without informing stakeholders²⁴⁷ (business ethics), or illegal resolutions made by the shareholders' meeting or board of directors²⁴⁸ (abiding by laws and regulations).

Meanwhile, approximately 32% of the corporate dispute cases in the sample indirectly apply Article 5 of the CCL. Most of these cases did not explain which specific part or section of Article 5 was used, but only stated that 'the judgment was based on Article 5 of the CCL' at the end of the case. In other words, in these cases, Article 5 is likely to be playing the role of 'slogan', or a subsidiary condition for judging the case. Among the various investigation results, one article²⁴⁹ shows that the term "企业社会责任" (Corporate Social Responsibility) (Article 5 of the CCL) is not completely useless in court, although the legal meaning of corporate social responsibility is specific to particular circumstances and sensitive to the institutional environment. Moreover, the adjudication function of the law depends to a large extent on the capacity of the relevant

²⁴⁶ Wuhan Municipal Market Supervision Administration v. Wuhan Jiacheng Foundation Real Estate Brokerage Co., Ltd. (2019 E 0103 Xingshen No. 33) [武汉市市场监督管理局、武汉嘉诚基业房地产经纪有限公司非诉执行审查行政裁定书 (2019)鄂0103行审33号].

²⁴⁷ Xinjiang Sanlian Investment Group Co., Ltd. v. Karamay Desert International Ecotourism Development Co., Ltd. (2019 No. 0203 Minchu No. 191) [新疆三联投资集团有限责任公司与克拉玛依大漠国际生态旅游发展有限公司公司决议纠纷案 (2019)新0203民初191号].

²⁴⁸ Zhang Wenbin and Zhu Lin v. Jilin Ostar Pharmaceutical Co., Ltd. (2018 Ji 0102 Minchu No. 4145) [张文彬与朱琳、吉林欧思达医药有限公司公司决议纠纷案(2018)吉0102民初4145号].

²⁴⁹ Lin Li, "Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China" (2020) 68 American Journal of Comparative Law 576, 611–615 <<https://doi.org/10.1093/ajcl/avaa025>>.

legal infrastructure and the macro social and political conditions.

For example, in some company litigation cases,²⁵⁰ because the parties failed to provide evidence or the evidence was insufficient to prove their facts before making a judgement, the parties could not succeed in the lawsuit. Such cases are supposed to be decided under the Chinese Civil Procedure Law for judgement and interpretation. Therefore, Article 5 does not play a significant role in interpretation, and citing specific articles is not likely to be appropriate.

In addition, in many cases in the sample concerning the infringement of a company's legitimate rights and interests, the court did not seem to apply the CCL to explain precisely. It was more likely that Article 5 would be used to provide incidental grounds in cases that were mostly decided under another provision. For example, in an insurance dispute case involving a traffic accident caused by a driver,²⁵¹ the court mainly followed the Chinese Road Traffic Safety Law and Contract Law when deciding the final judgement. However, Article 5 of CCL played a role in supplementing and explaining the case in this dispute.

A sub-section of Article 5 of the CCL states that 'the legitimate rights and interests of a company shall be protected by laws and may not be trespassed'. In fact, in many cases it is possible to find out exactly which subject has harmed the legal rights of the company, and a more appropriate and accurate explanation may be found elsewhere in the CCL rather than in Article 5. In most cases Article 5 is mainly applied for case interpretation and analysis, and other legal provisions are used to supplement judgements. For instance, in cases where shareholders infringe on the company's

²⁵⁰ Gu Hailei v. Xuedouqi Clothing (Shanghai) Co., Ltd. (2019 Hu 01 Min Zhong 1930) [顾海雷诉雪豆齐服饰(上海)有限公司与公司有关的纠纷案(2019)沪01民终1930号].

²⁵¹ Taiping Property Insurance Co., Ltd. Zhaotong Center Branch v. Wu Changlin (2019 Yun 06 Min zhong 2183) [太平财产保险有限公司昭通中心支公司、吴昌林保险纠纷二审民事判决书(2019)云06民终2183号]

legitimate rights and interests²⁵² the court may quote and apply Article 20 of the CCL, which emphasises that a company's shareholders should abide by laws and regulations and not abuse their rights to harm the company or other stakeholders' interests. In this way, the court cannot merely rely on Article 5 of the CCL to point out and conclude the liability of shareholders for the abuse of their rights, because Article 20 provides a more appropriate statement of the issue. What is more, there are other stakeholders in the company, such as directors,²⁵³ supervisors²⁵⁴ and management,²⁵⁵ who should refer to Article 21 of the CCL in terms of a consideration of the legitimate rights and interests of the company.

Similarly, in dispute cases involving the infringement of corporate real estate rights and tort liability,²⁵⁶ the court may apply the Chinese Property Law and Tort Law and use Article 5 of the CCL as an add-on legislation. In the case of contract disputes caused by labour disputes,²⁵⁷ in one such case in the database the court made a first judgement based on Chinese Contract Law, using Article 5 of the CCL on a follow-up judgement basis; in this case there was no specific or related explanation for why Article 5 was adopted.

²⁵² Lang Tingze v. Hainan Dongfang Feilong Real Estate Development Co., Ltd. (2019 Qiong 97 Minzhong No. 963) [郎庭泽与海南东方飞龙房地产开发有限公司确认合同有效纠纷案(2019)琼 97 民终 963 号].

²⁵³ Qin Lijun v. Zhao Fengxiang (2019 Hei 12 Min Jun 689) [秦立军、赵凤祥损害股东利益责任纠纷案(2019 黑 12 民终 689 号)].

²⁵⁴ He Jun v. Yixing Nongdeli Agricultural Science and Technology Co., Ltd. (2019 Su 02 Min Zhong No. 1643) [贺俊与宜兴市农德利农业科技有限公司损害公司利益责任纠纷案(2019)苏 02 民终 1643 号].

²⁵⁵ Zhuzhou Solar Russell New Energy Co., Ltd. v. Lou Xuefeng, Zhou Hengqi (2018 Xiang 0104 Minchu No. 9000) [株洲索拉塞尔新能源有限公司与楼雪峰、周衡祁损害公司利益责任纠纷案(2018)湘 0104 民初 9000 号].

²⁵⁶ Beijing Star Trails Entertainment Cultural Communication Co., Ltd. v. Wu Yunshan Company (2017, Beijing 0105, Minchu 54133) [北京星迹互娱文化传播有限公司与吴云山公司证照返还纠纷案(2017)京 0105 民初 54133 号]; Shuyang Lekang Tableware Disinfection Co., Ltd. v. Dong Xiang (2018 Su 1322 Minchu No. 12260) [沭阳县乐康餐具消毒有限公司与董祥返还原物纠纷案(2018)苏 1322 民初 12260 号].

²⁵⁷ Quanzhou Tiandihui Supply Chain Management Co., Ltd. v. Wang Zhicai (2018 Min 0583 Minchu No. 11301) [泉州天地汇供应链管理有限公司与王志财劳动争议案(2018)闽 0583 民初 11301 号].

In general, it is clear that in this 32% of cases, Article 5 of the CCL provides legal support in different scenarios, involving different stakeholders and being invoked for different purposes in company disputes. In other words, Article 5 may be regarded as a legal basis that can meet all purposes related to CSR issues, since it is able to cover a relatively wide scope of laws. More importantly, although it may be appropriate to use Article 5 as a legal basis in this group of cases, the application may not always be accurate and precise, because other articles in the CCL may explain and match the corresponding CSR issues more accurately. In addition, in terms of whether judges should invoke stricter requirements for applying Article 5 of the CCL, they should certainly pay more attention to the interests of both parties when hearing company disputes, and judge clearly which stakeholder groups the parties in the case belong to or are involved in. This will significantly improve the accuracy and efficiency of legal judgements related to CSR in company law.

Among the 68% of the cases that were directly based on Article 5 or which gave a detailed interpretation of Article 5, not all use the legislation accurately in their judgements, although they do offer corresponding and clear explanations for why Article 5 was applied. For instance, in a judgement about using a company name to endanger the public interest where Article 5 was invoked, in fact Article 213 of the CCL would have been more suitable. Article 213 of the CCL clearly relates to cases where ‘any person commits, in the name of a company, any serious violation of law that threatens the security of the state or injures the public interest or the interests of society...’. Hence, it is not difficult to see that an interpretation of this paragraph would be more accurate and appropriate than a general interpretation of Article 5. In addition, in company dissolution disputes, Chapter 10 of the CCL (Articles 180 to 190) provides a more comprehensive and detailed legal framework to deal with different types of company dissolution issues than Article 5.

In summary, according to the cases in the sample Article 5 of the CCL may not always

be accurately or appropriately applied, no matter whether it is used directly or indirectly. One of the most influential factors here seems to be that Article 5 covers a wide scope of laws, from the most basic compliance with laws and regulations to social ethics, corporate rights and interests and other related corporate disputes. Hence, Article 5 often plays a promotional role rather than a substantive role in case law.

The 32% of cases in this sample that use Article 5 indirectly are employing it as an add-on legal resource or on a subsidiary judgement basis, which can make Article 5 appear to be merely a CSR slogan. At the same time, however, to a certain extent Article 5 can provide judges with opportunities for abuse in the judgement of CSR-related cases, which may reduce the accuracy and fairness of CSR-related judicial decisions. For instance, judges may prefer to choose Article 5 as the primary legal basis for their interpretation of a case because Article 5 covers a very wide range but may offer no specific explanation for their judgement. This can depend on the judge's supplementary interpretation of Article 5 based on the specific circumstances of the case. If judges are encouraged to use the correct articles of law more accurately to make decisions in cases related to CSR, this will not only promote CSR hard law in China, but also constantly raise awareness of more comprehensive requirements for the articles of law (such as Article 5) concerning CSR.

4.5 Overview of Technology Companies in The Sample

In the sample there was a total of 12 company dispute cases involving high-tech or technology-type companies. Among these, 8 cases were disputes caused by shareholders, employees or management that harmed the company's overall interests, while 4 cases were disputes caused by the company being in arrears with payments to suppliers or partners. In the former cases, the majority of the judgements adopted, and the Article 5 sub-sections invoked, were based on the protection of the company's legitimate interests. The remaining cases focused on the company's creditors' interests and accusations of abuse of rights by shareholders in the company.

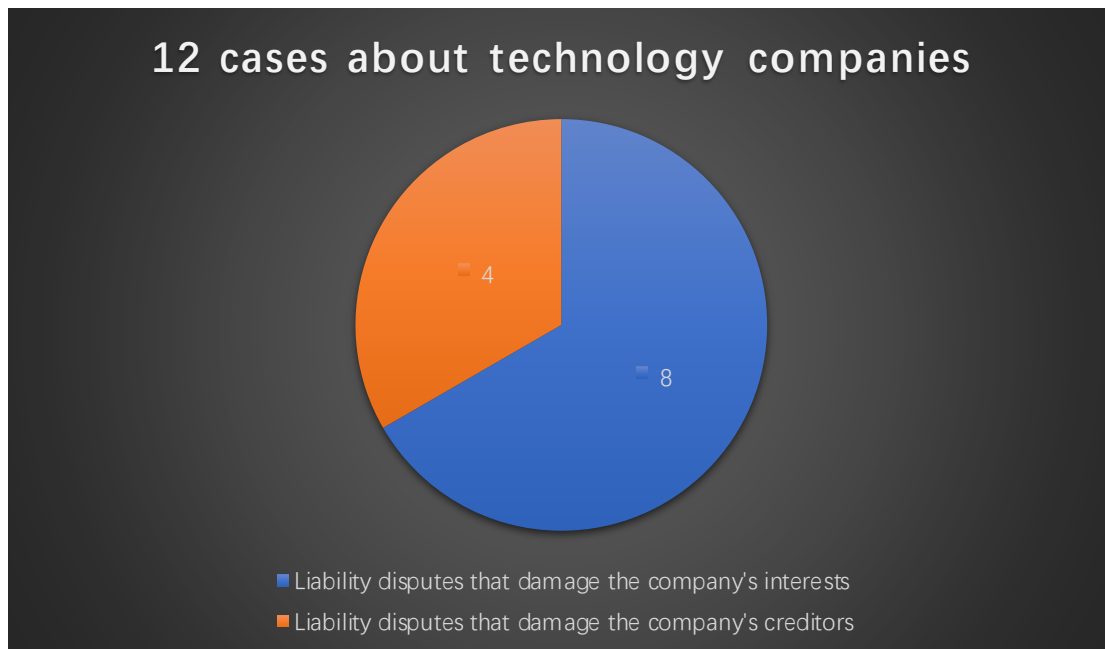


Figure 6. Breakdown of dispute cases involving high-tech or technology-type companies

There is no doubt that almost all the cases involving high-tech companies emphasise the overall interests of the companies or the interests of stakeholders. This may be due to some general characteristics of high-tech companies: high registered capital, as well as complex and special stakeholder networks (particularly involving CSR problems to do with suppliers and overseas subsidiaries). Therefore, the relevant sub-section in Article 5 of the CCL may be regarded as relatively appropriate and suitable to be applied to the CSR issues of high-tech companies. Another important reason why the sub-section can be successfully applied to CSR company disputes in this sector is that its content and requirements are consistent with the contemporary political environment in China, i.e. to promote the construction of a harmonious society.²⁵⁸ However, the sub-section's statements and requirements for CSR are too conceptual and lacking in any substantive role; it is more like a spiritual slogan for CSR, although it does have educational significance.

²⁵⁸ Baoqing Wang, "Considering China's Science and Technology Cooperation with New International Concepts (以国际新兴理念思考我国的国际科技合作)" (2014) 29 *Bulletin of the Chinese Academy of Sciences* (中国科学院院刊) 185, 189–190.

In general, there were 23 cases involving shareholder disputes, and often, this type of case greatly damages the company's overall interests. For high-tech companies, this kind of conflict of interest is often manifested in dialogue between different stakeholders (for example, disagreements between management and shareholders on short-term development goals), and in the process of resolving these conflicts of interest, innovative ideas and new values often appear.²⁵⁹ In short, stakeholder dialogue in high-tech companies can enable them to create new value or drive innovation. Therefore, to solve CSR problems in high-tech companies, a new requirement may be necessary to improve Article 5 of the CCL.

A technology company is a knowledge-intensive enterprise that takes high and new technology as its main input and has technology production, creation and utilisation as its main form, emphasising the accumulation and application of particular human resources. Within this context, the stakeholder network in a high-tech company (e.g. shareholders, directors, key engineers, suppliers) will be complicated. If there are different levels of poor decision-making or disagreement, this will affect and involve many different stakeholders. Therefore, if Article 5 can provide high-tech companies with more comprehensive and completely applicable legal resources or legal support, it will assist companies in solving disputes and conflicts. Moreover, the technical content of technology company products is relatively high, and the company itself needs to have core competitiveness, constantly launch new products that are marketable and safe, and constantly explore or develop market opportunities. Coincidentally, a better legal solution to conflicts of interest in high-tech companies will bring new value and positive results as well. Therefore, reliable legal support is clearly significant for high-tech companies, not only to provide direct legal protection, but also to protect and promote the company's human resources and the development of scientific and

²⁵⁹ Nobuyuki Tokoro, "Stakeholders and Corporate Social Responsibility (CSR): A New Perspective on the Structure of Relationships" (2007) 6 *Asian Business & Management* 143 <<https://doi.org/10.1057/palgrave.abm.9200218>>.

technological products and innovation.

CHAPTER 5: CORPORATE GOVERNANCE IN CHINA: A PERSPECTIVE OF PATH DEPENDENCE

China has emerged as a major player in the dynamic world of international business, with its rapidly expanding economy and booming technology sector. However, beneath the surface of its modern corporate landscape lies a unique model of corporate governance deeply rooted in its history, culture and political traditions. This chapter will delve into China's corporate governance practices, revealing how traditional values such as Confucianism and intricate interpersonal relationships, often referred to as "Guanxi culture," continue to shape the Chinese business environment.

In addition, I will examine the far-reaching impact of China's ambitious Belt and Road Initiative on intricate corporate governance. This massive infrastructure and economic development project has not only reshaped China's role in global trade, but has also created complex challenges and opportunities for corporate governance practices at home and abroad.

In this chapter, I aim to reveal the multifaceted nature of corporate governance in China by examining the historical path dependencies that have led to the current state of corporate governance in China. By delving into the influence of Confucian values, the pervasive role of Kansai culture, and the intricate web of relationships formed under the Belt and Road Initiative, I attempt to provide a comprehensive understanding of China's corporate governance landscape. Through this exploration, it aims to shed light not only on the uniqueness of Chinese corporate governance, but also on its implications for future global business interactions.

5.1 Background and Relevance

Corporate governance has attracted considerable attention as a global issue over the

past two decades, particularly in developing countries and emerging markets²⁶⁰ with the occurrence of food safety and corporate scandals, such as the contamination of dairy products in China in 2008 and poor-quality vaccines in 2018, as well as the outbreak of the COVID-19 pandemic in 2020. Given the alarming increase in the frequency and severity of corporate fraud, it is essential to examine CSR and governance issues in depth.²⁶¹ To address this issue and examine how to balance the relationship between corporate governance and CSR, Jamali offered the following theoretical advice in his research on regulatory and government departments in developing countries: policymakers in developing countries need to increase the vigilance and capacity of their regulatory and judicial systems in the context of corporate governance reforms and strengthen institutional pressures, particularly in coercive and normative terms, to enhance the adoption of CSR.²⁶²

The use of the term ‘corporate governance’ has been enhanced by the economic and political changes instigated in Organisation for Economic Co-operation and Development (OECD) countries from the mid-1980s onwards. Shleifer and Vishny suggested that economic and political changes can lead to a significant increase in stock market activity around the world, defining corporate governance as ‘the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment’.²⁶³ In 1999, the OECD defined corporate governance as ‘the system by which business corporations are directed and controlled, by stipulating the distribution of rights and responsibilities between the different participants in a company’.²⁶⁴

²⁶⁰ Jingchen Zhao, “Promoting a More Efficient Corporate Governance Model in Emerging Markets through Corporate Law” (2016) 15 *Washington University Global Studies Law Review* 447, 448–449 <<http://irep.ntu.ac.uk/id/eprint/33603/>>.

²⁶¹ J Jean-Michel Sahut, Marta Peris-Ortiz and Frédéric Teulon, “Corporate Social Responsibility and Governance” (2019) 23 *Journal of Management & Governance* 901, 901–902 <<https://doi.org/10.1007/s10997-019-09472-2>>.

²⁶² Dima Jamali, Assem Safieddine and Myriam Rabbath, “Corporate Governance and Corporate Social Responsibility Synergies and Interrelationships” (2008) 16 *Corporate Governance: An International Review* 443 <<https://doi.org/10.1111/j.1467-8683.2008.00702.x>>.

²⁶³ Andrei Shleifer and Robert W Vishny, “A Survey of Corporate Governance” (1997) 52 *The Journal of Finance* 737 <<https://doi.org/10.1111/j.1540-6261.1997.tb04820.x>>.

²⁶⁴ Mats Isaksson, “Investment, Financing and Corporate Governance: The Role and Structure of Corporate Governance Arrangements in OECD Countries” (OECD, 1999) <<https://www.oecd.org/corporate/ca/corporategovernanceprinciples/1931532.pdf>> accessed November

Additionally, the OECD provides a more detailed and clear explanation of ‘corporate governance’ in its 2015 G20 Principles, which indicate that ‘corporate governance involves a set of relationships between a company’s management, its board, its shareholders, and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined’.²⁶⁵ In other words, an effective corporate governance framework involves the elements necessary for success at all stages of the investment process, such as the board, managers, shareholders, and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs.²⁶⁶

The first version of the UK Corporate Governance Code (the Code) was published in 1992 by the Cadbury Committee, defining ‘corporate governance’ in a similar way (i.e. as the system by which companies are directed and controlled)²⁶⁷ as the later OECD definition in 1999. In addition, the Code also required the board of directors to be responsible for the governance of their company, with the shareholders’ role in governance being to appoint directors and auditors and satisfy themselves that an appropriate governance structure is in place.²⁶⁸

Corporate governance and CSR are related and intertwined business concepts that are both deeply embedded in business practice.²⁶⁹ In 1999, Johnson and Greening explored the impact of corporate governance and institutional investors’ shareholding on CSR.²⁷⁰

1, 2021.

²⁶⁵ OECD, *G20/OECD Principles of Corporate Governance* (OECD Publishing 2015).

²⁶⁶ Humera Khan, “A Literature Review of Corporate Governance” (2011) 25 *2011 International Conference on E-business, Management and Economics*; IPEDR 1, 2.

²⁶⁷ Adrian Cadbury, “The Report of the Cadbury Committee on The Financial Aspects of Corporate Governance: The Code of Best Practice” (1993) 1 *Corporate Governance: An International Review* 124 <<https://doi.org/10.1111/j.1467-8683.1993.tb00025.x>>.

²⁶⁸ Financial Reporting Council (FRC), ‘THE UK CORPORATE GOVERNANCE CODE’ (2018).

²⁶⁹ Laxminarayana Maroli, “Relationship between Corporate Social Responsibility and Corporate Governance” (2012) 2 *IOSR Journal of Business and Management* 24, 25 <<https://doi.org/10.7176/ikm/9-11-01>>.

²⁷⁰ Richard A Johnson and DW Greening, “The Effects of Corporate Governance and Institutional Ownership Types on Corporate Social Performance” (1999) 42 *The Academy of Management Journal* 564 <<https://doi.org/10.2307/256977>>.

In 2011, Benson et al. empirically investigated the relationship between stakeholder management models, firm value and corporate governance,²⁷¹ and in 2014, Sacconi defined CSR as an extended model of corporate governance and explained a CSR approach of voluntary compliance with strategic CSR management standards based on the economic theory of self-regulation.²⁷² In 2020, a systematic study of corporate governance (CG) and CSR was conducted by several researchers to delineate how CG-CSR research has developed and progressed both theoretically and methodologically in different institutional contexts.²⁷³ In summary, the study found that CSR and CG have an inseparable relationship and affect the value and development of the company, including its stakeholders.

There is also a series of relevant studies on the relationship between corporate governance and CSR in both Chinese and foreign academic communities. In recent years, there has been an increasing number of empirical studies on this topic in China. Therefore, it is of great significance to study CSR from the perspective of corporate governance in the context of China's system. Meanwhile, the concept of corporate governance should be examined and investigated to better understand the meaning of CSR. The Green Paper issued by the European Commission defined CSR as enabling companies to meet and go beyond their legal obligations, invest in human capital and the environment, and strengthen their relationships with stakeholders. Besides, the Green Paper defined corporate governance as the system or channel for managing relationships among management,²⁷⁴ the board of directors, shareholders, and other stakeholders.²⁷⁵ In other words, the standard approach to corporate governance has

²⁷¹ Bradley W Benson and others, "Deviations from Expected Stakeholder Management, Firm Value, and Corporate Governance" (2011) 40 *Financial Management* 39 <<https://doi.org/10.1111/j.1755-053x.2010.01134.x>>.

²⁷² Lorenzo Sacconi, "Corporate Social Responsibility (CSR) as a Model of 'Extended' Corporate Governance: An Explanation Based on the Economic Theories of Social Contract, Reputation and Reciprocal Conformism" (2004) 142 *Liuc Papers* 1 <<https://doi.org/10.2139/ssrn.514522>>.

²⁷³ Rashid Zaman and others, "Corporate Governance Meets Corporate Social Responsibility: Mapping the Interface" (2020) 61 *Business & Society* 690 <<https://doi.org/10.1177/0007650320973415>>.

²⁷⁴ European Communities, *Corporate Social Responsibility: A Business Contribution to Sustainable Development* (Luxembourg: Office for Official Publications of the European Communities 2002) 4.

²⁷⁵ *Ibid* 274-275

been based on the goal of optimising the value of the company, suggesting that the interests of managers and shareholders should be aligned at the lowest possible cost.²⁷⁶

To compare and highlight the particularities and differences of corporate governance in developing countries more directly, we can first review corporate governance in developed countries. The externally controlled corporate governance model in European and American companies relies heavily on external forces to exercise control over management. The term ‘decentralised shareholding’ may be used to describe a company that is highly liquid, depends less on bank financing and has strong legal protection for shareholders, but has little concern for other stakeholders. According to Barnea and Rubin, CEOs and senior managers tend to invest in CSR activities to build their reputation as good citizens, resulting in conflicts with other stakeholders.²⁷⁷ Similarly, Ntim and Soobaroyen argued that managers should develop more CSR-friendly practices in well-managed companies.²⁷⁸ To some extent, board size, board diversity, and the number of independent directors all significantly influence the adoption of CSR practices. To summarise, certain features of the board, including its composition and functions, can play a role in ensuring a balance between the interests of different stakeholders. This largely explains the practice of corporate social responsibility.

However, corporate governance in China is different from the German-Japanese insider model, the Anglo-American outsider model, or the Southeast Asian/West Asian family-oriented corporate model.²⁷⁹ The transformation of the Chinese corporate governance

²⁷⁶ Shann Turnbull, “Defining and Achieving Good Governance” in Güler Aras and Coral Ingley (eds), *Corporate Behavior and Sustainability: Doing Well by Being Good* (Routledge 2015) <<https://doi.org/10.2139/ssrn.2571724>>.

²⁷⁷ Amir Barnea and Amir Rubin, “Corporate Social Responsibility as a Conflict between Shareholders” (2010) 97 *Journal of Business Ethics* 71 <<https://doi.org/10.1007/s10551-010-0496-z>>.

²⁷⁸ Collins G Ntim and Teerooven Soobaroyen, “Black Economic Empowerment Disclosures by South African Listed Corporations: The Influence of Ownership and Board Characteristics” (2012) 116 *Journal of Business Ethics* 121 <<https://doi.org/10.1007/s10551-012-1446-8>>.

²⁷⁹ Some scholars have suggested that the present dual corporate governance environment indicates that China's corporate governance is undergoing a transition from "administrative governance" to "economic governance", in which two governance environments have coexisted, and their main manifestation is the combination and matching of the two environments to varying degrees. See Weian Li, Aichao Qiu and

model is an ongoing process, according to a hybrid model with both administrative and economic dimensions and a particular focus on these four elements:²⁸⁰ board systems, the priorities placed on shareholder value or a combination of shareholder and stakeholder value; the relationship between control and ownership as well as the financial structure of the company; and the role of capital markets. This hybrid model is constantly evolving with the growth of the Chinese economy and the development of a series of reform attempts, mainly dominated by corporatisation and a shift in the roles of the government and the Communist Party. A uniquely Chinese framework for corporate governance has arisen as a result of the country’s political system dominated by a ruling party and its deep-rooted traditions and cultural factors,²⁸¹ including an obsession with corporate regulatory culture and the influence of dominant ideologies.²⁸²

<u>Corporate Governance Models</u>	Anglo-American	German-Japanese	South-Asia	China
Firms' ownership identity	Institutional investors	Financial institutions and individual investors	Family and government	Government
Level of concentration	Diffused	Diffused	Concentrated	Concentrated
Board structure	One-tiered	Two-tiered	Two-tiered	Two-tiered

Zhihui Gu, “Dual Corporate Governance Environment, Political Connections Preference and Firm Performance——Study on Governance Transition of China’s Private Listed Firms (双重公司治理环境、政治联系偏好与公司绩效——基于中国民营上市公司治理转型的研究)” (2010) 267 *China Industrial Economics* (中国工业经济) 85, 86.

²⁸⁰ Jingchen Zhao, “Modernising Corporate Objective Debate towards a Hybrid Model” [2020] *The Northern Ireland Legal Quarterly* 361, 364 <<https://doi.org/10.53386/nllq.v62i3.424>>.

²⁸¹ Fuxiu Jiang and Kenneth Kim, “Corporate Governance in China: A Survey*” (2020) 24 *Review of Finance* 733, 760–763 <<https://doi.org/10.1093/rof/rfaa012>>.

²⁸² Jiangyu Wang, “The Political Logic of Corporate Governance in China’s State-Owned Enterprises” (2014) 47 *Cornell International Law Journal* 631, 639–640 <<https://ssrn.com/abstract=2574111>>.

Monitoring model	External	Internal	Family	Hybrid
Main characteristics	Shareholding fragmentation and weak shareholders, strong management	Relative concentration of shareholding and higher leverage ratio	Businesses are exclusionary and family style of decision making	

It has been verified that optimise corporate governance can mitigate agency problems (conflicts of interest that occur when agents do not fully represent the best interests of the principals in the company), and this is uniquely necessary in China where there is a recognised double agency problem²⁸³ characterised by conflicts between the interests of the board of directors and shareholders and between those of controlling and minority shareholders.²⁸⁴ The agents in these agency problems are often the controlling shareholders and decision-makers. In the Chinese economic environment, which is dominated by state-owned enterprises, agents tend to dominate the corporate boards of state-owned enterprises (SOEs) and are the regulators of companies and corporate behaviour.²⁸⁵ Therefore, a discussion of the history, nature, problems and future of corporate administrative governance in China is essential to provide an accurate framework analysis of corporate governance.

²⁸³ Karen Jingrong Lin and others, “State-Owned Enterprises in China: A Review of 40 Years of Research and Practice” (2020) 13 *China Journal of Accounting Research* 31, 43 <<https://doi.org/10.1016/j.cjar.2019.12.001>>.

²⁸⁴ Wuqing Wu and Suning An, “Double-Principal Agent: False Accounting Information, Supervision Cost and Corporate Performance” (2014) 2 *Journal of Systems Science and Information* 301, 303 <<https://doi.org/10.1515/jssi-2014-0301>>.

²⁸⁵ Karen Jingrong Lin and others, “State-Owned Enterprises in China: A Review of 40 Years of Research and Practice” (2020) 13 *China Journal of Accounting Research* 31 <<https://doi.org/10.1016/j.cjar.2019.12.001>>.

In this scenario, path dependence theory may be applied to analyse the uniqueness of the Chinese model of corporate governance. According to Hathaway, path dependence may be broadly defined as an outcome or decision that has been shaped in a specific and systematic way due to historical paths.²⁸⁶ In terms of time progression, path dependence indicates that what happens at an earlier point in time affects the possible outcomes of a series of events occurring at a later point in time.²⁸⁷ Generally, each country has particular path-dependent factors that contribute to its corporate governance, and these are different from other countries. China's long historical process, unique cultural heritage and complex political structure should all be considered path-dependence factors, with a considerable influence on the unique development of contemporary corporate governance in China. Path dependence plays a role in corporate governance in China by creating and maintaining differences in corporate structures, with differences in corporate governance caused by differences in history, culture, politics and tradition.

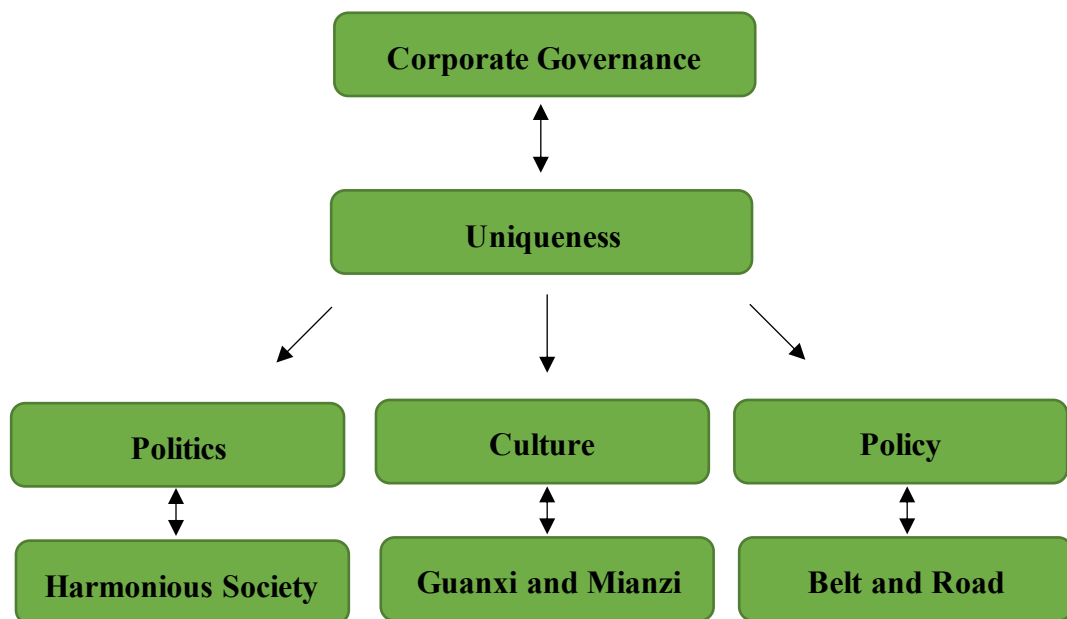


Figure 7. Path dependence factors in the evolution of China's corporate governance

²⁸⁶ Oona A Hathaway, "Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System" (2003) 41 Public Law and Legal Theory Research Paper 101 <<https://doi.org/10.2139/ssrn.384595>>.

²⁸⁷ William H Sewell and TJ McDonald, "Three Temporalities: Toward an Eventful Sociology" in Terence McDonald (ed), *The Historic Turn in the Human Sciences* (University of Michigan Press 1996).

5.2 Corporate Governance and the Construction of a Harmonious Society

The building of a ‘Harmonious Socialist Society’ is a relatively recent strategic guiding ideology for China’s economic and social development, proposed at the Fourth Plenary Session of the 16th CPC Central Committee in 2002.²⁸⁸ It represents a further enrichment and development of the theory of socialism with Chinese characteristics. Additionally, the report of the 17th National Congress of the CPC calls on the Party and the State to ‘[p]ursue development scientifically and promote social harmony in building a moderately prosperous society in all respects’, and further specifies the direction of development for the construction of a Harmonious Socialist Society. The construction of this new Harmonious Socialist Society was significantly influenced by Chinese Confucianism, but with significant differences; for example, the moral norms, etiquette and social customs of the Harmonious Society are consistent with Confucianism’s promotion of ‘benevolence and love’ (仁爱思想)²⁸⁹ but the feudal authoritarianism and strict hierarchy of Confucianism are not included in the modern Harmonious Socialist Society.²⁹⁰ As a result, this philosophy has also been characterised as a form of New Confucianism.

In general terms, the Harmonious Society policy can be interpreted as a strategic goal for social development, referring to a state of harmony and concerted effort in which all sectors of society work together.²⁹¹ This policy mainly revolves around a conception of traditional Chinese Confucianism to govern a Chinese society. Specifically, the Harmonious Society provides a new definition for different aspects of the Chinese

²⁸⁸ Xinhua News Agency, “Communique Of The Fourth Plenary Session Of The 16Th Central Committee Of The Communist Party Of China (中共十六届四中全会发表公报)” (Cpc.people.com.cn, 2002) <<http://cpc.people.com.cn/GB/64162/64168/64569/65412/4429182.html>> accessed November 1, 2021.

²⁸⁹ Wei Zhao and Jingjing Zhao, “On the Value of Confucianism in Building a Harmonious Society (论儒家思想在构建和谐社会中的价值)” (2006)28 Journal of Bohai University (Social Science) (渤海大学学报(哲学社会科学版)) 5, 5–6.

²⁹⁰ Ibid 7

²⁹¹ Central State Council (PRC), “Decisions of the Central Committee of the Communist Party of China on Certain Important Issues Concerning the Construction of a Harmonious Socialist Society (中共中央关于构建社会主义和谐社会若干重大问题的决定)” (Gov.cn, 2006) <https://www.gov.cn/govweb/gongbao/content/2006/content_453176.htm> accessed November 1, 2021.

economy, politics, culture and society.²⁹² The Harmonious Society is related to current Chinese society, including the equalisation of basic public services in particular areas of social concern, including education, healthcare and social security.²⁹³ In addition, a system of democratic rights protection and the widening of channels for the expression of social opinion are specific elements of the theory of a Harmonious Society.²⁹⁴

It is also in this context that corporate governance is defined and explained. Blair defined corporate governance in this broader context, arguing that it ‘should be regarded as a set of institutional arrangements for regulating the relationships between the responsibilities and rights of different stakeholders (shareholders, board of directors, senior managers, supervisory board and other stakeholders) in a corporate enterprise’.²⁹⁵ A system of corporate governance should create an organisational system of mutual checks and balances and interdependence to improve the enterprise’s business performance.²⁹⁶ The adequacy and effectiveness of such institutional arrangements are important and even decisive for the enterprise’s sustainability development, which in turn has a wider impact on the economic efficiency of the industry as a whole.²⁹⁷

5.2.1 Application of the Harmonious Society in Chinese Corporate Governance

In the context of China’s unique political concept of a Harmonious Society, the practice

²⁹² John P Geis and Blaine D Holt, “‘Harmonious Society’ -- Rise of the New China” [2009] *Strategic Studies Quarterly* 75, 75–76 <<https://apps.dtic.mil/dtic/tr/fulltext/u2/a511202.pdf>>.

²⁹³ NDRC, “Part X. Promoting a Harmonious Socialist Society (第十篇 推进社会主义和谐社会建设)” (National Development and Reform Commission (NDRC), 2006) <https://www.ndrc.gov.cn/xwdt/gdzt/ghjd/quanwen/201403/t20140321_1201607.html> accessed November 1, 2021.

²⁹⁴ State Council, ‘Decision Of The Central Committee Of The Communist Party Of China On Certain Important Issues In Building A Socialist Harmonious Society (中共中央关于构建社会主义和谐社会若干重大问题的决定)’ (State Council Bulletin 2006).

²⁹⁵ Margaret M Blair, “Rethinking Assumptions behind Corporate Governance” (1995) 38 *Challenge: The Magazine of Economic Affairs* 12 <<https://doi.org/10.1080/05775132.1995.11471861>>.

²⁹⁶ Cynthia A Montgomery and Rhonda Kaufman, “The Board’s Missing Link” (*Harvard Business Review*, 2003) <<https://hbr.org/2003/03/the-boards-missing-link#:~:text=When%20shareholders%20fail%20to%20set,to%20fill%20the%20information%20void.>> accessed November 1, 2021.

²⁹⁷ Miguel Ángel Jaimés-Valdez and Carlos Armando Jacobo-Hernández, “Sustainability and Corporate Governance: Theoretical Development and Perspectives” (2016) 6 *Journal of Management and Sustainability* 44 <<https://doi.org/10.5539/jms.v6n3p44>>.

of corporate governance requires company managers to adhere to the concepts of ‘People-oriented’ (i.e. all-round development of the individual) and ‘Harmony’ (i.e. building a harmonious company), and govern the company in a democratic and friendly manner according to the characteristics of the company itself.²⁹⁸ Ultimately, they must aim to achieve harmony between people and in society, both inside and outside the company. For instance, harmonious corporate governance should pay attention to the role of employees and their interests.

Corporate governance in China under the policy and environment of the Harmonious Society can be summarised as harmony between managers and employees within the company, and between the company and its external environment.²⁹⁹

Internally, the construction of harmonious corporate governance reflects the previously mentioned ‘People-oriented’ requirement and advocates a people-centred ‘Humanistic Management’ model³⁰⁰. This suggests that the company should invest its efforts in strengthening people, improve its employees’ political and, ideological quality, moral qualities and skills, and aiming for comprehensive human development. In addition, the company needs to co-ordinate internal, interpersonal relations and create a good interpersonal environment, arousing the enthusiasm of the staff and creating a harmonious atmosphere to ensure the achievement of the company’s management objectives.

²⁹⁸ Feng Wang, “Discussion on Harmonious Management in Business (论企业和谐管理)” (2007) 9 MODERN FINANCE & ECONOMICS (现代财经) 39, 39.

²⁹⁹ Xin Zhang and Jin Li, “Application of Harmonious Society Theory in Corporate Governance (和谐社会理论在公司治理中的运用)” (2009) 6 Economic Forum (经济论坛) 121.; Jingchen Zhao, “The Harmonious Society, Corporate Social Responsibility and Legal Responses to Ethical Norms in Chinese Company Law” (2012) 12 The Journal of Corporate Law Studies 163, 180–182 <<https://doi.org/10.5235/147359712800129911>>.

³⁰⁰ The company should regard its employees as the most important resource of the organisation, take the maximum satisfaction and reconciliation of the needs of the organisation, employees and stakeholders as the seven points of the target, fully explore the potential of people, mobilise their enthusiasm through management means such as motivation, training and leadership, create a harmonious, tolerant and fair cultural atmosphere so that the majority of people feel inspired, thus achieving the ultimate goal of common development of the organisation and individuals; See Domènec Mèlé, “Understanding Humanistic Management” (2016) 1 Humanistic Management Journal 33 <<https://doi.org/10.1007/s41463-016-0011-5>>.

In terms of the company's external environment, one of the essential elements of the construction of harmonious corporate governance is strengthening investor relations management and establishing harmonious investor relationships.³⁰¹ Specifically, companies should enhance the transparency of their company information and improve their information disclosure systems, thereby ensuring the information's truthfulness and accuracy. The Shenzhen Stock Exchange ChiNext Market's series of new disclosure documents³⁰² and guidance rules are a good illustration of how different types of listed companies should achieve positive and normative corporate governance. Under the conditions of separation of powers, most investors mainly rely on the information disclosed by the company to understand the company's operation and situation instead of directly participating in the company's business management. Hence, the company must strive to establish an honest and trustworthy corporate image.

Simultaneously, the company's management should always emphasise and understand investors' opinions and requirements, strengthen communication and exchange with investors, reinforce relationships with investors, and enhance investors' trust in the company. The full mobilisation of small and medium-sized shareholdings to participate in corporate governance (an aspect that is repeatedly emphasised in the Code of Corporate Governance for Listed Companies³⁰³) is also an indispensable condition for the establishment of harmonious investor relations. Small and medium shareholders sometimes may not be motivated to participate in general meetings owing to major shareholders' dominance in the company's business decisions. Many minority shareholders feel they have no say in the company's management, even when they do participate in general meetings, making it difficult to protect their rights and interests

³⁰¹ Youmin Xi and Yuvan Shang, "Harmonious Management Thought and Contemporary Harmonious Management Theory (和谐管理思想与当代和谐管理理论)" (2001) 3 Journal of Xian Jiaotong University (西安交通大学学报) 23.

³⁰² See Notice of the Shenzhen Stock Exchange on Issuing the Guidelines of the Shenzhen Stock Exchange on the Disclosure about Growth Enterprise Market 2010

³⁰³ Article 8,17 and 37, Code of Corporate Governance for Listed Companies 2018

when these are infringed upon by major shareholders. Therefore, harmonious corporate governance should encourage the participation of small and medium shareholders in corporate governance to obtain their support for the development of the company and stabilise investor confidence.

The modern corporate enterprise has gradually developed to satisfy the needs of socialised mass production and market economy development. The majority of modern companies apply the 'Principal-Agent System' for the organisation of their property. This suggests that the principal (the shareholder) gives control of his property to the agent (company management) subject to a residual claim,³⁰⁴ and the agent is remunerated for running the shareholder's property and required to maximise shareholder returns. However, the principal and the agent may not have the same behavioural objectives, especially under the 'agency cost problem'. In this situation the agent, as an 'economic person'³⁰⁵ with a tendency to be opportunistic,³⁰⁶ creates a series of problems of 'moral hazard' in the agency process, such as the potential for negligence in their duties and compromising or eroding the interests of the principal.

For listed companies, factors such as the fragmentation and high liquidity of the company's shareholding and the limited voice of shareholders can lead to the formation of enterprises that are not operating well, due to disagreements among shareholders or

³⁰⁴ According to Fama and Jensen, a rational allocation of a firm's residual claim can be an effective solution to the agency cost problem arising from the combination of decision-making operations and decision control. And the definition of residual claim can be interpreted as 'the right to possession of the residual benefits of the total product after deducting the remuneration of all contractual elements, such as the right to the firm's residual income after deducting wage expenses...'; See Eugene F Fama and Michael C Jensen, "Chapter 6, Agency Problems and Residual Claims" in Michael C Jensen (ed), *Foundations of Organizational Strategy* (Harvard University Press 1998) <<https://doi.org/10.2139/ssrn.94032>>.

³⁰⁵ According to the theory of economist Adam Smith, economic man, also known as rational economic man, can be defined as 'a person whose motivation to act is rooted in economic inducements and maximises his own interests'; see William D Grampp, "Adam Smith and the Economic Man" (1948) 56 *Journal of Political Economy* 315 <<https://doi.org/10.1086/256694>>.

³⁰⁶ Opportunistic behaviour is a situation where people do not disclose all information truthfully and engage in other self-serving behaviour in a situation of information asymmetry, and engage in various economic activities with the ultimate aim of satisfying their own needs.; See Oliver E Williamson, "Opportunism and Its Critics" (1993) 14 *Managerial and Decision Economics* 97 <<https://doi.org/10.1002/mde.4090140203>>.

the failure of shareholders to take measures such as administrative management and accountability. This eventually leads to a weakening of the supervision and restraint of agents, to the detriment of investors and other interested parties. This process has also increased the proportion of ‘zombie companies’ in many industries in China in recent years, particularly in the real estate and old energy industries.³⁰⁷

Corporate governance should also solve the principal-agent problem arising from the separation of ownership and control of the company’s property (i.e. the behaviour of agents pursuing their own interests to the detriment of the interests of the principal), minimise agency costs and risks, maximise shareholder value and the interests of all parties, and establish an effective incentive and restraint mechanism to achieve a harmonious relationship between the interests of all parties in the company. The purpose of incentives is to make agents work actively for the benefit of investors and motivate them to take a fair and diligent interest in the company’s development and the appreciation of the company’s assets. The objective of the restraints is to overcome the short-term behaviour (i.e. opportunism) of agents, encouraging them to not pursue their own interests to the detriment of investors’ interests. Moreover, employees’ interests should be effectively safeguarded to achieve harmony in the company’s relations. This involves a series of measures related to CSR practices and the Code of Corporate Governance for Listed Companies, such as establishing incentive mechanisms (e.g. share incentives and employee stock ownership plans, safeguarding labour relations).³⁰⁸ A company’s board of directors should take measures to pursue the legal responsibility of managers who violate the laws and regulations and the provisions of the company’s articles of association, thereby causing the company to suffer losses.³⁰⁹

Generally, corporate governance in China in the context of a harmonious society is

³⁰⁷ Jin Zhou, Guoming Xian and Xiunan Ming, “The Recognition and Warning of Zombie Enterprises: Evidence from Chinese Listed Companies (僵尸企业的识别与预警:来自中国上市公司的证据)” (2018) 44 *Journal of Finance & Economics* (财经研究) 130.

³⁰⁸ Article 62, Code of Corporate Governance for Listed Companies 2018

³⁰⁹ Article 54, Code of Corporate Governance for Listed Companies 2018

based on the principle of people-centred governance.³¹⁰ Corporate governance, as an institutional arrangement and social design mechanism, plays an essential role in building a harmonious society by coordinating the company's relationships with both its internal and external stakeholders. The uniqueness of this arrangement is conducive to the healthy development of the company, its market competitiveness and the sustainable development of the company.

5.2.2 Alibaba's Practice of Corporate Governance in the Context of a Harmonious Society

Founded in 1999, the Alibaba Group is a Chinese company that provides an online trading platform for e-commerce, including services such as B2B trading, online retail, a shopping search engine, third-party payment, and cloud computing services. Its Taobao and Tmall (online shopping platform) services reached a value of RMB 1.1 trillion in 2012, with total merchandise transactions exceeding RMB 3 trillion in 2015, making it the world's largest retailer.³¹¹ In November 2019 the Alibaba Group was listed on the Hong Kong Stock Exchange with a total market capitalisation of over \$4 trillion.

The Alibaba Group has been applying and experimenting with a 'partnership' system of corporate governance since 2010. This involves a special provision in the company's articles of association for nominating directors: a group of people called 'partners' nominate the majority of directors on the board, rather than allocating the right to nominate directors to shareholders in proportion to their shareholding. Notably, the 'partners' in the Alibaba Group have limited powers and responsibilities and cannot directly appoint directors; the shareholders must still vote on the directors nominated before they can be appointed. However, the 'partners' can keep nominating them even

³¹⁰ Bao Shan, "The Connotation and Ideas of Harmonious Management of Enterprises (企业和谐管理的内涵与思路)" (2005) 6 Enterprise Reform and Management (企业改革与管理) 18.

³¹¹ Tencent Technology, "Alibaba Overtakes Walmart To Become The World's Largest Retail Company (阿里巴巴超沃尔玛成全球最大零售公司)" (Tencent Technology (腾讯科技), 2016) <<https://tech.qq.com/a/20160407/002672.htm>> accessed November 1, 2021.

if the shareholders do not approve them. Partners are renewed by self-renewal, with the election of a new partner requiring 75% of the votes of all partners and the removal of a partner requiring 51% of the votes of all partners.

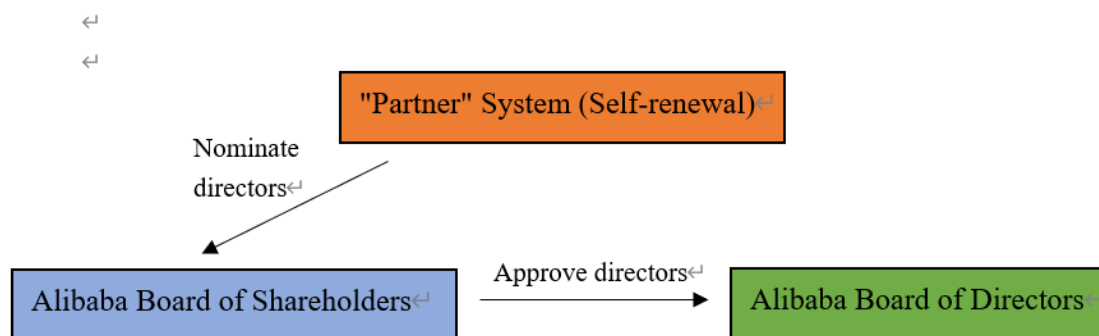


Figure 8. Alibaba's 'Partner' System

There are different opinions in the business community and academia about Alibaba's unique corporate governance system. Cai, one of the founders of the Alibaba Group, believes that the corporate governance mechanism of partnership equips the core executives of the company with greater strategic decision-making power and reduces the impact of short-term capital market fluctuations, ensuring the long-term interests of customers, the company and all shareholders. Meanwhile, the management avoids asserting overarching control over the enterprise, acknowledging the pivotal role that a distinctive corporate culture has in maintaining and enhancing the unique 'Ali culture', particularly in the context of internet businesses.³¹²

However, a Chinese report stated that the partner system is unfair to investors in general, and the Alibaba partner system implies that shareholders have shared but no decision-making power.³¹³ Additionally, the essence of the partnership system could allow partners to seize board seats and control the company, against the principle of fairness

³¹² Sohu, "Cai Chongxin: Why We Launched The Partnership System (蔡崇信: 我们为什么推出合伙人制度)" (Sohu (搜狐), 2017) <https://www.sohu.com/a/211281422_100003666> accessed November 1, 2021.

³¹³ Shanghai Alshine Law Firm, "Unravelling the Mystery of Ali's Partner System (浩信观点: 揭开阿里合伙人制度的神秘面纱)" (Shanghai Alshine Law Firm, 2020) <<http://www.haoxinlaw.com/cn/news/ShiDaiPingLun/53020.html>> accessed November 1, 2021.

in the market. Moreover, this also does not reflect the uniqueness and application of the 'harmonious society' in Chinese corporate governance, since the interests of shareholders without real power could still be harmed.

From the perspective of principal-agent analysis, under Alibaba's partnership system, the purpose of the shareholders is assumed to be gaining income rather than controlling the company, while the executive partners, usually the founders of the company, have a strong desire to maximise the long-term development of the company. Concurrently, the partners, as minority shareholders, also want to obtain high returns from the company's development. Thus, the partnership system allows the interests of the principals (the shareholders) and the agents to converge and achieve balance in the principal-agent relationship.

Apart from the company's sophisticated operations capability, the partnership system has also positively promoted the Alibaba Group to become a significant business success story in China despite its complex corporate governance structure. First, unlike traditional technology-based companies, internet companies require advanced expertise and a more pronounced division of labour in management with the growth of the company. As professional managers of a company, directors can make choices that are more beneficial to the company's operations than ordinary shareholders. Consequently, the quality and independence of directors will determine the quality of a company's governance. From the beginning of the partnership system, the right to nominate directors was given to the partners in order to capture the quality of the directors at source and ensure the foundation of the company's development.

However, partnership deprives other shareholders of the right to nominate directors and their control over the personnel that make up the company's management, and creates a structured separation of operating and ownership rights. Under the partnership system, the cost of communication will increase sharply in the event of a disagreement between

the general meeting and the partners, and there may even be an embarrassing situation where no directors can be elected.

The Alibaba Group, along with many successful technology companies in China, has set a good example in terms of information disclosure for corporate governance. On Alibaba's corporate governance web page, the investor can view a clear and well-defined corporate governance leadership team (including the Board of Directors, Board Committees, Alibaba Partnerships and Senior Management) and a breakdown of corporate governance documents (e.g. Memorandum and Articles of Association, Code of Corporate Governance, Code of Ethics, and Audit Committee Articles). In addition, the Alibaba Group also reports on each year's finances for two different periods, interim and annual.

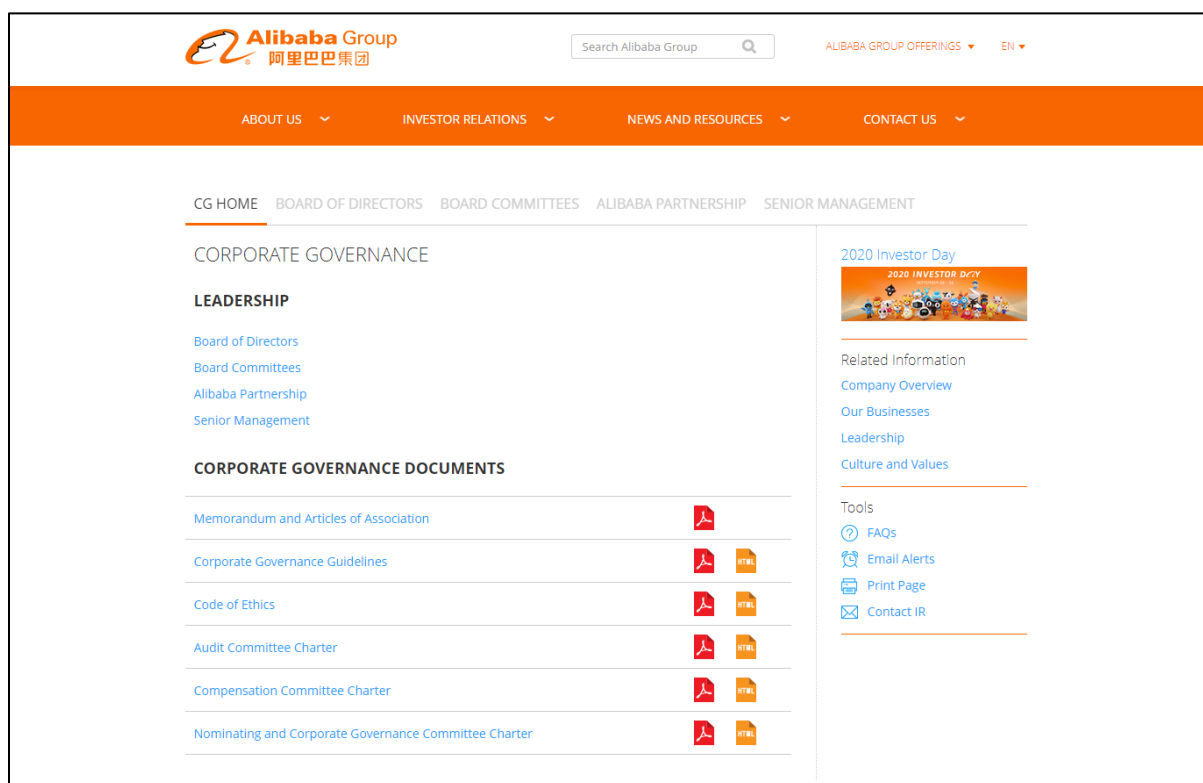


Figure 9. Alibaba's corporate governance web page

It is undeniable that Alibaba has adopted a unique partnership system in the context of corporate governance in China, leading to a series of debates and opinions both positive

and negative. Nevertheless, its high-level and standardised corporate governance framework is worthy of our attention and research.

5.3 Corporate Governance and The Culture of Guanxi and Mianzi

Corporate governance is a significant component of the corporate governance framework, and the development of corporate systems in different jurisdictions is inseparable from the local cultural roots. Therefore, local cultural values, such as the typical Chinese cultures of Guanxi (relationships and connections) and Mianzi (dignity), as well as the idea of Guan Benwei (official rank standard), should be fully considered in any examination of the unique Chinese model of corporate governance. Generally, the official rank standard can be described as a value measured by the level of official position and power; specifically, it involves a strict hierarchy of superiors and subordinates, wherein individuals must strictly obey the instructions of their superiors and have absolute power over their subordinates. For this reason, an interdisciplinary understanding of the history of Chinese political thought may allow for a clearer articulation of the unique moral and ethical relationships involved in Chinese corporate governance.

In traditional Chinese culture (especially Confucianism), ethics and morality are raised to the highest level of society, and benevolence and moral rule are regarded as common guidelines for handling all interpersonal and social relationships.³¹⁴ In simple terms, Confucianism is one of the most influential religious philosophies in the history of China, and has existed for over 2,500 years. It is concerned with inner virtue, morality, and respect for the community and its values. Confucian cultural values and the concept of a Harmonious Society as described in the previous chapter have gradually given CSR a new definition in recent years. For example, the ‘Chinese harmony approach to CSR’³¹⁵ involves respecting nature and loving people, and this new definition

³¹⁴ Datong Xu, “Confucius’ Benevolent, Virtuous and Courteous Way of Governing the Country (孔子仁政、德治、礼范的治国之道)” (2013) 4 *Journal of the History of Political Thought* (政治思想史) 1.

³¹⁵ Wang Lei and Heikki Juslin, “The Impact of Chinese Culture on Corporate Social Responsibility: The Harmony Approach” (2009) 88 *Journal of Business Ethics* 433 <<https://doi.org/10.1007/s10551-009-0306-7>>.

incorporates cultural contexts into the concept of CSR while making it easier to understand the characteristics of the Chinese market.

On the one hand, this focus on ethics is conducive to the adjustment and optimisation of human relations. It not only promotes norms of behaviour and activity in social organisations and effectively reduces corruption in enterprises, but also allows for a more formal and regulated structure of business organisations. On the other hand, however, the negative effects of Confucianism have contributed to an increasingly centralised business environment and complex social organisation. For example, excessive conformism in interpersonal relations can result in unequal social status between people and solidified hierarchies.

The influence of Confucianism can be seen in the corporate culture of most SOEs (state-owned enterprises) in China. In the case of Chinese SOEs, it was made clear during the process of founding the enterprise that the entire state and the people were the subjects of the property rights of the enterprise (i.e. ownership by the people). Each member of the SOE and all the stakeholders have equal rights under the law. However, there are significant issues of inequality in SOEs, with the interests of creditors and employees often being treated unequally.³¹⁶ This is associated not only with historical and institutional factors specific to China, but also with the traditional cultural notions of hierarchy and power.

5.3.1 The Mianzi Phenomenon in Chinese Corporate Governance

‘Mianzi’ (English translation: ‘face’) is one of the most familiar and commonly used concepts in China, and is a unique psychological and cultural phenomenon among Chinese people. Mianzi can be regarded as the symbol and most important factor in interpersonal relations in China.³¹⁷ In interpersonal interactions, the extent to which

³¹⁶ Huiya Lin, “A Brief Discussion on the Reform of the Property Rights System of State-Owned Enterprises (浅谈国有企业的产权制度改革)” (2012) 31 *Technological Development of Enterprise (企业技术开发)* 101.

³¹⁷ Caifen Jiang, “The Roots and Social Functions of Mianzi Culture (面子文化产生根源及社会功能)”

both parties wish to ‘save face’ (i.e. have a concern about the benefits of the interaction and personal feelings), whether they ‘give face’ (i.e. show respect and flattery) or not, or whether they ‘give enough face’, are generally essential conditions for interpersonal harmony, and are directly connected with the direction and extent of the development of the interpersonal relationship.³¹⁸ Teon believed that Mianzi involves the most subtle and bizarre aspects of Chinese social psychology, and is the most delicate criterion by which Chinese people regulate their social interactions.³¹⁹ In general, Mianzi is an evaluation based on self-expression in interpersonal communication, and represents a person’s social status. It has an important function in interpersonal communication as a resource exchange.

In the legal system, it is generally crucial to prove a case through facts. On the contrary, under the influence of Mianzi people will pay more attention to who the individual is, while potentially ignoring objective facts. In addition, the law adjusts the relationship of interest, while relationships within Mianzi are related to the relationships between people.³²⁰

Relationships of rights and obligations adjusted by law can be seen as a relationship of interest, which is often singular and only involves two parties. The relationship between the parties is linear.³²¹ Unlike legal relations, however, ‘face relationships’ involve personal prestige, status and social reputation. They are not directly expressed as interest relations, though they are potentially connected with interests. Moreover, such relationships are not limited to the parties involved; rather, they are closely associated with other people who have relationships with the parties, showing a network and

(2009) 3 *Guangxi Shehui Kexue* (广西社会科学) 116, 116–117.

³¹⁸ *Ibid* 119-120

³¹⁹ Aris Teon, “The Concept of Face in Chinese Culture and the Difference between Mianzi and Lian” (*The Greater China Journal*, May 15, 2017) <<https://china-journal.org/2017/02/25/the-concept-of-face-in-chinese-culture-and-the-difference-between-mianzi-and-lian/comment-page-1/>> accessed November 1, 2022.

³²⁰ Anping Zhou, “Mianzi and Law—Based on the Perspective of Sociology of Law (面子与法律—基于法社会学的视角)” (2008) 4 *Law And Social Development* (法制与社会发展) 89.

³²¹ *Ibid* 91

reticular pattern.³²² In these networks, individuals are not independent, and their behaviours and relationships can affect a wide variety of related stakeholders.

Mianzi culture can cause a number of problems in corporate governance. For example, the members of supervisory boards in Chinese companies must act to preserve the ‘face’ of the chairman, directors and executives; there is no incentive for the supervisory board to exercise its supervisory powers for the overall benefit of the company, as long as their personal interests are not at stake. In Chinese SOEs, where seniority is based on administrative rank, it is even more difficult for the director of the supervisory committee to exercise supervisory functions if he is at a lower level compared with the chairman of the board. As a result, the supervisory board often has no actual authority and power, impeding it from truly exercising its supervisory powers. The culture of Mianzi thereby creates a number of different kinds of problems in corporate governance in China with respect to hierarchy and power, and affects the internal governance structure of the company.

5.3.2 Guanxi Culture in Chinese Corporate Governance

The culture of Guanxi is another typical Chinese cultural root influencing people’s social and even workplace interests. In Chinese society, ‘Guanxi’ can be generally described as interpersonal relationships, including two different levels of meaning.³²³

First, Fan believes that Guanxi is a social connection that originates between two people but involves many others,³²⁴ and Standifird and Marshall argue that the important role of Guanxi and interpersonal networks in Chinese social and economic life must be specially noted.³²⁵ Based on the above analysis, Guanxi (interpersonal relationships)

³²² Ibid 92

³²³ Yadong Luo, “Definition, Principles, and Philosophy of Guanxi” in Léo-Paul Dana (ed), *Asia-Pacific business series* (World Scientific 2020) 2–3 <https://doi.org/10.1142/9789811210556_0001>.

³²⁴ Ying Fan, “Questioning Guanxi: Definition, Classification and Implications” (2002) 11 *International Business Review* 543 <[https://doi.org/10.1016/s0969-5931\(02\)00036-7](https://doi.org/10.1016/s0969-5931(02)00036-7)>.

³²⁵ Stephen S Standifird and R Scott Marshall, “The Transaction Cost Advantage of Guanxi-Based Business Practices” (2000) 35 *Journal of World Business* 21 <[https://doi.org/10.1016/s1090-9516\(99\)00032-2](https://doi.org/10.1016/s1090-9516(99)00032-2)>.

refers to the interdependent and interconnected social relations constituted by interaction among social groups. It arises from the mutual perceptions of people and the resulting relationships of attraction or rejection, cooperation or competition, leadership or subordination.

Second, there is a deeper meaning to Guanxi in that relationships and interests are inseparably linked. Guanxi involves a special connection of mutual benefit, which is directly related to the benefits to be obtained by the people or organisations concerned.³²⁶ In the context of business relations in China, Guanxi can be understood directly as a notion of securing an interest in a personal relationship.³²⁷ Therefore, reference to Guanxi in China is in many cases directly related to the acquisition of relevant benefits. However, it also directly or indirectly affects the allocation of resources. For instance, Guanxi can provide a company or factory with tangible benefits such as access to information on government policies, market trends, and business opportunities, thereby streamlining business operations and transactions (company image building, logistics, collection of receivables, access to production resources and so on).

In the context of corporate governance, Guanxi gradually becomes an organisational asset³²⁸ when it contributes to or is used by the organisation, constituting a new model of governance known as ‘Guanxi governance’. Guanxi governance is the use of relationship norms as a mechanism of control between internal hierarchical governance and external market-based governance.³²⁹ It relies more on relationship norms such as

³²⁶ Lucian Pye, *Chinese Negotiating Style: Commercial Approaches and Cultural Principles* (Praeger 1992) 88–90.

³²⁷ Yadong Luo, “Guanxi: Principles, Philosophies, and Implications” (1997) 16 *Human Systems Management* 43 <<https://doi.org/10.3233/hsm-1997-16106>>.

³²⁸ Hongchang Wang and Xuehua Liao, “A Study of the Legitimacy of Relational Theory in a Social Normative Perspective (社会规范视角下的关系理论之合法性研究)” (2014) 11 *Guanli Xuebao* (管理学报) 764, 764–765.

³²⁹ Guijun Zhuang, Qiao Li and Xiaoming Cui, “The Impact of Relationship Marketing Orientation and Cross-Organisational Interpersonal Relationships on Corporate Relationship-Based Channel Governance (关系营销导向与跨组织人际关系对企业关系型渠道治理的影响)” (2008) 7 *Journal of Management World* (管理世界) 77.

mutual understanding, mutual trust commitment, and affection to prevent speculative behaviour in companies' cooperation.

The establishment of inter-company relationships begins with private relationships between business managers, which are an extension of individual private relationships, and can be referred to as political and commercial relationships.³³⁰ Political relationships are the vertical relationships between business managers and officials in government departments, industrial sectors, and regulatory authorities (such as taxation, banking and industrial and commercial administration departments). Thus, building political relationships with relevant authorities to obtain scarce resources (such as land and minerals) and achieve a competitive advantage is undoubtedly an important priority in all relationships in China, where the government is the main controller of many key resources.

Meanwhile, commercial or business relationships are the horizontal relationships between business managers and suppliers, sellers, and competitor executives, and are a major source of market information. Extensive business relationships facilitate the transfer of tacit knowledge across organisations and bring more opportunities for companies. High-quality business relationships ensure the authenticity of information resources and improve the accuracy of corporate strategies and tactics.

Yang suggests that the appropriate use of Guanxi is challenging, but it can be considered to be 'in line with the new structural needs of capitalism and even provides a competitive advantage for Chinese capitalism'.³³¹ In consideration of the shortcomings of Guanxi in Chinese society and the strategic position of the technology industry in China, Pingping nevertheless demonstrates the importance of Guanxi in the knowledge

³³⁰ Seung Ho Park and Yadong Luo, "Guanxi and Organizational Dynamics: Organizational Networking in Chinese Firms" (2001) 22 *Strategic Management Journal* 455, 473–474 <<https://doi.org/10.1002/smj.167>>.

³³¹ Mayfair Mei-hui Yang, "The Resilience of *Guanxi* and Its New Deployments: A Critique of Some New *Guanxi* Scholarship" (2002) 170 *The China Quarterly* 459, 460 <<https://doi.org/10.1017/s000944390200027x>>.

management and decision-making processes of Chinese high-tech start-ups companies.³³²

Among Chinese high-tech companies, the political Guanxi between the company and the government and the business Guanxi within the industry should be particularly noted. According to the analysis of the relationship between high-tech companies and the government in the previous section on stakeholder theory, in the Chinese unique business environment favourable policies on technology or subsidies for innovative high-tech companies (e.g. tax concessions) are imperative for small and medium-sized or private high-tech companies, and government policies can even lead or change the direction of the company's development.

A firm's innovation activity is a central channel for capturing technology subsidies. Moreover, provided that innovation activity is intensive, socially connected investment can capture more technology subsidies for a firm.³³³ This suggests that Chinese high-tech companies should tend to rely more on developing their political Guanxi with the government to obtain technology subsidies and financial support.

5.3.3 The Link Between Guanxi and CSR in The Chinese Business Environment

The discussion in the previous section suggests that Guanxi is derived from Confucianism, which emphasises authority, order, harmony, loyalty, trust and personal relationships as well as honour and integrity. Moreover, Guanxi is usually understood as an informal personal relationship between individuals, bound by a contract, and based on trust, commitment and mutual obligations.

Hwang et al. argued that in contrast to the business practice of European and American

³³² Ping Fu, Anne S Tsui and Gregory G Dess, "The Dynamics of Guanxi in Chinese Hightech Firms: Implications for Knowledge Management and Decision Making" (2006) 46 *Management International Review* 277, 46–48 <<https://doi.org/10.1007/s11575-006-0048-z>>.

³³³ Jinxuan Zhu, Qigui Zhu and Jin Guan, "Research on the Relationship between Investments of Social Connections and Technology Subsidies in Chinese High-Tech Enterprises (中国高科技企业社会关系投资与科技补贴的关系研究)" (2020) 40 *Technology Management Research (科技管理研究)* 98, 105.

companies, where personal social relationships are developed after a business deal has been successfully concluded, Chinese businessmen prefer to establish Guanxi with potential partners from the beginning of the trade, and to build mutual trust before any business deal is concluded.³³⁴ This theory is based on the idea that Guanxi can strengthen socio-business relationships when members of the Guanxi network (within the relationship) insist and rely on their trust and loyalty to the other party.

Zhang explored the link between Guanxi and business-organisational dynamics at the individual level in China, and assessed the differences in various studies on the connotations of Guanxi based on the nature and key features of the relationship.³³⁵ Three main types of Guanxi were proposed:³³⁶

1. (亲情关系) Qinqing Guanxi: the most intimate internal relationship, mainly consisting of family members, close clan members. Qinqing Guanxi, rooted in psychological identification, is an enduring relationship in which members conceal and maintain very close ties with each other. Responsibility, duty and loyalty are the core factors that ensure harmony and order among members of this type of Guanxi.
2. (人情关系) Renqing Guanxi: a broad range of relationships whose members have similar backgrounds or experiences, including neighbours, fellow Chinese, schoolmates, colleagues and close friends. It involves social exchanges (i.e. mutually beneficial exchanges) in which trust and reputation are essential to the existence of such relationships.

³³⁴ Dennis BK Hwang and others, "Guanxi and Business Ethics in Confucian Society Today: An Empirical Case Study in Taiwan" (2008) 89 *Journal of Business Ethics* 235, 235–237 <<https://doi.org/10.1007/s10551-008-9996-5>>.

³³⁵ Yi Zhang and Zigang Zhang, "Guanxi and Organizational Dynamics in China: A Link between Individual and Organizational Levels" (2006) 67 *Journal of Business Ethics* 375, 375–376 <<https://doi.org/10.1007/s10551-006-9031-7>>.

³³⁶ *Ibid* 381

3. (交易关系) Jiaoyi Guanxi: a trading relationship or a purely utilitarian business relationship that exists in a commercial transaction of pure interest and does not generally involve a human connection. The acquisition of benefits is the critical element of this relationship.

Zhang argues that these different types of Guanxi can have a range of positive effects on business organisations.³³⁷ For instance, Guanxi can facilitate the creation of harmonious interpersonal networks between organisations, help companies gain access to limited resources and thus build a competitive advantage in the market, and assist companies in acquiring a transaction cost advantage.

Freeman introduced stakeholder theory in 1994 and emphasised that the essence of business is primarily about building relationships and creating value for the internal and external stakeholders. In China's particular business environment, a company's stakeholders can be covered by the three Guanxi categories proposed by Zhang, contributing to a better understanding of CSR in Chinese companies. For example, regarding Qinqing Guanxi, members of the same family in a company may tend to favour and trust relatives and family members in the company more, and may even use their position to facilitate other family members. Concerning Renqing Guanxi, if the company's purchasing manager has been friends with the supplier for many years, the transaction process may become easier and smoother, often accompanied by a more favourable deal amount. The rest of the stakeholders are considered to be in simple Jiaoyi Guanxi relationships if they do not have too much of a personal or blood relationship with the company (interest-only), such as generating productivity to the business through the compensation of employees. Hence, the proper use and strengthening of these different types of Guanxi with the company's stakeholders is equivalent to contributing to the company's CSR activities and processes in the Chinese business environment.

³³⁷ Ibid 384

According to Wang and Chaudhri, enhancing ‘corporate image/reputation’ (external) and ‘building corporate culture’ (internal) are the two most important factors for Chinese companies as they engage in CSR activities,³³⁸ with environmental protection, energy-saving, disaster relief, occupational health and safety and consumer rights as priority areas for CSR engagement.³³⁹ However, there is an inevitable problem whereby the scarce resources and capabilities of many Chinese companies mean they are unable to implement effective communication strategies for internal and external stakeholders.³⁴⁰

Generally, Chinese companies target their CSR activities at their primary stakeholders, who are usually external stakeholders critical to the company.³⁴¹ These stakeholders include customers, distributors, suppliers, consumers, the government, labour groups or other social commentators, product industries, shareholders, and wholesale and retail buying groups. Insight into the power and authority of different stakeholder groups can help Chinese companies determine the allocation of resources to launch appropriate CSR activities and thereby obtain a competitive advantage. Therefore, the question of how Chinese companies can nurture Guanxi with their direct stakeholders through CSR activities has become a key issue.

Through CSR policies and programmes, effective Guanxi management and distribution can strengthen relationships with stakeholders. Companies should build loyalty relationships with internal and external stakeholders, earn their trust, and develop mutual obligations. In return, the company’s stakeholders and consumers will have more confidence in the company, as well as higher trust and loyalty. As a result of being

³³⁸ Jian Wang and Vidhi Chaudhri, “Corporate Social Responsibility Engagement and Communication by Chinese Companies” (2009) 35 *Public Relations Review* 247, 248–249 <<https://doi.org/10.1016/j.pubrev.2009.04.005>>.

³³⁹ Hanming Gu and others, “Political Connections, Guanxi and Adoption of CSR Policies in the Chinese Hotel Industry: Is There a Link?” (2013) 34 *Tourism Management* 231 <<https://doi.org/10.1016/j.tourman.2012.01.017>>.

³⁴⁰ KC Patrick Low, Vai Shiem Leong and Samuel O Idowu, “Guanxi and CSR,” *Encyclopedia of Corporate Social Responsibility* (Springer Berlin Heidelberg 2013) 1323–1324 <https://doi.org/10.1007/978-3-642-28036-8_749>.

³⁴¹ *Ibid* 1326

in a reciprocal relationship, they will feel obliged to give back to the company.

Since the company is aiming to build long-term and sustainable Guanxi with their stakeholders, the relationship slowly evolves from simple (interest-only) Jiaoyi Guanxi at the beginning to Renqing Guanxi. In the more distant future, because of the close partnership and the development of positive Guanxi, businesses and stakeholders may develop Qinqing Guanxi (e.g. a marriage between members of two business families as a result of the stability and sustainability of the business partnership).

An increasing focus on Guanxi with the company's stakeholders also indicates that the company's CSR activities are being driven forward, because long-lasting and close Guanxi with partners is one of the best ways to enhance the company's reputation and prestige. Moreover, the trust and loyalty of the company's stakeholders increases as the type of Guanxi changes and strengthens. This not only brings benefits to CSR-oriented Chinese companies, but also creates a competitive advantage for companies that emphasise 'relationships' at an organisational level.

5.4 Corporate Governance and the Belt and Road Initiative

In focusing on corporate governance issues in China, it would be neglectful to overlook one of the important and modern factors, namely the Belt and Road Initiative proposed by the Chinese government. The Belt and Road, which evolved from the Silk Road Economic Belt and the 21st Century Maritime Silk Road, is a transnational economic belt initiated and led by China in 2013. The Belt and Road connects China with Central, South, Southeast Asia, and the Middle East and has created unlimited opportunities for companies in China and other countries along the economic belt. It covers large-scale infrastructure development, industrial facilities, cross-border investment, coordination of monetary policies and bilateral relations, as well as cultural exchanges. The Belt and

Road includes 69 countries along its route, accounting for 62% of the world's population, 31% of global GDP and 33% of global trade.³⁴²

Enterprises are the mainstay of the implementation of the Belt and Road. By March 2021, China had signed 200 cooperation documents with 141 countries and 31 international organisations to establish the Belt and Road. Since the countries covered by these documents have different political, economic historical and cultural backgrounds,³⁴³ the establishment of the economic belt required a new mechanism and response to facilitate cooperation. The construction of the Silk Road Economic Belt required innovative modes of cooperation and the strengthening of the 'five focuses', namely policy coordination, unimpeded trade, financial integration, facilities connectivity and people-to-people bonds.³⁴⁴

In terms of corporate cooperation and policies, the Belt and Road encourages national enterprises to participate in infrastructure construction and industrial investment in countries along the route. It promotes enterprises to operate and manage according to the principle of territorialisation (i.e. protection and development of the territory's own political and economic ecology),³⁴⁵ actively helps local economies to develop, increase employment, improve people's livelihoods, take the initiative to assume social responsibility, and strictly protect biodiversity and the ecological environment.

³⁴² United Nations, "World Economic Situation and Prospects 2019" (UN Department of Economic and Social Affairs Economic Analysis, 2019) <<https://www.un.org/development/desa/dpad/publication/world-economic-situation-and-prospects-2019/#:~:text=Global%20growth%20is%20expected%20to,Economic%20Situation%20and%20Prospects%202019.>> accessed November 1, 2022.

³⁴³ OECD, "China's Belt And Road Initiative In The Global Trade, Investment And Finance Landscape" (OECD, 2018) <https://doi.org/10.1787/bus_fin_out-2018-6-en> accessed November 1, 2022.

³⁴⁴ Xinhua News Agency, "Vision And Action For Promoting The Construction Of The Silk Road Economic Belt And The 21St Century Maritime Silk Road (推动共建丝绸之路经济带和 21 世纪海上丝绸之路的愿景与行动)" (Belt and Road Forum for International Cooperation, 2017) <<http://2017.beltandroadforum.org/n100/2017/0407/c27-22.html>> accessed November 1, 2022.

³⁴⁵ Thomas J Bassett and Denis Gautier, "Regulation by Territorialization: The Political Ecology of Conservation & Development Territories" [2014] *EchoGéO* <<https://doi.org/10.4000/echogeo.14038>>.

5.4.1 CSR and the Belt and Road Initiative

The issue of corporate governance becomes more complicated here, because the main purpose of the Belt and Road is the cooperation of companies in different countries and the investment of companies abroad. Many studies have examined the mechanisms for and responses to CSR along the Belt and Road. Political, economic and cultural differences between countries in the initiative have an impact on the effectiveness of socially responsible behaviour by Chinese multinational enterprises.³⁴⁶ Moreover, the literature on CSR in international business has typically focused on the impact of host country institutions on the social responsibility of multinational enterprises,³⁴⁷ but the impact of domestic institutions on the social responsibility of multinational enterprises has not been given as much attention. Therefore, in addition to the CSR responsibilities of Chinese companies themselves, CSR-related issues for stakeholders such as suppliers cooperating with the Belt and Road policy should also be considered.³⁴⁸ What is more, considering the importance of corporate social responsibility in the Belt and Road Initiative, some scholars have put forward policy recommendations such as encouraging financial institutions to strengthen their financial support to enterprises, developing a system that dovetails with national regulations, and establishing a sound accountability system.³⁴⁹

³⁴⁶ Zhang Qian, Bee Lan Oo and Bomyi Lim, “Drivers, Motivations, and Barriers to the Implementation of Corporate Social Responsibility Practices by Construction Enterprises: A Review” (2019) 210 *Journal of Cleaner Production* 563 <<https://doi.org/10.1016/j.jclepro.2018.11.050>>; Dima Jamali and Charlotte M Karam, “Corporate Social Responsibility in Developing Countries as an Emerging Field of Study” (2016) 20 *International Journal of Management Reviews* 32 <<https://doi.org/10.1111/ijmr.12112>>.

³⁴⁷ Sean Buchanan and José Carlos Marques, “How Home Country Industry Associations Influence MNE International CSR Practices: Evidence from the Canadian Mining Industry” (2018) 53 *Journal of World Business* 63 <<https://doi.org/10.1016/j.jwb.2017.07.005>>.

³⁴⁸ Na Yang and others, “Home-Country Institutions and Corporate Social Responsibility of Emerging Economy Multinational Enterprises: The Belt and Road Initiative as an Example” (2020) 39 *Asia Pacific Journal of Management* 927 <<https://doi.org/10.1007/s10490-020-09740-y>>; Lulu Gu, Guang Yang and Rui Zuo, “Dual Liability and the Moderating Effect of Corporate Social Responsibility—Evidence from Belt&Road Investment of Chinese Firms” (2022) 50 *Emerging Markets Review* 100833 <<https://doi.org/10.1016/j.ememar.2021.100833>>.

³⁴⁹ Guanjun Tian and Lingxi Zheng, “Social Responsibility Supervision System for Overseas Investment of State-Owned Enterprises under the ‘Belt and Road’ Initiative (一带一路)倡议下国有企业境外投资社会责任监管体系构建” (2019) 5 *Finance and Accounting Monthly (财会月刊)* 171, 171–173.; Guoqing Shi and Junbi Zhou, “A Study on Social Evaluation Indicators for the Industry under the Belt and Road Initiative (一带一路)倡议下行业社会评价指标研究” (2018) 3 *Guangxi Social Sciences (广西社会科学)* 151.; Xu Si, He Xiaoyi and Kai Zhong, “Belt and Road Initiative and Financing Constraints of Chinese Enterprises (一带一路)倡议与中国企业融资约束” (2019) 7 *China Industrial*

Specifically, the main types of corporate governance (and in particular CSR) issues that are involved in the Belt and Road are:

- Chinese regulatory issues on overseas investments
- Corporate governance between Chinese and overseas partner companies

Each issue will now be analysed separately in terms of corporate governance, since each involves different subjects and needs to be analysed on a case-by-case basis.

5.4.2 Chinese Regulatory Issues on Overseas Investments

In the context of the Belt and Road, the increasing scale of overseas investment also represents an increase in risk. How to perform effective financial supervision has become a hot topic of concern in both theoretical and practical communities. There is an extensive body of research on the different aspects of overseas investment regulation; for example, it has been suggested that governments should strengthen the comprehensive management of overseas investment from three aspects: institutions, systems, and policy.³⁵⁰ Parent companies should create a supervisory mechanism to prevent the risk of overseas investments,³⁵¹ and state-owned enterprises investing abroad should enhance risk management, establish systematic internal control systems, and improve their overseas employment mechanisms.³⁵² Central and local governments should establish state-owned capital investment holding companies, standardise the ways in which state-owned enterprises operate and manage, and improve the quality and amount of supervision and oversight.³⁵³

Economics (中国工业经济) 155.

³⁵⁰ Liulu Zhang, “Risks and Precautions for China’s Overseas Investments (中国海外投资的风险与防范)” (1996) 3 Journal of Henan University (Social Science Edition) (河南大学学报(社科版)) 63, 63–65.

³⁵¹ Wenchuang Wang and Taifung Chen, “Reflections on the Establishment of a Risk Prevention System for Offshore Investments (关于建立境外投资风险防范体系的思考)” (2006) 8 Journal of International Economic Cooperation (国际经济合作) 21.

³⁵² Zonghan Zheng, “Strengthening the Supervision of State Assets (加强国有资产监管)” (2010) 7 Contemporary Economic Research (当代经济研究) 45.

³⁵³ Qingtai Chen, “State-Owned Enterprise Reform and Corporate Governance (国有企业改革与公司治理)” [2009] Nankai Management Review (南开管理评论) 4.

In other words, the social responsibility undertaken by enterprises going global is based on internal controls. Social responsibility is regulated by society and the government based on internal controls, which can effectively reduce social risks and facilitate rapid local integration and sustainable development. Alongside these benefits, however, the overseas operation always involves some risks. In the Belt and Road there have also been cases where enterprises have been unable to continue their international operations.³⁵⁴ Most of these cases were caused by poor supervision from government agencies, improper internal management of the enterprises, and the failure to take into account economic, legal, social and environmental differences when expanding abroad.

All these circumstances highlight the importance of regulation. The sustainable development of overseas investment by enterprises along the Belt and Road cannot be achieved without the construction of a sound and effective regulatory framework, which will enhance the risk management of overseas investment and guide the government, enterprises, intermediaries, the media and NGOs to perform their roles in the process of going abroad, thereby minimising the likelihood of financial risks.

Generally, overseas projects have longer lead times and more complex uncontrollable factors, with social factors as the most uncontrollable of these.³⁵⁵ The social risks for enterprises investing abroad involve uncertainties caused by differences in culture, social customs and religious beliefs between China and the countries where the investments are made (for example, some Belt and Road partner countries are subject to political risks caused by the absence of the rule of law and frequent regime changes),³⁵⁶ as well as the risk of losses suffered by enterprises due to their failure or improper assumption of social responsibilities.

³⁵⁴ Guanjun and Lingxi (n349) 172

³⁵⁵ Ibid 173

³⁵⁶ Jigao Zhu, Yi Wang and Guliang Tang, "China's Central SOEs' Corporate Social Responsibility Performance under the BRI" (2020) 15 *China Economist* 45, 45.

Therefore, the social responsibility regulatory system for Chinese enterprises investing abroad needs to be improved and optimised under the Belt and Road Initiative. As a regulator, the government should clarify the classification and content of social responsibility. For instance, the government should establish relevant laws and regulations to enhance the legislation on outbound investment, standardise the domestic financial regulatory system, form a sound accountability mechanism, develop a complete social responsibility management process for overseas investment at the enterprise level, and emphasise and facilitate the training of relevant talents.

5.4.3 Corporate Governance Between Chinese and Overseas Partner Companies

In addition to the above-mentioned issues related to Chinese investment abroad, corporate governance issues in the context of Chinese domestic companies undertaking cooperative projects abroad also affect many projects within the Belt and Road, especially in terms of infrastructure construction (e.g. the cooperation of Chinese companies in the construction of railway projects in Africa).

Most of the countries along the Belt and Road are developing countries. Local governments and people judge whether an enterprise is socially responsible primarily according to whether its investment drives local economic development and increases employment opportunities.³⁵⁷ Many of these developing countries have inadequate infrastructure, poor education, a low-skilled workforce and insufficient management capacity. Moreover, some countries suffer from political and social unrest and conflicts. Therefore, Chinese enterprises should undertake social responsibility based on local needs.

Some suggestions for Chinese companies working with overseas companies to realise corporate value are as follows. Firstly, overseas partner enterprises can sign contracts

³⁵⁷ Shengnan Zhang, “Study on the Relationship between Social Responsibility and Corporate Value of China’s Overseas Investment Enterprises in the Context of the Belt and Road (一带一路背景下我国海外投资企业社会责任与企业价值关系研究)” (2020) 12 *Sci-Tech & Development of Enterprise* (企业科技与发展) 10.

with the government of the place of investment to give priority to local materials in purchase decisions. Overseas investment enterprises should also give priority to local suppliers who meet the requirements of the project. What's more, in case of employ and train local staff, the cooperating enterprises should employ local staff, which will increase the employment rate of the local country or the region and help to mitigate problems of local employability. Since some developing countries have a poor quality education system, a weak economic base and a low-skilled local workforce, companies should train local employees to promote the sustainable development of the local community. Protecting the local natural environment is also significant to consider in this context. It is essential for a socially responsible company to protect the local environment. Cooperating companies should pay more attention to environmental protection, jointly develop corporate environmental protection standards and agreements, comply with local environmental protection laws and regulations, and proactively improve the ecological environment in their overseas locations. For the local culture, overseas investing companies should consider cultural differences and respect the local culture in their work, given the different understandings and needs of local employees in terms of work intensity, work patterns, and work benefits. Last but not least, the company should actively carry out public welfare undertakings. The donations made by overseas investment enterprises in the countries or regions where they invest are an important manifestation of their active social responsibility. These might take the form of, for example, setting up public welfare funds to help build infrastructure or developing education in poor local areas.

Along the Belt and Road, whether or not Chinese enterprises' overseas investments or cooperation projects actively fulfil these social responsibility requirements has a significant impact on the social and economic development, civilisation and living standards of the people in the places where they invest.³⁵⁸ It is also of great significance to the overseas investing enterprises themselves.

³⁵⁸ Qin Zhang, "Corporate Social Responsibility of State-Owned Enterprises in African Railway Projects

Moreover, corporate governance in China has been actively reflected and interpreted in the context of the Belt and Road. Significant areas of consideration mainly include credit building in overseas investments,³⁵⁹ whether to assume social responsibility in cooperation projects,³⁶⁰ and how to improve and refine overseas corporate governance systems and frameworks. In contrast to the previously described issues of Confucianism and Guanxi culture, which are specific to China, the Belt and Road policy highlights practical examples of how contemporary Chinese companies are responding to different situations in overseas corporate governance. Confucianism is the most fundamental historical context for corporate governance in China, Guanxi culture is the most unique cultural factor, and the Belt and Road is a representative demonstration of China's efforts to adapt its corporate governance regime to different contexts. The combination of these three factors reflects a complete picture of the unique Chinese model of corporate governance.

5.4.4 Huawei: A Unique Paradigm of Corporate Governance

Huawei Technologies Co., Ltd. is a Chinese multinational high-tech company providing communications equipment and selling consumer electronics, including smartphones. Huawei offers its products and services in more than 170 countries, and overtook Apple Inc. in 2018 to become the world's second-largest smartphone manufacturer behind Samsung Electronics.³⁶¹ In this section, Huawei will be used as an example to illustrate the uniqueness of Chinese technology companies in terms of their corporate governance, including a consideration of Confucianism, Guanxi culture and the Belt and Road

under the 'One Belt One Road' Initiative Corporate Social Responsibility in Project Construction ('一带一路'倡议下国企在非洲铁路项目建设的企业社会责任研究)" (2021) 1 PR Magazine (国际公关) 20.

³⁵⁹ Shengyan Yan and Dian Wang, "Belt and Road Corporate Social Responsibility, Financing Constraints and Investment Efficiency (一带一路企业社会责任、融资约束与投资效率)" (2021) 2 Finance & Economics (财经科学) 45, 45–47.

³⁶⁰ Yannan Wang, Zijie Li and Banruo Zhang, "Influencing Factors and Mechanisms of Social Responsibility of Multinational Enterprises under the Belt and Road (一带一路下跨国企业社会责任的影响因素及机制)" (2020) 10 On Economic Problems (经济问题) 82.

³⁶¹ Samuel Gibbs, "Huawei Beats Apple to Become Second-Largest Smartphone Maker" *The Guardian* (August 1, 2018) <<https://www.theguardian.com/technology/2018/aug/01/huawei-beats-apple-smartphone-manufacturer-samsung-iphone>> accessed November 1, 2022.

Initiative in order to better understand and explain what is unique in Chinese corporate governance.

1. Confucianism in Huawei's corporate culture

Confucianism's emphasis on people has set the benchmark for Huawei's cultural development. Talent, as a strategic resource, is arguably the most imperative factor in the development of modern enterprises. In 1988, three years after the company was founded, Huawei established its basic corporate framework, the Huawei Basic Law, to explain the governance and spiritual essence of Huawei's corporate culture.

In the Huawei Basic Law,³⁶² Article 2 clearly states that dedicated and self-disciplined employees are the company's greatest asset, while Article 9 stresses that the growth of the company's human capital is prioritised over an increase in financial capital. These two company regulations are a clear demonstration of the Confucian approach to people-centred governance.³⁶³ In other words, the goal of Huawei's corporate governance has always been the management of people, who are seen as the most crucial element of the company.

Apart from the people-oriented corporate culture emphasised in the Huawei Basic Law, Huawei also attaches great importance to the protection of the personal rights and interests of its employees, such as by providing basic labour protection and occupational health protection schemes and building a set of effective employee reward and incentive mechanisms.³⁶⁴ Huawei's Confucianism-based approach to governance not only enhances the sense of belonging and loyalty of its employees, but also allows

³⁶² Wu and others (n 123). 31-33. The Huawei Basic Law, established in 1998, is a foundational document that outlines the guiding principles and operational frameworks for Huawei, the Chinese multinational technology company. This law played a crucial role in standardising routines and practices across the rapidly expanding firm.

³⁶³ Dongshui Su, "People-Centred And Eastern Management Culture (以人为本与东方管理文化)" (2003) 3 China Reading Weekly (中华读书报) 1.

³⁶⁴ Huawei, "HUAWEI'S COMMITMENT TO HUMAN RIGHTS 2020" (Huawei, 2020) <<https://www.huawei.com/uk/declarations/huawei%20human%20rights%20commitment>> accessed November 1, 2022.

the legitimate rights of most stakeholders to be taken into account and protected.

2. Guanxi Culture in Huawei

In the previous chapter, the cultures of Guanxi and Mianzi were discussed as an inevitable and important issue in the management culture of Chinese companies and corporate governance. The most obvious embodiment of Guanxi culture in Huawei is qinqing (亲情) Guanxi, i.e., the most intimate internal relationship, consisting mainly of family or close clan members. This is because many family members are employed by the company. Ren Zhengfei is Huawei's founder and CEO, while Meng Wanzhou (Ren's eldest daughter) is the company's CFO and Vice Chairman. Prior to her role as CFO, Meng held other key financial executive positions at Huawei, including Director of the International Accounting Department, Chief Financial Officer of Huawei Hong Kong, and President of the Accounts Management Department.

According to allegations in the Wall Street Journal and other media, Huawei has received huge subsidies from the Chinese government. It has been reported that in the years following 2008, Huawei received approximately US\$16 billion in funding from the Chinese government,³⁶⁵ and by 2019, Huawei had received US\$75 billion, far more than other countries' support for technology companies.³⁶⁶ Huawei has disagreed with these allegations, stating that, like other technology companies operating in China, the company received equal policy treatment from the Chinese government but did not benefit from any additional or special treatment. This phenomenon may be attributed to the Chinese culture of Jiaoyi (交易) Guanxi, mainly characterised by private or undisclosed partnerships between companies and the government.

³⁶⁵ Chuin-Wei Yap, "State Support Helped Fuel Huawei's Global Rise" *WSJ* (December 25, 2019) <<https://www.wsj.com/articles/state-support-helped-fuel-huaweis-global-rise-11577280736>> accessed November 1, 2022.

³⁶⁶ Li Tao and Li Tao, "Huawei Says Relationship with Chinese Government 'No Different' from Any Other Private Company in China" *South China Morning Post* (December 26, 2019) <<https://www.scmp.com/tech/big-tech/article/3043558/huawei-says-relationship-chinese-government-no-different-any-other>> accessed November 1, 2022.

3. Huawei's Belt and Road Policy

Huawei's leading 5G technology and communications infrastructure projects have made it one of the key implementers under the Belt and Road policy. In addition to major railway projects, China has also continuously strengthened the promotion and implementation of digitalisation and infrastructure in Pakistan in cooperation projects between the two countries. In this newly developed network, the submarine communication cable is Huawei's responsibility.

Moreover, Huawei has also cooperated in a series of infrastructure projects in Africa. Its network equipment and mobile phones are very popular in Africa. This is also closely related to the Belt and Road policy, which has brought Huawei large amounts of economic revenue and benefits in the economic belt formed by the partner countries. At the same time, Huawei also brings labour opportunities and economic profits to local communities and markets via the construction of infrastructure or in the local telecommunications sales industry.

Under the Belt and Road policy, Huawei has not only focused on economic development projects with other partner countries, but has also created a series of schemes and programmes on its own to benefit local CSR development. An example is its 'Seeds for the Future Support Programme', which was launched in 2008 to promote knowledge migration, raise awareness of and interest in the telecommunications industry, and encourage national and local participation in building digital communities.

CHAPTER 6: AI AND CSR

The integration of Artificial Intelligence (AI) into corporate governance and decision-making processes is ushering in a new era of technological advancement. In this chapter, I will delve into the far-reaching impact of AI on corporate social responsibility (CSR) and the intricate relationship between the two concepts, since AI has transformative potential for how high-tech and other companies operate. Artificial intelligence has the potential to revolutionise the way companies operate, make decisions and interact with society at large. However, it also presents powerful tools that pose deep ethical and regulatory questions. Ethical considerations and responsible AI deployment have become critical as we navigate this change. This chapter aims to explore the many facets of AI in corporate governance, from its role in the boardroom to regulatory and risk considerations. At the same time, I will also delve into the importance of socially responsible AI, the impact of big data and machine learning, and the evolving global AI regulatory framework. By the end of this chapter, readers will be able to gain a fuller understanding of the key role of AI in shaping the CSR landscape and the strategies needed to harness its potential while ensuring ethical and responsible business behaviour.

6.1 Introduction

6.1.1 AI and CSR: The Backstory

Embracing AI responsibly has become an ongoing debate for us in recent years. We are at a crossroads, and ethical considerations are becoming increasingly critical in innovation. Every organisation needs to be responsible for how its use of data and AI affects people and society. This chapter will focus on the relationship between AI and CSR, such as the role of AI in the boardroom and how we should address the risks and challenges arising from AI in terms of regulation.

A recent PwC report on AI predicts that AI will add \$15 trillion to the world economy

by 2030, more than the current output of China and India combined.³⁶⁷ AI will have different value potential in different industries, as will be explored in this chapter. However, the current legal framework for controlling and regulating AI is also evolving, alongside a recognition that AI can be a double-edged sword for social development.³⁶⁸

In China, there has been phenomenal growth in the amount of research into the impacts of AI on society and the economy; China's global share of research papers on AI jumped from 4.26% (1,086) in 1997 to 27.68% (37,343) in 2017, more than any other country in the world. In addition, China has also consistently filed the most AI patents globally.³⁶⁹ As of March 2019, the number of AI companies³⁷⁰ in China had reached 1,189, second only to the US, which has more than 2,000 active AI companies.³⁷¹ In addition, the increased use of AI and its incorporation into organisations has resulted in certain positive effects; for example, AI and related technology could increase employment in China by around 12% over the next 20 years.³⁷² China's AI companies are more focused on speech (e.g. speech recognition, speech synthesis) and vision (e.g. image recognition, video recognition) than their overseas counterparts.³⁷³

³⁶⁷ Anand S Rao and Gerard Verweij, "Sizing the Prize: What's the Real Value of AI for Your Business and How Can You Capitalise?" [2017] PwC Global 2017 <<https://www.pwc.com/gx/en/issues/analytics/assets/pwc-ai-analysis-sizing-the-prize-report.pdf>> accessed November 1, 2022.

³⁶⁸ Shivam Gupta and others, "Assessing Whether Artificial Intelligence Is an Enabler or an Inhibitor of Sustainability at Indicator Level" (2021) 4 *Transportation Engineering* 100064 <<https://doi.org/10.1016/j.treng.2021.100064>>; Mariarosaria Taddeo, Tom McCutcheon and Luciano Floridi, "Trusting Artificial Intelligence in Cybersecurity Is a Double-Edged Sword" (2019) 1 *Nature Machine Intelligence* 557 <<https://doi.org/10.1038/s42256-019-0109-1>>.

³⁶⁹ Daitian Li, "Is China Emerging as the Global Leader in AI?" (*Harvard Business Review*, February 18, 2021) <<https://hbr.org/2021/02/is-china-emerging-as-the-global-leader-in-ai>> accessed November 1, 2022.

³⁷⁰ AI companies generally refer to organisations that apply AI technology to or are based on AI technology. Almost every industry is being used by AI (including automation and robotics). Common examples are machine learning (DeepMind), smart apps and appliances (Google), digital assistants (Amazon) or self-driving cars (Tesla).

³⁷¹ Kyle Wiggers, "AI Weekly: TikTok's Algorithm Licensing Signals China's Play for AI Dominance" *VentureBeat* (July 9, 2021) <<https://venturebeat.com/business/ai-weekly-tiktoks-algorithm-licensing-signals-chinas-play-for-ai-dominance/#:~:text=While%20blacklisting%20by%20the%20U.S.,to%20the%20U.S.%20at%202%2C000>> accessed November 1, 2022.

³⁷² PwC, "PwC UK - Building Relationships, Creating Value" (PricewaterhouseCoopers (PwC), 2018) <<https://www.pwc.co.uk/services/economics/insights/the-impact-of-artificial-intelligence-on-the-uk-economy.html>> accessed November 1, 2022.

³⁷³ Deloitte, "Deloitte Research Report On China Growing AI Companies (中国成长型 AI 企业研究报告)" (Intel & Deloitte & SAIIA, 2020)

Against this backdrop, the aim of this chapter is to explore the interplay between AI and corporate governance, focusing on the relevance and contributions that AI may bring to companies in terms of their CSR performances. The development of AI technology in business is changing our world. From sales to marketing, from finance to supply chains, the impact of AI applications spans the globe. In addition to the relatively mature development of AI in fields such as banking and finance services, healthcare, retail and E-commerce, manufacturing etc.,³⁷⁴ recent advances in AI have also gradually affected corporate management³⁷⁵ (e.g. AI automated scheduling, resource allocation and reporting) and governance.³⁷⁶ In line with the rapid technological development, AI is predicted to enter corporate boardrooms in the very near future.³⁷⁷ However, in the domain of corporate governance, problems will arise in areas such as delegation (e.g. whether and how far directors can delegate to AI in different jurisdictions) and decision-making. Indeed, the use of AI in board decisions has already raised a number of controversies, for example, the question of whether the use of AI will lead to a loss of accountability in decision-making.³⁷⁸

Moreover, AI is a double-edged sword, with both advantages and disadvantages in different fields. For instance, in the field of justice, judicial AI³⁷⁹ may in theory be more

<<https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/technology-media-telecommunications/deloitte-cn-tmt-research-report-on-china-growing-ai-companies-zh-210512.pdf>> accessed November 1, 2022.

³⁷⁴ Sophia Martin, “Top Industries Getting Revolutionised by Artificial Intelligence” *Medium* (December 10, 2021) <<https://medium.com/hackernoon/top-industries-getting-revolutionised-by-artificial-intelligence-686a440857c0>> accessed November 1, 2022.

³⁷⁵ Vegard Kolbjørnsrud, Richard Amico and Robert J Thomas, “The Promise of Artificial Intelligence: Redefining Management in the Workforce of the Future” (Accenture Institute for High Performance, 2016) <<https://www.accenture.com/us-en/insight-promiseartificial-intelligence>> accessed November 1, 2022.

³⁷⁶ Michael Hilb, “Toward Artificial Governance? The Role of Artificial Intelligence in Shaping the Future of Corporate Governance” (2020) 24 *Journal of Management & Governance* 851 <<https://doi.org/10.1007/s10997-020-09519-9>>.

³⁷⁷ John Armour and Horst Eidenmueller, “Self-Driving Corporations?” (2019) 475 *European Corporate Governance Institute - Law Working Paper* <<https://doi.org/10.2139/ssrn.3442447>>.

³⁷⁸ Anat Alon-Beck, “Artificial Intelligence In The Corporate Boardroom” *Forbes* (February 8, 2021) <<https://www.forbes.com/sites/anatalonbeck/2021/02/08/artificial-intelligence-in-the-corporate-boardroom/?sh=53dc6aec5a7a>> accessed November 1, 2022.

³⁷⁹ The term judicial AI generally refers to the introduction of AI to assist judges in hearing cases and resolving disputes quickly and accurately. AI can deconstruct case-related materials through techniques

efficient (depending also on the quality of machine learning),³⁸⁰ more experienced and more objective than human judges,³⁸¹ and technological applications can be of value for a variety of applications in assisting judicial case management or autonomous decision-making, such as eliminating information asymmetries between case departments, maximising case efficiency, reducing wrongful convictions and promoting judicial fairness. Building on this, Colombia's proactive stance towards integrating AI in legal proceedings exemplifies how technology can aid in judicial case management and decision-making.³⁸² The success of initiatives like SIARELIS and Prometea in Colombia demonstrates the potential of AI in data-driven insights and supporting judges in complex decision-making processes. However, the use of AI in the legal arena also has its limitations; for example, in the justice system there may be a risk of bias and discrimination in detection data in cases where algorithmic³⁸³ risk assessment is applied.³⁸⁴

Indeed, in 2016 a case caused widespread debate and controversy when a judge in the

such as text recognition, image recognition, semantic analysis and element association, and reorganise them according to a given knowledge map to automatically generate concise judgement documents such as writs, elements and tables. See Zichun Xu, “Human Judges in the Era of Artificial Intelligence: Challenges and Opportunities” (2021) 36 *Applied Artificial Intelligence* 1021 <<https://doi.org/10.1080/08839514.2021.2013652>>.

³⁸⁰ Stanley Greenstein, “Preserving the Rule of Law in the Era of Artificial Intelligence (AI)” (2021) 30 *Artificial Intelligence and Law* 291, 295–296 <<https://doi.org/10.1007/s10506-021-09294-4>>.

³⁸¹ Xu (n 379). 1021

³⁸² Irma Isabel Rivera, “The Implementation of New Technologies under Colombian Law and Incorporation of Artificial Intelligence in Judicial Proceedings” (International Bar Association, 2022) <<https://www.ibanet.org/article/14AF564F-080C-4CA2-8DDB-7FA909E5C1F4>> accessed September 5, 2023.

³⁸³ Such algorithms refer to machine algorithms in the process of machine learning. Machine learning was popularised in 1959 by Arthur Lee Samuel, an American pioneer in the field of computing and AI, who mentioned that ‘machine learning studies and builds a special algorithm (not a particular algorithm) that allows the computer to learn in the data itself and thus make predictions.’ See L SamuelA, “Some Studies in Machine Learning Using the Game of Checkers” (1959) 3 *IBM Journal of Research and Development* 210 <<https://doi.org/10.1147/rd.33.0210>>.

³⁸⁴ ProPublica, “Machine Bias: There’s Software Used Across the Country To Predict Future Criminals. And It’s Biased Against Blacks” *ProPublica* (August 23, 2016) <<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>> accessed November 1, 2022. Machine learning in practice generally involves 7 steps, which are Gathering Data, Preparing that Dat, Choosing a Model, Training, Evaluation, Hyperparameter Tuning and Prediction. In the seven steps, for example, if there is inaccurate data collection in the first step, it may lead to bias in this machine algorithm. See Yufeng G, “The 7 Steps of Machine Learning - towards Data Science” *Medium* (June 20, 2018) <<https://towardsdatascience.com/the-7-steps-of-machine-learning-2877d7e5548e>> accessed November 1, 2022.

US used algorithmic software to assess a suspect's risk during sentencing and sentenced him to six years in prison based on this risk report.³⁸⁵ This case highlighted the inherent challenges in contesting rulings where AI has been instrumental. Specifically, it underscored the difficulties in establishing faults due to the 'black box' nature of AI decisions and the secrecy surrounding algorithms. The Loomis case is a poignant illustration of how the addition of AI to the justice system can threaten the accessibility of law, a fundamental aspect of the rule of law. The technical complexity and opaque nature of AI applications render them largely impenetrable to human understanding, thereby diminishing transparency and predictability. While we can identify the algorithms used by AI systems and describe their creation, our current technological understanding often falls short in explaining precisely why a specific result was outputted by the algorithm, going beyond mere mechanical explanations. What is more, a central notion of the rule of law is that laws should be accessible so that people can comply with them and know what is expected of them, predictability being paramount.³⁸⁶ However, the addition of AI to the justice system may threaten to undermine the accessibility of the law; because the technical complexity associated with AI applications makes them largely impenetrable to human understanding, insight or transparency, this significantly reduces the degree of accessibility.³⁸⁷ For example, we can say that an AI network uses a particular algorithm, and we can also explain how the network was created. However, based on the current level of technological development and our degree of understanding, we are unlikely to be able to explain exactly why a particular result was the output of the algorithm; this is not just a simple mechanical explanation.

6.1.2 Evaluating AI's Role and Relevance in the Boardroom

At the same time, there is also growing concern about whether AI can join or be

³⁸⁵ *Loomis v. Wisconsin*, 881 N.W.2d 749 (Wis. 2016)

³⁸⁶ Jeremy Waldron, "The Rule of Law" (Stanford Encyclopedia of Philosophy, 2016) <<https://plato.stanford.edu/entries/rule-of-law/>> accessed November 1, 2022.

³⁸⁷ Marek Kowalkiewicz, "How Did We Get Here? The Story of Algorithms. - Towards Data Science" *Medium* (December 12, 2021) <<https://towardsdatascience.com/how-did-we-get-here-the-story-of-algorithms-9ee186ba2a07>> accessed November 1, 2022.

delegated to by a company's board of directors. Deep Knowledge Ventures, a Hong Kong-based venture capital company, assigned an algorithm called VITAL (Validating Investment Tool for Advancing Life Sciences) to its board of directors from 2014.³⁸⁸ According to media releases at the time, the algorithm was granted the same authority as other human board members to “vote on whether the firm makes an investment in a specific company or not”.³⁸⁹ VITAL was chosen for its capacity to “automate due diligence and leverage past records to detect trends that are not readily apparent to humans reviewing top-line statistics”.³⁹⁰ However, there have been a number of sceptical and negative comments about the board appointment of this AI technology. A faction of computer science scholars has described it as “publicity hype”³⁹¹ or a “business gimmick,”³⁹² because in order for the AI to become a fully functional board member it must first spend a lot of time reasoning and agreeing with other board members. The relevant laws authorising this in the Hong Kong jurisdiction provide that the board of directors consists of all the directors of the company and the directors must normally be natural persons, but a private company may have a body corporate as its director, or alternatively, the AI may be treated as a separate legal entity³⁹³ to facilitate its legal capacity and accountability mechanisms, if the company is not a member of a listed group.³⁹⁴ In this case, unless the VITAL technology is more competent or capable of serving on the board than has been described, it can never be considered a “natural person”, and therefore it would seem that it cannot be appointed as a member of the

³⁸⁸ Florian Mölslein, “Robots in the Boardroom: Artificial Intelligence and Corporate Law” (Oxford Law Blogs, November 16, 2017) <<https://blogs.law.ox.ac.uk/business-law-blog/blog/2017/11/robots-boardroom-artificial-intelligence-and-corporate-law>> accessed November 1, 2022.

³⁸⁹ Rob Wile, “A Venture Capital Firm Just Named an Algorithm To Its Board Of Directors — Here’s What It Actually Does” *Business Insider* (May 13, 2014) <<https://www.businessinsider.com/vital-named-to-board-2014-5?r=US&IR=T>> accessed November 1, 2022.

³⁹⁰ Ellie Zolfagharifard, “ROBOT Becomes World’s First Artificial Intelligence Company Director” *Mail Online* (May 19, 2014) <<https://www.dailymail.co.uk/sciencetech/article-2632920/Would-orders-ROBOT-Artificial-intelligence-world-s-company-director-Japan.html>> accessed November 1, 2022.

³⁹¹ BBC News, “Algorithm Appointed Board Director” *BBC News* (May 16, 2014) <<https://www.bbc.co.uk/news/technology-27426942>> accessed November 1, 2022.

³⁹² Sophie Brown, “Could Computers Take over the Boardroom?” (CNN, 2010) <<https://edition.cnn.com/2014/09/30/business/computers-ceo-boardroom-robot-boss/index.html>> accessed November 1, 2022.

³⁹³ Simon Chesterman, “Artificial Intelligence and the Limits of Legal Personality” (2020) 69 *International and Comparative Law Quarterly* 819, 822–823 <<https://doi.org/10.1017/s0020589320000366>>.

³⁹⁴ See Article 457 of Cap. 622 Hongkong Companies Ordinance

board.

6.2 The Rationale for AI Application

As stated in the introduction, AI has been used in many different areas, so there is a good deal of variation in the definitions of AI put forward by different scholars and industries,³⁹⁵ and various emphases have been defined in different ways. Therefore, rather than attempting to provide a broadly applicable definition of AI, this chapter offers a multifaceted combination of definitions, in order to facilitate our discussion of the role of AI in corporate governance and CSR.

The market for AI technology is growing as a result of increasing investment from large companies in AI solutions. We can observe examples of the fastest-growing AI technologies to date in different industries: augmented reality (Google Glass), big data (targeted advertising in social media), facial recognition (Luxand), automation (Tesla's Autopilot), biometrics (Apple Siri), deep learning platforms (Amazon SageMaker) and so on.³⁹⁶ Due to extensive research and rapid advances in the field of AI, some have predicted that by the end of 2035, the fabric and structure of our societies and cities will have transitioned from the use of AI with complex machine language to the integration of AI that humans may fully understand.³⁹⁷

6.2.1 Fundamental Definition of AI in A Broad Context

In a broad context, artificial intelligence can be defined as a suite of computer systems and algorithms designed to interpret complex data, learn from such data, and make decisions or take actions based on this learning and predefined objectives. This process

³⁹⁵ See Sankalp Bhatnagar and others, "Mapping Intelligence: Requirements and Possibilities," *Studies in applied philosophy, epistemology and rational ethics* (2018) <https://doi.org/10.1007/978-3-319-96448-5_13>; Christopher Collins and others, "Artificial Intelligence in Information Systems Research: A Systematic Literature Review and Research Agenda" (2021) 60 *International Journal of Information Management* 102383 <<https://doi.org/10.1016/j.ijinfomgt.2021.102383>>.

³⁹⁶ Tan Yiğitcanlar and others, "Artificial Intelligence Technologies and Related Urban Planning and Development Concepts: How Are They Perceived and Utilized in Australia?" (2020) 6 *Journal of Open Innovation: Technology, Market, and Complexity* 187 <<https://doi.org/10.3390/joitmc6040187>>.

³⁹⁷ Gil Press, "Top 10 Hot Artificial Intelligence (AI) Technologies" *Forbes* (January 23, 2017) <<https://www.forbes.com/sites/gilpress/2017/01/23/top-10-hot-artificial-intelligence-ai-technologies/?sh=193c325c1928>> accessed November 1, 2022.

may appear to mimic certain aspects of human cognition, such as perception and decision-making, but it is important to note that AI operates on fundamentally different principles from human thought and consciousness. The Encyclopaedia Britannica defines it as follows: “Artificial intelligence (AI), the ability of a digital computer or computer-controlled robot to perform tasks normally associated with intelligent beings”.³⁹⁸ In this scenario, intelligent beings are defined as being able to adapt to a changing environment; for example, common forms of AI in use today include digital assistants, chatbots, virtual agents and so on.

6.2.2 The Evolutionary Concept of AI

In 1950, Alan Turing published a landmark paper in which he predicted the possibility of creating machines with true intelligence.³⁹⁹ Noting that the concept of “intelligence” was difficult to define precisely, he proposed the famous Turing test: a machine is said to possess human-like intelligence if it can carry on a conversation with a human without being identified as a machine. To date, no AI application has uncontroversially passed the Turing test.⁴⁰⁰

The field of artificial intelligence research can be traced back to 1956 when the American computer scientist John McCarthy, at a seminar held at Dartmouth College, defined artificial intelligence as “the science and engineering of making intelligent machines, especially intelligent computer programs”. More recently, Andreas Kaplan and Michael Haenlein from the ESCP Business School defined AI as “using external information obtained through the Internet of Things or other big data sources as input to identify potential rules and patterns through methods that rely on machine

³⁹⁸ BJ Copeland, “Artificial Intelligence (AI) | Definition, Examples, Types, Applications, Companies, & Facts” (Encyclopedia Britannica, October 31, 2023) <<https://www.britannica.com/technology/artificial-intelligence>> accessed November 1, 2022.

³⁹⁹ Alan Turing, “Computing Machinery and Intelligence (1950),” *Oxford University Press eBooks* (2004) <<https://doi.org/10.1093/oso/9780198250791.003.0017>>.

⁴⁰⁰ Evgeniya Panova, “Which AI Has Come Closest To Passing The Turing Test? - Dataconomy” *Dataconomy Media* (March 16, 2021) <<https://dataconomy.com/2021/03/which-ai-closest-passing-turing-test/>> accessed November 1, 2022.

learning.”⁴⁰¹ In summary, AI technology can be briefly defined as a machine or computer that mimics the cognitive functions associated with human thinking, such as learning and problem solving. AI is a branch of computer science that develops devices capable of perceiving their environment and acting to maximise their chances of success.

In terms of components to understand the concept, machine learning, a branch of AI, refers to a computer programme’s ability to learn from past experience, make rational decisions, and react quickly or optimise its performance criteria.⁴⁰² There must be a conceptual understanding based on definitions before there can be effective regulation, legislation, or implementation.⁴⁰³ The difficulty in defining AI is mostly caused by the vagueness of the term ‘intelligence’.⁴⁰⁴ In the context of ‘intelligence’ alone, practitioners in different fields define AI by focusing on different stages of its application in practice. For example, in building AI in the high-performance computing and communications industry, there are four basic dimensions: expert systems, heuristic problem solving, natural language processing, and computer vision.⁴⁰⁵ In fact, the majority of AI applications currently supporting corporate governance are under the process automation classification (board reporting, risk and audit systems, legal

⁴⁰¹ Andreas Kaplan and Michael Haenlein, “Siri, Siri, in My Hand: Who’s the Fairest in the Land? On the Interpretations, Illustrations, and Implications of Artificial Intelligence” (2019) 62 *Business Horizons* 15 <<https://doi.org/10.1016/j.bushor.2018.08.004>>.

⁴⁰² Linda Tucci, “What Is Machine Learning and How Does It Work? In-Depth Guide” (Enterprise AI, September 15, 2023) <<https://www.techtarget.com/searchenterpriseai/definition/machine-learning-ML>> accessed November 1, 2023.

⁴⁰³ John McCarthy, “What Is Artificial Intelligence? - Formal Reasoning Group” (Stanford University, 2007) <<http://www-formal.stanford.edu/jmc/whatisai.pdf>> accessed November 1, 2022.

⁴⁰⁴ Matthew Scherer, “Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies” (2016) 29 *Harvard Journal of Law & Technology* 354, 357–361 <<https://doi.org/10.2139/ssm.2609777>>.

⁴⁰⁵ Benjamin W Wah and others, “Report on Workshop on High Performance Computing and Communications for Grand Challenge Applications: Computer Vision, Speech and Natural Language Processing, and Artificial Intelligence” (1993) 5 *IEEE Transactions on Knowledge and Data Engineering* 138, 149–151 <<https://doi.org/10.1109/69.204098>>; Expert systems (ES) are knowledge-based systems that take knowledge about their application domain and use reasoning (inference) procedures to solve problems that would otherwise require human ability or expertise; heuristic problem solving's is an informal, intuitive, speculative process that leads to solutions in some cases but not in others; natural language processing is a combination of computational linguistics (rule-based modelling of human language) with statistical, machine learning and deep learning models; computer vision enables computers and systems to take meaningful information from digital images, videos and other visual inputs and act or make recommendations based on that information.

compliance), with some progress in cognitive insight (risk management, internal audit, legal compliance).⁴⁰⁶ Their value in the boardroom is likely to increase as the technology becomes more sophisticated (intelligent visualisation with recommended actions, robo-advisors, IoT-enabled functions).

In China, there is currently no unified regulation of AI and its industry in the legal field.⁴⁰⁷ However, the first draft of local regulation of the field of AI research⁴⁰⁸ defined it as “the ability to study and develop theories, methods, technologies and applications that simulate, extend and expand human intelligence by using artificial methods and techniques, using computers or devices controlled by them to learn and analyse collected external data, perceive the environment, acquire knowledge and derive deductions”.

In Chinese academia, there are varying degrees of understanding and analysis of the definition of AI.⁴⁰⁹ In the field of philosophy, AI is concisely described as “being an extension of the human brain and an amplification of the human intellect”.⁴¹⁰ In addition, Chinese educational researchers often combine the concepts of AI and education, for example, using terms such as 'AI education' and 'AI in education' to describe the application of AI in the education field. As a result, it has been difficult to find a unified or precise definition of AI in the context of education. One reason for difficulties in defining the concept of AI is its interdisciplinary nature, while another

⁴⁰⁶ Natania Locke and Helen Bird, “Artificial Intelligence and Technology in Corporate Governance | CLS Blue Sky Blog” (The CLS Blue Sky Blog, April 6, 2020) <<https://clsbluesky.law.columbia.edu/2020/04/06/artificial-intelligence-and-technology-in-corporate-governance/>> accessed November 1, 2022.

⁴⁰⁷ CAICT, “AI White Paper (2022) 人工智能白皮书（2022 年）” (China Academy of Information and Communication Technology (CAICT), 2022) <http://www.caict.ac.cn/kxyj/qwfb/bps/202204/t20220412_399752.htm> accessed November 1, 2022.

⁴⁰⁸ Article 2, the Regulations of Shenzhen Special Economic Zone on Promoting the Artificial Intelligence Industry 2021 (Draft)

⁴⁰⁹ Huw Roberts and others, “The Chinese Approach to Artificial Intelligence: An Analysis of Policy, Ethics, and Regulation” (2020) 36 AI & SOCIETY 59 <<https://doi.org/10.1007/s00146-020-00992-2>>; Junhua Zhu, “AI Ethics with Chinese Characteristics? Concerns and Preferred Solutions in Chinese Academia” [2022] AI & SOCIETY <<https://doi.org/10.1007/s00146-022-01578-w>>.

⁴¹⁰ Guangyun Cheng, “From A Man-Machine Relationship to Inter Human Relations: Definition and Strategy of Artificial Intelligence” (2019) 41 Journal of Dialectics of Nature 9.

reason is that the field of AI encompasses constantly changing content that is difficult to describe in precise terms.⁴¹¹ In addition, the word “intelligence” in AI is considered the most difficult to define in the field of legal regulation because of its conceptual ambiguity, although AI can be defined as the ability of machines to perform tasks that humans need intelligence to be able to perform.⁴¹²

6.3 AI Adoption in the Boardroom: Regulatory and Risk Considerations

6.3.1 The Main Theme Categories Within AI

In general artificial intelligence technologies can be categorised into two themes, namely weak AI (also known as narrow AI or applied AI) and strong AI (also known as general AI or full AI).⁴¹³ Weak AI is generally AI that focuses on and can only solve problems in a specific domain.⁴¹⁴ In contrast, strong AI, or general AI, is characterised by its ability to understand, learn, and apply its intelligence across a wide range of tasks, akin to the breadth and adaptability of human intelligence.⁴¹⁵ This concept involves advanced computational models such as sophisticated neural networks that enable the system to continuously learn from data, adapt to new situations, and perform complex problem-solving across various domains. Unlike weak AI, strong AI is not limited to predefined tasks and can generalize its learning to new and unforeseen scenarios.

At the current time in the UK, weak AI is more likely to be used by a company’s board of directors than strong AI. This is because according to the UK’s company law regulations at least one natural person in a company needs to be a director of the

⁴¹¹ Chong Meng and Yining Wang, “Artificial Intelligence In Education: Concept Analysis, Application Concerns And Solutions (教育领域中的人工智能: 概念辨析、应用隐忧与解决途径)” (2021) 2 *Modern Distance Education* (现代远程教育) 62.

⁴¹² Matthew U Scherer, Jianfeng Cao and Jinlei Li, “Regulating Artificial Intelligence Systems: Risks, Challenges, Capabilities And Strategies (监管人工智能系统: 风险、挑战、能力和策略*)” (2017) 03 *Information Security and Communications Privacy* (信息安全与通信保密) 45.

⁴¹³ Ragnar Fjelland, “Why General Artificial Intelligence Will Not Be Realized” (2020) 7 *Humanities and Social Sciences Communications* 1, 1–2 <<https://doi.org/10.1057/s41599-020-0494-4>>.

⁴¹⁴ David Weinbaum and Viktoras Veitas, “Open Ended Intelligence: The Individuation of Intelligent Agents” (2016) 29 *Journal of Experimental and Theoretical Artificial Intelligence* 371 <<https://doi.org/10.1080/0952813x.2016.1185748>>.

⁴¹⁵ John R Searle, “Minds, Brains, and Programs” (1980) 3 *Behavioral and Brain Sciences* 417, 418 <<https://doi.org/10.1017/s0140525x00005756>>.

company,⁴¹⁶ and the director needs to have independent judgement ability.⁴¹⁷ Also, strong AI, in its ideal form, is not yet at a stage of development where it can be reliably and effectively implemented in such complex decision-making roles. Therefore, AI is more suited to a supporting role in the board of directors, to inform and assist the directors in making better decisions. At present, a weak AI application without autonomy can provide an assistance function to a company's board of directors, but an approach whereby a strong AI application completely replaces the board members is not currently allowed by law.

6.3.2 Appointment and Duties of Directors in Different Jurisdictions

Before exploring the possibility of using AI for decision-making (including the role of AI in performing certain specific tasks delegated by the directors or the board of directors), we should first consider how different jurisdictions regulate directors and their duties in a company.

Whether AI assists and advises the directors or is independent in the management and governance of a company, the use of AI will involve a division of labour between the AI application and the directors, and the possibility that directors may delegate some or all of their authority or power to AI. Therefore, from the perspective of company law, UK businesses and organisations should determine whether company directors can delegate to or authorise others (including AI applications) to manage the company. Moreover, according to the latest UK Government Digital Regulation Policy Document 2021,⁴¹⁸ the UK's regulations designed for the future development of digital innovation will be guided by three principles, namely to create proportionate, agile and flexible measures. As a result, given the digital trends and favourable policy context, I predict that in the future, there is likely to be a growing trend for AI to be delegated to or given

⁴¹⁶ Companies Act 2006, s 155.

⁴¹⁷ Companies Act 2006, s 173.

⁴¹⁸ Department for science, innovation and technology, "Digital Regulation: Driving Growth and Unlocking Innovation" (Gov.uk, 2021) <<https://www.gov.uk/government/publications/digital-regulation-driving-growth-and-unlocking-innovation/digital-regulation-driving-growth-and-unlocking-innovation>> accessed November 1, 2023.

the opportunity to join boards of directors of companies in order to assist and make decisions.

Based on the statute in Part 2 of the UK Companies (Model Articles) Regulations 2008,⁴¹⁹ directors may delegate any of their powers vested, which are conferred on them under the articles of the company to any person or committee as they see fit. It follows that the UK regulation of directors' duties allows directors to delegate aspects of their authority to any persons or committees as long as they do not violate the company's articles of association.

Moreover, from the perspective of purpose interpretation, when a company is tackling complicated tasks, if the director cannot solve the problem themselves, delegating some of their powers to others is beneficial to the company by improving management efficiency and protecting the interests of the company. In essence, the purpose of company directors in delegating certain duties to an AI technology is the same as their purpose in delegating other duties to persons or committees, and both are aimed at the better management of the company.

Likewise, Article 147 of the Chinese Company Law 2006 requires directors of a company to have a duty of loyalty and diligence to the company, in addition to following the rules and regulations. The law does not spell out in detail what the duty of loyalty is, although it does list specific things that company directors should not violate. In the 1993 Company Law, the statement that directors must 'maintain the interests of the company' similarly emphasises that they have 'a duty of loyalty and diligence to the company'.⁴²⁰ Whilst in today's Companies Act 2006,⁴²¹ directors are equally required to have a duty to promote the success of the company (and in particular, to benefit the interests of its members as a whole). In other words, directors should

⁴¹⁹ Model Articles of association automatically apply to every UK company upon incorporation, unless the company chooses to adopt altered or bespoke articles instead.

⁴²⁰ Article 59, Chinese Company Law 1993

⁴²¹ Section 172, Companies Act 2006

perform their duties in the interest of the company, and should not seek their own personal interests. In addition, the duty of loyalty is also a minimum duty of directors;⁴²² if directors consider that it will be to the benefit of the company to rely on AI assistance to make better decisions, this practice should also be regarded as a duty of loyalty. However, there are new challenges in this context concerning the extent to which a company board should delegate its powers to AI technology in order for it still to be seen as exercising its duty of diligence. Within the scope of its delegation, AI may not follow the instructions of the General Meeting of Shareholders or the Supervisory Board and exercise its discretion on its own.⁴²³ The consequence of this is that the remaining shareholders may feel threatened. Finally, it affects the relationship between the director and the company, the controlling shareholder and the non-controlling shareholder.

6.3.3 AI in The Boardroom: Oversight and Risks

After discussing the thematic categories of AI and the feasibility of its application in the boardroom, it is necessary to understand what risks AI may raise in the boardroom and how we can regulate it more effectively. There are two general aspects of AI risk that we can analyse: one is whether there are problems with the data itself in AI programs, and the other is the risks that may arise in companies' use of AI.

AI models themselves or the data itself can create problems in providing biased results (for example, if the population in the data used to train the model is underrepresented, and also if the data sample size is too small). Therefore, in AI data analytics organisations, scripting errors, data management failures, and misclassification of model training data can then easily have a range of negative impacts: compromising fairness, privacy, security and compliance.⁴²⁴

⁴²² Lin Ye, “Directors’ Duty of Loyalty and Its Expansion (董事忠实义务及其扩张)” (2021) 2 Political Science and Law (政治与法律) 16.

⁴²³ Ibid 26-27

⁴²⁴ FRA, “Data Quality And Artificial Intelligence – Mitigating Bias And Error To Protect Fundamental Rights” (European Union Agency for Fundamental Rights, 2019) <https://fra.europa.eu/sites/default/files/fra_uploads/fra_uploads/fra-2019-data-quality-and-ai_en.pdf> accessed

According to a McKinsey report, the data itself in AI may produce a series of risks related to enablers, such as the tendency for companies to inadvertently use or disclose sensitive information hidden in anonymous data when acquiring, classifying and collecting data, which eventually leads to problems with data difficulties.⁴²⁵ This requires companies to avoid the reputational risks of data management by focusing on the EU's General Data Protection Regulation (GDPR) and other privacy law, when processing data from AI programs.

AI could be an example of a new type of risk management issue that needs to be addressed on the boardroom agenda if it is decided to incorporate AI into corporate practice. While there are inherent issues of complexity and overload of information in the data of AI and its processes, however, in practice, the continued inclusion and incorporation of AI into companies and businesses may result in directors in companies being exposed to AI to a greater or lesser extent. In this case, the complexity and volume of data cannot be an excuse for directors not to read and understand it.⁴²⁶ For directors, the decision-making process is not always simple and accessible, and they may not understand each field of decision-making and, therefore have to seek to the advice and information provided by others, including AI. Therefore, both risks and liabilities are inevitable for directors in this context, and the law also requires directors to use their AI products in accordance with the law. The real issue and risk in this situation are whether directors may be responsible for breaching their duty of care and diligence⁴²⁷ and their duty of independent judgment⁴²⁸ by relying on or abusing AI. In the context of a company's use of AI, how these duties would function does not necessarily require

November 1, 2022.

⁴²⁵ Benjamin Cheatham, Kia Javanmardian and Hamid Samandari, "Confronting the Risks of Artificial Intelligence" (McKinsey & Company, April 26, 2019) <<https://www.mckinsey.com/business-functions/quantumblack/our-insights/confronting-the-risks-of-artificial-intelligence>> accessed November 1, 2022.

⁴²⁶ See *ASIC v Healey* (2011) 83 ACSR 484 [229]

⁴²⁷ Section 174, Company Act 2006

⁴²⁸ Section 173, Company Act 2006

a particularly complex process,⁴²⁹ experienced corporate lawyers (practical solicitors) advise directors to consider several key questions to navigate these challenges effectively:

1. Would introducing a new AI tool be suitable for the purpose of enhancing the value of the company's business?
2. Does it adequately protect the personal data (including sensitive and confidential information) of our employees and customers?
3. Do we have a sophisticated checking and assurance system in place to identify and monitor situations where AI fails to perform as expected?
4. Do we have a risk mitigation/disaster recovery plan that is prepared for or in place in the event of a catastrophic or systemic failure?

Thus, it is not enough for the board of directors in a company to simply label AI as an 'IT matter' and assign it to the IT department or other relevant departments. The scope of AI adoption and the level of potential risk requires the board to consider the issues more comprehensively (e.g. by communicating with the technology departments within the company or delegating some of the directors' duties), as well as taking into account all the different areas of the business that may be affected.

6.4 AI and CSR: AI Needs to Be Socially Responsible

As AI systems become ever more powerful and versatile, they are starting to exceed human performance in many areas. For example, Shazam, a song recognition software for listening to songs on mobile applications, using an audio fingerprint based on a time-frequency graph called a spectrogram to identify songs.⁴³⁰ And Shazam collects the audio playing on the smartphone microphone to match it to its database and

⁴²⁹ Matthew Walker and Tom Whittaker, "Artificial Intelligence and the Boardroom Risk" (SCL, 2020) <<https://www.scl.org/articles/11944-artificial-intelligence-and-the-boardroom-risk>> accessed November 1, 2022.

⁴³⁰ Jovan Jovanovic, "How Does Shazam Work? Music Recognition Algorithms, Fingerprinting, and Processing" (Toptal Engineering Blog, February 2, 2015) <<https://www.toptal.com/algorithms/shazam-it-music-processing-fingerprinting-and-recognition>> accessed November 1, 2022.

identifies the name of the song within seconds. This technique of finding detailed information about a song in a short period of time and with accuracy from just a small audio sample is almost certainly beyond the capability of most humans.

Research by the University of Cambridge's interdisciplinary Research Centre for the Study of Existential Risk identifies a number of emerging threats and trends in global cybersecurity, and notes that the increasing use of AI has also raised recent concerns, including privacy, bias, inequality, safety and security.⁴³¹ A recent Facebook data breach⁴³² and the rising number of AI discrimination cases all show that the rapid development of advanced technology is also accompanied by many social problems (e.g. discrimination in AI employee systems).

6.4.1 Reasons why AI needs to be socially responsible

Before looking at the impact of AI in the boardroom, it is inevitable to discuss the more general topic of whether AI needs to be socially responsible, as this is a topic of wider scope. I believe there are three main reasons and factors why AI must be socially responsible. The first is directly related to our daily lives, namely the issue of security in data collection. The application of machine learning as a major component of AI technologies has penetrated every aspect of our lives, from facial recognition during payment to monitoring babies while they sleep. However, with so much visual data being collected and used for deep analysis, it is a substantial challenge to ensure that AI collects, stores and uses visual data responsibly. In practice, if data collection and disposal processes are not conducted responsibly by AI applications, this will lead to a range of issues regarding privacy protection and illegal use of data, including the unauthorised or inappropriate disclosure of private information. Some of these

⁴³¹ Centre for the Study of Existential Risk, "Risks from Artificial Intelligence" (The Centre for the Study of Existential Risk, 2022) <<https://www.cser.ac.uk/research/risks-from-artificial-intelligence/#:~:text=AI%20also%20raises%20near%2Dterm,digitisation%20and%20nuclear%20weapons%20systems>> accessed November 1, 2022.

⁴³² Eric Rosenbaum, "Facebook Data Privacy Scandal Has One Silver Lining: Thousands of New Jobs AI Can't Handle" *CNBC* (March 23, 2018) <<https://www.cnbc.com/2018/03/23/facebook-privacy-scandal-has-a-plus-thousands-of-new-jobs-ai-cant-do.html>> accessed November 1, 2022.

include voice assistants such as Amazon's Alexa, which is popular today and will record conversations or content heard without the customer's knowledge.⁴³³

What is more, AI is invisibly guiding our decisions as well as our preferences, especially now that most of us cannot live without our daily use of the internet. AI technology has been applied to automated voice chat and messaging platforms to facilitate the development of the retail industry. This is noticeable when we shop online and need to contact customer service for queries or complaints. In such instances, we may encounter chatbots that, while not inherently incompetent, may lack the training to respond to a broad range of questions or fully understand natural language.⁴³⁴ This limitation can lead to less satisfactory customer service experiences compared to interactions with human representatives. The impact of AI is growing to the extent that it can target the products or information we prefer and use this as an advantage to gain more benefits from us than people without any preference. which in effect is likely to invisibly guide and manipulate our lives. It is, therefore, necessary to establish a code of practice for AI in relation to the authenticity of information and the prevention of manipulation.

Last but not least, the application and use of AI in the workplace is becoming increasingly widespread. In addition to mitigating labour costs, AI can improve operational efficiency and speed up decision-making, especially in the area of human resources.⁴³⁵ As shown in a BBC documentary called *Computer Says No*, some

⁴³³ Geoffrey A Fowler, "Alexa Has Been Eavesdropping on You This Whole Time" *Washington Post* (May 8, 2019) <<https://www.washingtonpost.com/technology/2019/05/06/alexa-has-been-eavesdropping-you-this-whole-time/>> accessed November 1, 2022.

⁴³⁴ More data see BUSINESS WIRE, "Newvoicemedia Research Reveals Bad Customer Experiences Cost U.S. Businesses \$75 Billion A Year" (Business wire, 2018) <<https://www.businesswire.com/news/home/20180517005043/en/NewVoiceMedia-Research-Reveals-Bad-Customer-Experiences-Cost-U.S.-Businesses-75-Billion-a-Year>> accessed November 1, 2022.

⁴³⁵ ORACLE, "AI at Work: It's Time to Embrace AI" (ORACLE, 2018) <<https://www.oracle.com/us/products/applications/oracle-ai-at-work-report-5037501.pdf>> accessed November 1, 2022.; According to Gartner's 2019 AI Survey, 70% of organisations use AI solutions for HR functions and another 30% will do so by 2022. The implication is that a growing number of companies offering HR services or with HR departments are looking to optimise, improve and automate their operations to remain competitive, as the application of solutions built around AI can help them create value. See Mary Baker, "AI in HR: How AI Is Transforming the Future of HR | Gartner" (Gartner,

companies today use AI facial analysis technology to examine video interviews. In many cases there is not even a real HR member of staff from the company to review the interview, and it is controversial to rely on AI alone to judge the interviewee.⁴³⁶ Developing principles for AI work and strengthening its social responsibility is key to the coexistence of machines and humans in the workplace. It is particularly important to ensure that algorithms are transparent in this process; AI, like humans, can develop biases. More seriously, AI can inherit bias through its machine learning. A famous example of this was identified by Joy Buolamwini in relation to automated facial recognition, which was found to be racially biased (against dark-skinned women).⁴³⁷

Another controversial case suggests that there is a tendency in the AI recruitment tools used by Amazon to prefer males to females in the process of screening resumes;⁴³⁸ Amazon's management ultimately blamed this gender bias on the AI training samples and algorithms. Another notable study was Cathy O'Neil's 'Weapons of Math Destruction',⁴³⁹ which illustrated how algorithms can reinforce disadvantage. A large amount of data is needed in machine learning, but if biased historical data is included in the collection process (for example, unfavourable consideration of a particular postal district), this can instil discrimination in the algorithm. Therefore, blind trust in algorithms can ultimately lead to harmful outcomes such as increased inequality and a widening gap between rich and poor. Hence, it is necessary to ensure that there is a diversity of people, data and machines involved in data collection work in order to avoid bias.

2020) <<https://www.gartner.com/smarterwithgartner/ai-shows-value-and-gains-traction-in-hr>> accessed November 1, 2022.

⁴³⁶ BBC, "Computer Says No" (BBC iPlayer, 2022) <<https://www.bbc.co.uk/iplayer/episode/m0015gvw/computer-says-no>> accessed November 1, 2022.

⁴³⁷ Joy Buolamwini and Timnit Gebru, "Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification" [2018] The 1st Conference on Fairness, Accountability and Transparency 77 <<http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>>.

⁴³⁸ Jeffrey Dastin, "Amazon Scraps Secret AI Recruiting Tool That Showed Bias against Women" *Reuters* (October 10, 2018) <<https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>> accessed November 1, 2022.

⁴³⁹ Cathy O'Neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (Allen Lane 2016) 62–63 <<https://ci.nii.ac.jp/ncid/BB22310261>>.

The impact of AI on society is increasing, so it is vitally important to ensure that AI makes reasonable and fair decisions in important areas such as justice, education, recruitment, and medical care. A 2018 Fjord report on Accenture global design and innovation⁴⁴⁰ proposed a potential way to mitigate these risks, namely the adoption of a value-sensitive framework for responsible AI. In simple terms, this means that setting principles for AI practice will effectively enable AI to be socially responsible at the same time.

6.4.2 Potential Hazards and Risks Arising from The Use of AI in Companies

In 2016 a self-driving car manufactured by Tesla was involved in a serious autopilot car accident.⁴⁴¹ In April 2021 two more people were killed in a crash with a self-driving Tesla car in the United States, reigniting the debate about the capabilities and safety of ‘self-driving’ technology.⁴⁴² Self-driving technology is a key feature of highly automated vehicles, and this technology belongs to the category of AI as it involves machine learning algorithms⁴⁴³ and deep neural networks.⁴⁴⁴ Therefore, if a company applies AI technology which leads to risks and problems, questions are raised about who is responsible for this risk. In the case of Tesla, should the company that developed the AI or the manufacturer of the car take responsibility for the car accidents? As in

⁴⁴⁰ Fjord, “Fjord Trends Look Back: 2018 - Design Voices - Medium” *Medium* (January 4, 2022) <<https://medium.com/design-voices/fjord-trends-look-back-2018-3fd2ebb87bab>> accessed November 1, 2022.

⁴⁴¹ Danny Yadron and Dan Tynan, “Tesla Driver Dies in First Fatal Crash While Using Autopilot Mode” *The Guardian* (November 28, 2017) <<https://www.theguardian.com/technology/2016/jun/30/tesla-autopilot-death-self-driving-car-elon-musk>> accessed November 1, 2022.

⁴⁴² Bryan Pietsch, “2 Killed In Driverless Tesla Car Crash, Officials Say” (Nytimes.com, 2021) <<https://www.nytimes.com/2021/04/18/business/tesla-fatal-crash-texas.html>> accessed November 1, 2022.

⁴⁴³ Machine learning algorithms are part of AI and use a variety of precise, probabilistic and scale-up techniques that enable computers to take inspiration from past reference points and perceive hard-to-perceive patterns from large, noisy or complex data sets. See P Ambika, “Machine Learning and Deep Learning Algorithms on the Industrial Internet of Things (IIoT),” *Advances in Computers* (2020) <<https://doi.org/10.1016/bs.adcom.2019.10.007>>.

⁴⁴⁴ Artificial neural networks (ANNs) are an aspect of AI that focuses on simulating the learning methods that humans use to acquire certain types of knowledge. Deep neural networks (DNNs), on the other hand, are a part of artificial neural networks (ANNs) and can be thought of as stacked neural networks, i.e. networks made up of multiple layers. See Himanish Shekhar Das and Pinki Roy, “A Deep Dive into Deep Learning Techniques for Solving Spoken Language Identification Problems,” *Elsevier eBooks* (2019) <<https://doi.org/10.1016/b978-0-12-818130-0.00005-2>>.

the case of the 2018 accident caused by Uber's self-driving technology, it is very complicated to determine who is to blame in different situations.⁴⁴⁵

Significantly, different stakeholders should undertake responsibility for the risks and problems associated with the adoption of AI technology, especially the designers of the AI and the company directors who decided to adopt it. The application of AI technology requires a large number of examples for training the algorithm, since the effectiveness of machine learning algorithms depends on the quality of data provided by the company.⁴⁴⁶ When AI learns from unrepresentative or poorly managed data, it is more likely to produce biased results.⁴⁴⁷ Therefore, transparency and accountability are particularly critical to mitigate the potential risks that can arise from the application of AI technology in companies. AI designers must carefully consider the data behind their predictive models in order to achieve accurate and useful predictions, and the directors of a company have a duty of diligence to adopt fair and unbiased AI technologies.

6.4.3 How AI Can Transform and Promote CSR

Basically, CSR can be seen as a business process within a company's operations and, therefore requires continuous improvement in the efficiency and effectiveness of its practices.⁴⁴⁸ The direction of this CSR is briefly about contributing to the well-being of the communities and societies they influence and depend on, and likewise, in meeting

⁴⁴⁵ In 2018, a bicycle driver was killed in an accident caused by Uber's Autopilot. Uber is not liable for the accident, while the driver of the Uber automobile, which had self-driving technology, is facing prosecution. This has also led to controversy that Uber does not have a driver in an Uber car with self-driving technology to supervise it, but rather to act as a backup to assume all responsibility in the event of a fault. See Jennifer Sensiba, "Uber's Deadly 2018 Autonomous Vehicle Crash Isn't Over Yet" *CleanTechnica* (June 13, 2022) <<https://cleantechnica.com/2022/06/13/ubers-deadly-2018-autonomous-vehicle-crash-isnt-over-yet/>> accessed November 1, 2022.

⁴⁴⁶ Genevieve Smith and Ishita Rustagi, "Mitigating Bias In Artificial Intelligence: An Equity Fluent Leadership Playbook" (Berkeley Haas Center for Equity, Gender and Leadership, 2020) <https://haas.berkeley.edu/wp-content/uploads/UCB_Playbook_R10_V2_spreads2.pdf> accessed November 1, 2022.

⁴⁴⁷ Mutale Nkonde, "Is AI Bias a Corporate Social Responsibility Issue?" (Harvard Business Review, September 13, 2021) <<https://hbr.org/2019/11/is-ai-bias-a-corporate-social-responsibility-issue?ab=hero-subleft-1lity-issue>> accessed November 1, 2022.

⁴⁴⁸ EU, "Corporate Social Responsibility & Responsible Business Conduct" (EU - Internal Market, Industry, Entrepreneurship and SMEs, 2021) <https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility-responsible-business-conduct_en> accessed November 1, 2022.

the broad objectives of formal corporate social and environmental responsibility.⁴⁴⁹ Applying these CSR principles in practice requires companies to integrate a social perspective into the core framework they use to understand their competition and develop their business strategy,⁴⁵⁰ particularly in the area of AI technology, which should be deployed in a strategic and integrated manner to fundamentally improve CSR processes.

To give some examples, in AI-related organisations, the following applications of AI may be considered. 1) AI technology is used to tackle or mitigate human prejudice and bias⁴⁵¹ (e.g., sample bias, racial bias, association bias, etc.)⁴⁵² in value measurement and materiality assessment. 2) AI systems provide accurate and multi-dimensional performance measures, not only for programme performance against management or regulatory criteria,⁴⁵³ but also for performance against global criteria (e.g., pollution levels) through dynamic monitoring and tracking of emerging global changes.⁴⁵⁴ 3) AI technology can be used for fraud detection and to improve internal controls.⁴⁵⁵

AI is a technology that is constantly developing and updating on a daily basis, so there

⁴⁴⁹ Kasturi Rangan, Lisa A Chase and Sohel Karim, “The Truth about CSR” (2015) 93 Harvard Business Review 12 <<https://hbr.org/2015/01/the-truth-about-csr>>.

⁴⁵⁰ Michael E Porter and Mark R Kramer, “Strategy and Society: The Link between Competitive Advantage and Corporate Social Responsibility” [2006] Harvard Business Review <<https://hbr.org/2006/12/strategy-and-society-the-link-between-competitive-advantage-and-corporate-social-responsibility>>.

⁴⁵¹ Jake Silberg and James Manyika, “Tackling Bias in Artificial Intelligence (and in Humans)” (McKinsey & Company, June 6, 2019) <<https://www.mckinsey.com/featured-insights/artificial-intelligence/tackling-bias-in-artificial-intelligence-and-in-humans>> accessed November 1, 2023.

⁴⁵² TELUS International, “Seven Types Of Data Bias In Machine Learning” (TELUS International, 2021) <<https://www.telusinternational.com/articles/7-types-of-data-bias-in-machine-learning>> accessed November 1, 2022.

⁴⁵³ Roberta Kwok, “AI empowers conservation biology” (2019) 567 Nature 133

⁴⁵⁴ Ricardo Vinuesa and others, “The Role of Artificial Intelligence in Achieving the Sustainable Development Goals” (2020) 11 Nature Communications <<https://doi.org/10.1038/s41467-019-14108-y>>; Geetha Mani, Joshi Kumar Viswanadhapalli and P Sriramalakshmi, “AI Powered IoT Based Real-Time Air Pollution Monitoring and Forecasting” (2021) 2115 Journal of Physics 012016 <<https://doi.org/10.1088/1742-6596/2115/1/012016>>.

⁴⁵⁵ Sujata Dasgupta, “Harnessing the Power of AI for Internal Fraud Detection in FIs” *FinTech Futures* (2021) <<https://www.fintechfutures.com/2021/07/harnessing-the-power-of-ai-for-internal-fraud-detection/>> accessed November 1, 2022.; Joanna Wyrobek, “Application of Machine Learning Models and Artificial Intelligence to Analyze Annual Financial Statements to Identify Companies with Unfair Corporate Culture” (2020) 176 Procedia Computer Science 3037 <<https://doi.org/10.1016/j.procs.2020.09.335>>.

are many other areas of the company that can apply, for example, contribute to CSR through machine learning or big data in AI technology, which will be analysed in the last chapter of this thesis. By learning how to integrate CSR strategy with the overall business strategy, AI technology can help identify integration points for corporate strategy and CSR initiatives. In addition, by understanding business drivers⁴⁵⁶ and CSR objectives, companies can map out plans that facilitate the configuration and optimisation of CSR initiatives.

For advice on company practice, the author suggests that companies involved in AI technologies should not rely exclusively on internal technology departments to solve AI-related problems, either by shareholders or management, but can try to engage and bring together other departments to help develop the company's transformation. Leaders should start by creating a formal business plan for AI-related CSR. It is important to recognise that this is a rapidly emerging and complex area, and to recognise that AI technology itself creates many social issues discussed above that need to be addressed as part of CSR.

6.5 Big Data and Machine Learning

6.5.1 The Essential Idea and Background of Big Data

Data should be the relatively important factor influencing decision-making, and is equally a source of raw information for fulfilling corporate responsibilities. In today's private sector, Big Data analytics are everywhere, with consumer analysis, personalised services and predictive analytics used for marketing, advertising and management. In addition, similar technologies allow access to real-time data related to people's living standards, providing targeted assistance interventions for vulnerable groups (e.g. the intelligent robots that are used to care for the elderly in a Japanese nursing home, and these robots rely on AI and data to work).⁴⁵⁷ If a wide range of data is used

⁴⁵⁶ Business drivers are the factors that guide the business objectives and help to achieve them. These factors can cover a wide range, from the customer who creates the demand for a given product to the shipping department responsible for order fulfilment. Identifying business drivers can be an important part of business planning as well as coordination, as this may help the business.

⁴⁵⁷ Malcolm Foster, "Aging Japan: Robots May Have Role in Future of Elder Care" *Reuters* (March 28,

appropriately this can increase the flexibility and efficiency of decision-making, ensuring that it is evidence-based and allowing for better monitoring and implementation of an organisation's sustainable development goals.

A UN article on Big Data observed that it can reveal social differences that were invisible in previously aggregated population data.⁴⁵⁸ For example, women and girls who are often working in the informal economy or at home are socially restricted in their mobility and marginalised in private and public decision-making. Furthermore, much of the Big Data that would be the most useful for the public good is collected by the private sector. When this information is added to the publically available big data, it can have an even bigger impact on driving and carrying out humanitarian action.

In terms of directors' or management decision-making, while big data can present challenges in management and potentially disrupt the solidarity of the board⁴⁵⁹ due to some directors' lack of capacity to handle such vast amounts of information,⁴⁶⁰ it also offers significant opportunities. Effectively managed, big data can help resolve the common problem of groupthink⁴⁶¹ by introducing diverse perspectives and data-driven insights into the decision-making process. In brief, it means that directors need to adapt

2018) <<https://www.reuters.com/article/us-japan-ageing-robots-widerimage-idUSKBN1H33AB>> accessed November 1, 2022.

⁴⁵⁸ United Nations, "Big Data for Sustainable Development | United Nations" (United Nations (UN), 2022) <<https://www.un.org/en/global-issues/big-data-for-sustainable-development>> accessed November 1, 2022.

⁴⁵⁹ Board solidarity means that a decision taken in proper form by the board is a decision of all board members. See Institute of Community Directors, "Board Solidarity" (Institute of Community Directors Australia (ICDA), September 30, 2020) <<https://communitydirectors.com.au/help-sheets/board-solidarity#:~:text=Board%20solidarity%20means%20that%20a,board%20for%20your%20own%20proposition.>> accessed November 1, 2022.

⁴⁶⁰ Alessandro Merendino and others, "Big Data, Big Decisions: The Impact of Big Data on Board Level Decision-Making" (2018) 93 *Journal of Business Research* 67 <<https://doi.org/10.1016/j.jbusres.2018.08.029>>.

⁴⁶¹ The common "groupthink" problem refers to a psychological phenomenon in which the desire for harmony or unanimity in a group leads to irrational or dysfunctional decision-making outcomes. In such cases, in an attempt to maintain consistency or avoid conflict, group members may suppress dissenting views, fail to critically analyse alternatives, or ignore potential risks. See Kendra Cherry, "How Groupthink Impacts Our Behavior" *Verywell Mind* (November 12, 2022) <<https://www.verywellmind.com/what-is-groupthink-2795213#:~:text=Groupthink%20is%20a%20psychological%20phenomenon,Janis.>> accessed November 12, 2023.

to change within the changing context of new data as much as possible, and the pressure to adjust the way they make strategic decisions. Conversely, however, if boards can develop the requisite cognitive skills and find new ways of making decisions, particularly involving AI, big data can enable faster decision-making and shape their ability to respond to changes in the business environment.

A trend may exist that drives the need for most board members to understand and access large amounts of data in order for them to understand their business and create more value for the company. This includes the idea that applying big data may be equivalent to having the key to competitive differentiation, forecasting upcoming market trends, and providing a competitive advantage.⁴⁶² For example, on the Salesforce⁴⁶³ board of directors, there is a new AI employee who assists in making decisions, resolving disagreements and helping the company's outlook for the future, called Einstein. Einstein filters through large amounts of data in order to keep the board informed in real-time and up-to-date.⁴⁶⁴ With performance reviews and big data around various markets and executives, Einstein is able to spot trends and patterns that show strengths and weaknesses, and point out areas that need focus.

6.5.2 The Implications of Machine Learning

Machine learning algorithms are transforming most areas of the economy, from product marketing for online retailers to personalised search engines, and from advanced medical imaging to software in self-driving cars. As the use of machine learning expands in all areas of society, people may begin to worry about algorithmic machines intruding into aspects of life that previously relied on human judgement. This is because

⁴⁶² Husam Barham, "Achieving Competitive Advantage Through Big Data: A Literature Review" [2017] 2017 Portland International Conference on Management of Engineering and Technology (PICMET) <<https://doi.org/10.23919/picmet.2017.8125459>>.

⁴⁶³ Salesforce is a customer relationship management (CRM) software service provider founded in 1999 and headquartered in San Francisco, USA, offering an on-demand customer relationship management platform.

⁴⁶⁴ Roy Edwards, "Salesforce Launches Sales Cloud Unlimited to Support Productivity with AI and Automation Sales Cloud -" (Enterprise Times, 2022) <<https://www.enterprisetimes.co.uk/2022/06/17/salesforce-launches-sales-cloud-unlimited-to-support-productivity-with-ai-and-automation-sales-cloud/>> accessed November 1, 2022.

the key strategic or administrative decisions of organisations are increasingly guided by, and sometimes even made by, algorithmic automation.

When machine learning technology is properly understood, its use by government agencies can easily be adapted to operate within traditional legal parameters. Of course, the legality of robotic regulation is only one criterion for assessing its use. Clearly, agencies should not apply pre-existing algorithms directly without any risk assessment, even though doing so may not violate the law, and in some cases, machine learning may require additional safeguards to meet broader aspirations for good governance.⁴⁶⁵ At the same time, how these AI technologies should be used, and what they should be deployed for is controversial and subservient to any one of a range of normative visions for the field. Rather than relieving us of concern about these issues, new technologies require us to return to them with new vigour and creativity, which is at the same time a demand for our legal regulatory systems to adapt to these new challenges.

6.5.3 Big Data and CSR

Over the years, the concerns and worries of businesses have changed. In modern times, priorities cannot simply be limited to a consideration of the bottom line. CSR (corporate social responsibility) has become an important requirement that must be addressed by any successful business.

In addition to Big Data, AI has the potential to contribute to CSR-related developments in many other ways. In terms of corporate governance, AI technologies can provide more channels and facilities for stakeholders to participate in corporate governance activities. For example, distributed ledger and blockchain technologies may pave the way for more direct shareholder participation in governance by facilitating coordination and reducing the costs associated with voting and trade clearing,⁴⁶⁶ while AI may also

⁴⁶⁵ Cary Coglianese and David Lehr, “Regulating by Robot: Administrative Decision Making in the Machine-Learning Era” (2017) 1734 All Faculty Scholarship 1147, 1222–1223 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2736&context=faculty_scholarship>.

⁴⁶⁶ Christopher M Bruner, “Distributed Ledgers, Artificial Intelligence and the Purpose of the

narrow the areas of corporate decision-making that still rely on human management.⁴⁶⁷

In analysing the relationship between Big Data, CSR and sustainability, it seems that there is not much relevant research material at the present time. However, a study published in 'Nature Communications' indicates that artificial intelligence, closely linked to big data analytics, has the potential to positively influence a vast array of targets across the Sustainable Development Goals (SDGs).⁴⁶⁸ This study suggests that AI can be a key enabler in various sectors, from improving environmental outcomes to enhancing societal and economic structures, by harnessing the power of large datasets to make informed and sustainable decisions.⁴⁶⁹ In this case, the relationship between Big Data and social issues such as the environment cannot be overlooked, and there may be both potential to contribute and costs of processing. Big Data is generally defined as collections of data whose contents cannot be captured, managed and processed by conventional software tools in a certain period of time.⁴⁷⁰ In short, Big Data refers to massive and complex data sets that are too large for traditional data processing software to handle, but which can help us to solve previously difficult business challenges;⁴⁷¹ for example, studies have shown that the Big Data capabilities of managers in companies are linked to greater sustainability in their organisations.⁴⁷² Big Data technology offers the ability to quickly obtain valuable information from a

Corporation" (2020) 79 Cambridge Law Journal 431 <<https://doi.org/10.1017/s0008197320000756>>.

⁴⁶⁷ Christoph Van Der Elst and Anne Lafarre, "Blockchain and Smart Contracting for the Shareholder Community" (2019) 20 European Business Organization Law Review 111 <<https://doi.org/10.1007/s40804-019-00136-0>>.

⁴⁶⁸ Ricardo Vinuesa and others, "The Role of Artificial Intelligence in Achieving the Sustainable Development Goals" (2020) 11 Nature Communications 1 <<https://doi.org/10.1038/s41467-019-14108-y>>.

⁴⁶⁹ Ibid 3

⁴⁷⁰ Dan Kusnetzky, "What Is 'Big Data?'" *ZDNET* (February 16, 2010) <<https://www.zdnet.com/article/what-is-big-data/>> accessed November 1, 2022.

⁴⁷¹ Avita Katal, Mohammad Wazid and RH Goudar, "Big Data: Issues, Challenges, Tools and Good Practices" [2013] 2013 Sixth International Conference on Contemporary Computing (IC3) <<https://doi.org/10.1109/ic3.2013.6612229>>.

⁴⁷² Alberto Ferraris and others, "Big Data Analytics Capabilities and Knowledge Management: Impact on Firm Performance" (2019) 57 Management Decision 1923 <<https://doi.org/10.1108/md-07-2018-0825>>; Sanjay Kumar Singh and Abdul-Nasser El-Kassar, "Role of Big Data Analytics in Developing Sustainable Capabilities" (2019) 213 Journal of Cleaner Production 1264 <<https://doi.org/10.1016/j.jclepro.2018.12.199>>.

wide variety of data types;⁴⁷³ there are many examples of Big Data applications in fields such as astronomy, transportation, biology, finance, healthcare, social networking and so on.

Driven by technological advances and lower equipment costs, the volume of Big Data being captured and stored is growing exponentially. One of the best-known areas of application is the ‘procurement Big Data management problem’,⁴⁷⁴ which not only helps corporate procurement teams identify cost savings and risks and drive business performance, but also drives social change through procurement (i.e. procurement with purpose).⁴⁷⁵ Starting with Big Data ingestion, companies can collect, collate and analyse corporate spend data and supplier data, or form partnerships with Big Data companies in risk analytics (such as global risk and strategy consulting firms)⁴⁷⁶ who not only provide refined supply chain data and information about associated risks, but also allow practitioners to view their intelligence holistically. Ultimately, procurers, supply chain and risk managers in an organisation can make more informed business decisions based on that body of knowledge.

Procurement with purpose allows companies to adopt CSR initiatives such as sustainable supply chains⁴⁷⁷ and ethical sourcing, because procurement intelligence has the potential to help business leaders and practitioners identify and prevent the

⁴⁷³ Ahmed Oussous and others, “Big Data Technologies: A Survey” (2018) 30 Journal of King Saud University - Computer and Information Sciences 431 <<https://doi.org/10.1016/j.jksuci.2017.06.001>>.

⁴⁷⁴ Ardent Partners Analyst Team, ‘Intelligence-Driven CSR: Putting Big Data To Good Use’ (CPO Rising 2018) <<https://cporising.com/2018/03/26/intelligence-driven-csr-putting-big-data-to-good-use/>> accessed 4 May 2022.

⁴⁷⁵ Ardent Partners Analyst Team, “Intelligence-Driven CSR: Putting Big Data To Good Use” (CPO Rising, March 26, 2018) <<https://cporising.com/2018/03/26/intelligence-driven-csr-putting-big-data-to-good-use/>> accessed November 1, 2022.

⁴⁷⁶ Example can be found as Maplecroft Verisk, “Verisk Maplecroft’S Global Risk Analytics Now Available To Investors On The Open:Factset Marketplace” *Maplecroft* (2020) <<https://www.maplecroft.com/insights/news-events/verisk-maplecroft-risk-analytics-available-investors-open-factset-marketplace/>> accessed November 1, 2022.

⁴⁷⁷ Sustainable Supply Chain means that a company strives to consider the environmental and human impact of its products along the supply chain, from raw material procurement to production, storage, delivery and every transport link in between. See David Luther, “Supply Chain Sustainability: Why It Is Important & Best Practices” (Oracle NetSuite, May 10, 2021) <<https://www.netsuite.com/portal/resource/articles/erp/supply-chain-sustainability.shtml>> accessed November 1, 2022.

adoption of unethical and unsafe business practices in their supply chains. Importantly, Big Data is an effective resource for managing supply risk, driving compliance and helping to build ethical, sustainable supply chains.

In the context of the global COVID-19 pandemic that began in 2020, Qihoo 360 Technology Co Ltd, a security-related internet company in China, mentioned in its annual CSR report that the company has applied Big Data technology and AI technology to build an information-assisted decision-making system as well as an epidemic information intelligence research and evaluation system, to help public healthcare services by providing more efficient analyses of the geographical distribution of key populations in the epidemic, as well as enabling the tracking and relationship mapping of confirmed populations.⁴⁷⁸



Figure 10. Qihoo 360 Annual Social Responsibility Report 2020

Properly collected, organised and applied, Big Data can be a trusted tool that allows a company to demonstrate that it is responding to real needs by investing in sustainable efforts. These may be CSR-related activities, philanthropic efforts or directly related to their supply chains, resource use, or a host of other factors that affect a company's

⁴⁷⁸ 360 Security Technology Co, "Annual Social Responsibility Report 2020" [2020] Qihoo 360 Technology Co Ltd <<https://q.stock.sohu.com/newpdf/202144056297.pdf>> accessed November 1, 2022.

day-to-day functions.⁴⁷⁹ However, collecting data can be confusing, and it is a point of contention as to whether Big Data is always used correctly and ethically.

"Safety" will also become a catch word when it comes to AI involvement in the boardroom. In the race to launch AI products, some developers may release biased products without awareness.⁴⁸⁰ This brings us back to the earlier discussion of the risks and challenges that AI presents to companies, including the possibility of bias or other risks inherent in big data.

Without a practical understanding of Big Data technology, boards of directors may have difficulty grasping and analysing the actual value of Big Data to their organisations, which can lead to situations where company executives have poor or difficult assessments of the value of introducing Big Data. In addition, security is likely to be one of the top concerns of management. At the corporate administration level, the accurate collection, stable management, and secure storage of big data are of particular significance.⁴⁸¹

6.6 Regulatory Frameworks for AI in the Global Context

Throughout the world, in both developed and developing countries, governments or government intermediaries have introduced ethical guidelines for AI. These include the EU's Ethics Guidelines for Trustworthy AI (2019),⁴⁸² Guidance on the Ethical Development and Use of Artificial Intelligence issued by the Hong Kong PCPD (Office of the Privacy Commissioner for Personal Data, 2021),⁴⁸³ and the New-generation

⁴⁷⁹ Lennart Hammerström, Carsten Giebe and Dirk Zwerenz, "Influence of Big Data & Analytics on Corporate Social Responsibility" (2019) 3 Socioeconomic Challenges 47 <[https://doi.org/10.21272/sec.3\(3\).47-60.2019](https://doi.org/10.21272/sec.3(3).47-60.2019)>.

⁴⁸⁰ Sophie Camp, "Why Everyone in the Boardroom Needs AI - Outside Insight" (Outside Insight, November 30, 2018) <<https://outsideinsight.com/insights/why-everyone-in-the-boardroom-needs-ai/>> accessed November 1, 2022.

⁴⁸¹ Shannon Kempe, "Big Data in the Boardroom - DATAVERSITY" (DATAVERSITY, November 20, 2013) <<https://www.dataversity.net/big-data-in-the-boardroom/#>> accessed November 1, 2022.

⁴⁸² Independent High-Level Expert Group on Artificial Intelligence, "Ethics Guidelines for Trustworthy AI" (European Commission 2019)

⁴⁸³ Office of the Privacy Commissioner for Personal Data, Hongkong, "Guidance on the Ethical Development and Use of Artificial Intelligence" (PCPD 2021)

Artificial Intelligence Ethics Code issued by the Ministry of Science and Technology of China in September (2021).⁴⁸⁴ Since February 2020, the AI White Paper has been followed by the EU Commission's proposal for AI Regulation, which was published in April 2021.⁴⁸⁵ This latest proposed EU regulation on AI aims to secure a balanced approach to new risks or negative consequences of AI for individuals or society in the context of the rapid development of different industries.

6.6.1 Regulatory Framework for AI in China

One of the frequently mentioned principles of responsible AI explicitly refers to "privacy",⁴⁸⁶ which is that the massive amounts of data that companies input into AI-driven algorithms are also vulnerable to data breaches. Similarly, facial recognition tools in AI, for example, may also violate our privacy. In China, general regulations related to AI are focused on the protection of personal information, personal privacy and data security, and there is currently no single AI law that can be applied nationwide (except for local regulations in Shenzhen; see below for details). To be specific, Article 111 of the Chinese Civil Code 2020 states that personal information of natural persons is protected by law. The rest of the regulations, including the Chinese Cyber Security Law,⁴⁸⁷ the Chinese Data Security Law⁴⁸⁸ and the Personal Information Protection Law,⁴⁸⁹ clearly stipulate that the collection and processing of personal data by individuals or organisations should be legal and strictly confidential.

In July 2021, the Shenzhen government introduced the first local regulation for the AI

⁴⁸⁴ Ministry of Science and Technology of China, "A new generation of ethical codes for artificial intelligence" (Ministry of Science and Technology 2021)

⁴⁸⁵ European Commission, 'Proposal For A Regulation of The European Parliament and of The Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) a Amending Certain Union Legislative Acts' (2021).

⁴⁸⁶ Katharina Koerner, "Privacy and Responsible AI" *International Association of Privacy Professionals* (2022) <<https://iapp.org/news/a/privacy-and-responsible-ai/#:~:text=Privacy%20regulations%20and%20responsible%20AI&text=Principles%20of%20trustworthy%20AI%20like,provisions%20of%20corresponding%20privacy%20laws.>> accessed November 1, 2022.

⁴⁸⁷ Article 40, 41 and 42 of Chinese Cyber Security Law

⁴⁸⁸ Article 27, 28 and 32 of Chinese Data Security Law

⁴⁸⁹ Article 14, 16, 25 and 27 of Chinese Personal Information Protection Law

sector.⁴⁹⁰ In this local government document, the Shenzhen government emphasises the construction of incentives, encourages universities to open up their computing resources to promote the development of the AI sector, and advocates the establishment of an AI ethics committee and a statistical classification standard for the AI industry. The establishment of an AI ethics committee may be seen as an example of flexibility in response to corporate governance. This is because ethics committees in China are currently mainly focused on medical and health institutions or companies, functioning as a mechanism to review the scientific and ethical rationality or risk prevention of biomedical research projects involving human beings.⁴⁹¹ However, the establishment of ethics committees by local governments is not a strong regulatory or punitive mechanism, as illustrated by their responsibilities; rather, it is more of a mechanism to anticipate and identify overall risks, as well as to formulate white papers and guidance. The scope of the committee's mandate is relatively specific and addresses existing AI risk issues, but nevertheless, it should be able to play a leading role in the AI industry in Shenzhen, even in the national level, and promote the development of corporate governance and CSR practices in relevant companies.

6.6.2 Regulatory Framework for AI in the UK

In the UK, in September 2021, the government published its 10-year AI strategy. The approach to AI regulation set out in this strategy is primarily aimed at supporting innovation.⁴⁹² While this approach appears less stringent compared to EU Guidelines, which advocate for strict regulation of 'high-risk' AI, it should be noted that the UK does address high-risk AI concerns through sector-specific regulators. For instance, in areas like medicine or autonomous vehicles, relevant regulators are responsible for overseeing AI-related risks. This represents a different but nonetheless serious approach

⁴⁹⁰ Shenzhen Municipal People's Congress, 'Notice Of Public Consultation On The Draft Regulations On The Promotion Of Artificial Intelligence Industry In Shenzhen Special Economic Zone (关于《深圳经济特区人工智能产业促进条例(草案)》公开征求意见的公告)' (Shenzhen Gov Website 2022).

⁴⁹¹ Chapter 2, Measures for the Ethical Review of Biomedical Research Involving Humans 2016

⁴⁹² GOV.UK, 'Guidance: National AI Strategy - HTML Version' (Office for Artificial Intelligence, Department for Digital, Culture, Media & Sport, and Department for Business, Energy & Industrial Strategy 2021).

to managing high-risk AI, aligning with the UK's objective of leveraging AI as a key component of its economic competitiveness by fostering a more innovation-friendly regulatory environment.

In general, the EU takes a coordinated risk-based approach while the UK is taking a more sectoral approach, relying on individual regulators to offer statutory protections to particular types of activity. This is possible because a proportion of the UK's regulators are already leading the way in understanding the impact of AI on their industries or activities. For example, the UK's anti-discrimination legislative framework, notably the Equality UK Act 2010 and the Data Protection Act 2018, provides individuals with protection from discrimination, whether generated by manual or automated decision-making systems.⁴⁹³ Meanwhile, the General Data Protection Regulation (GDPR) primarily focuses on the processes for handling personal data, including provisions against decisions significantly affecting individuals being made solely through automated means without human intervention.⁴⁹⁴ The GDPR is less about substantive fairness in decisions and more about ensuring proper procedures in data processing, including steps to mitigate any discriminatory impact on natural persons. In particular, the GDPR states that data controllers should take steps to prevent "discriminatory impact on natural persons"⁴⁹⁵. Therefore, it is fair to say that the cross-sectoral regulatory regime for AI in the UK already covers most of the points of difficulty, including the 'high-risk' areas identified by the EU.

6.6.3 Report on AI-Related Governance in Chinese Listed Companies

In a series of AI ethical guidelines in China, AI is required to follow different ethical principles. These include human involvement and supervision, the accountability of AI, privacy and data management, transparency, pluralism and non-discrimination, and so on.

⁴⁹³ Section 14, CHAPTER 2, Data Protection Act 2018

⁴⁹⁴ Charter of Fundamental Rights of The European Union 2012/C 326/02

⁴⁹⁵ Recital 71, The EU general data protection regulation 2016/679 (GDPR)

From the CSR reports of top companies listed on the ChiNext subsidiary of the Shenzhen Stock Exchange, it's evident that AI is increasingly integral to their CSR strategies. For instance, Mindray Medical Corporation's collaboration with the China Academy of Information and Communications Technology aims to leverage AI for more effective medical devices,⁴⁹⁶ while East Money Information is enhancing its AI technology to improve its internet asset management and wealth management services.⁴⁹⁷ Similarly, the partnership between Aier Eye Hospital Group Company and the Institute of Computing Technology of the Chinese Academy of Sciences focuses on developing an AI-driven system for eye health management.⁴⁹⁸

These examples demonstrate a trend where AI is not just a tool for business efficiency, but also a catalyst for responsible innovation and sustainable development. The integration of AI in these companies' operations presents a complex landscape of opportunities and challenges. It raises questions about the ethical use of AI, the management of data privacy, and the potential impact on employment and societal welfare.

In this context, the role of CSR in guiding the responsible adoption and implementation of AI becomes crucial. These companies are not only pioneering AI applications in their respective fields, but also setting benchmarks for ethical AI practices. This dual role of innovation and leadership underscores the need for a nuanced understanding of how AI intersects with CSR principles. It points to the necessity of comprehensive regulation that addresses the unique challenges posed by AI, ensuring that its deployment advances both corporate success and societal well-being. Thus, an in-depth analysis of CSR's interaction with AI is essential for shaping effective industry-wide AI regulations

⁴⁹⁶ Mindray Medical International Limited, 'Mindray Medical Corporation CSR Report 2020 (迈瑞医疗: 2020 年度社会责任报告)' (Mindray Medical 2021).

⁴⁹⁷ East Money Information Co., Ltd., 'East Money Information Company Annual Social Responsibility Report 2021 (东方财富信息股份有限公司 2021 年度社会责任报告)' (East Money 2022).

⁴⁹⁸ Aier EYE Hospital Group CO., LTD., 'Aier Eye Hospital Group Limited Annual Social Responsibility Report 2021 (爱尔眼科医院集团有限公司 2021 年度社会责任报告)' (Aier Eye 2021).

in China.

6.7 Regulatory Approaches Towards Trustworthy or Accountable AI

There are many different definitions of AI, with different interpretations in different fields. While many people and organisations may have a (conceptual) understanding of what should and should not be referred to as ‘artificial intelligence’, the EU seems to have struggled to find a clear definition.⁴⁹⁹ If the intention of a definition is to capture all technologies, methods and software that may be called ‘AI’ now or in the future, one can understand why such definitions have been developed in a broad manner. However, looking at this situation from a legal perspective, it seems undesirable to introduce legislation to deal with an object that is very broad and at the same time, very uncertain, even potentially wide-ranging or cross-domain.⁵⁰⁰

Among the regulatory approaches, there are three common types, namely rights-based, risk-based, and responsive, according to Baldwin’s interpretation.⁵⁰¹ A rights-based approach to regulation is based on assessing and regulating whether a particular conduct has infringed human rights, while a risk-based approach means that the regulator assesses and understands the risks that actors face and then implements effective risk controls. Finally, a responsive approach to regulation involves listening to multiple stakeholders, highlighting the appropriate relationships between regulator and regulated in the investigation and enforcement process, and determining how this should lead to a more cooperative attitude in the future.

In these terms, the continuing development and pervasion of artificial intelligence pose

⁴⁹⁹ Raimond Dufour, “AI or More? A Risk-Based Approach to a Technology-Based Society” (Oxford Law Blogs, September 16, 2021) <<https://www.law.ox.ac.uk/business-law-blog/blog/2021/09/ai-or-more-risk-based-approach-technology-based-society>> accessed November 1, 2022.

⁵⁰⁰ Rowena Rodrigues, “Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities” (2020) 4 *Journal of Responsible Technology* 100005 <<https://doi.org/10.1016/j.jrt.2020.100005>>; Miriam Caroline Buiten, “Towards Intelligent Regulation of Artificial Intelligence” (2019) 10 *European Journal of Risk Regulation* 41 <<https://doi.org/10.1017/err.2019.8>>.

⁵⁰¹ Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press 2011).

enormous challenges to human rights.⁵⁰² Short-term challenges include the ways in which technology engages with all the rights covered by the Universal Declaration of Human Rights (UDHR), illustrated by the example of discriminatory algorithms. Medium-term challenges include the changing nature of work, which may bring into question the status of many people as participants in society. The United Nations Population Fund (UNFPA) explains that a rights-based approach must develop the capacity of duty bearers to fulfil their obligations, and encourage rights holders to claim their rights. Governments have three levels of obligation, i.e. to respect, protect and fulfil each right.⁵⁰³ However, companies or government intermediaries are not necessarily required to use a rights-based approach to regulation in order to respect human rights.

A risk-based approach to regulation (combined with, for example, a risk-based due diligence approach⁵⁰⁴) can provide a greater degree of control over a company's risks, and enable companies to manage their responsibility to respect human rights and achieve profits more effectively. Specifically, risk-based regulatory approaches such as risk-based due diligence provide companies with the means to operate (e.g. allowing them to identify and address any climate-related human rights and environmental impacts they may be implicated in) while also considering the human rights impacts of their climate mitigation strategies and their contributions to a just transition.⁵⁰⁵

6.7.1 The EU's Risk-Based Regulatory Approach to AI

In the EU's Proposal for Harmonised Rules on Artificial Intelligence (Artificial

⁵⁰² Mathias Risse, "Human Rights and Artificial Intelligence: An Urgently Needed Agenda" (2019) 41 Human Rights Quarterly 1 <<https://doi.org/10.1353/hrq.2019.0000>>.

⁵⁰³ UNFPA, "The Human Rights-Based Approach" (United Nations Population Fund (UNFPA), 2014) <<https://www.unfpa.org/human-rights-based-approach#:~:text=A%20rights%2Dbased%20approach%20develops,the%20enjoyment%20of%20the%20right.>> accessed November 1, 2022.

⁵⁰⁴ Mark B Taylor, Luc Zandvliet and Mitra Forouhar, "Due Diligence For Human Rights: A Risk-Based Approach" (53 Working Paper of Corporate Social Responsibility Initiative, 2009) <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_53_taylor_etal.pdf> accessed November 1, 2022.

⁵⁰⁵ Claire Bright and Karin Buhmann, "Risk-Based Due Diligence, Climate Change, Human Rights and the Just Transition" (2021) 13 Sustainability 10454 <<https://doi.org/10.3390/su131810454>>.

Intelligence Act),⁵⁰⁶ mentioned in the previous section, the European Commission proposes a risk-based regulatory approach focusing on setting ground rules for the use of high-risk AI practices in order to make AI solutions more accountable and fairer. The European Commission's choice of a risk-based regulatory approach stems from growing frustration with recurring patterns of bias and unfairness in AI solutions, and from a lack of transparency around some of the key issues surrounding AI, including algorithms and the ways in which they are written.⁵⁰⁷

The EU's risk-based regulatory approach to AI treats the classification and mitigation of risk as the core organising principle of the AI Act. It classifies AI applications into four tiers of risk, unacceptable, high, low, and minimal, and then imposes different requirements for each tier (see Table 1). Applications deemed to pose an unacceptable risk, such as social credit systems for assessing 'trustworthiness', are entirely prohibited. For high-risk applications, which include those used in critical sectors like healthcare, transportation, and law enforcement, stricter compliance requirements are mandated. These include rigorous accuracy and robustness assessments, detailed documentation for traceability, and human oversight to ensure accountability and prevent harmful outcomes. Conversely, AI applications considered low-risk, such as chatbots, are subject to basic transparency requirements. These requirements might include clear communication that users are interacting with an AI system and providing basic information about its functioning. Applications categorised as minimal risk face no additional regulatory burdens. In the context of corporate decision-making, the use of AI is likely to be classified as high-risk, given its significant role in assisting boardroom decisions, which can have broad implications for various stakeholders. This classification aligns with the Act's focus on 'ensuring the accuracy and robustness of the system', underscoring the importance of stringent regulations for high-risk AI

⁵⁰⁶ European Commission, 'Proposal For A Regulation of The European Parliament and of The Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) a Amending Certain Union Legislative Acts' (2021).

⁵⁰⁷ Abhijit Ahaskar, "Why a Risk-Based Approach to AI Regulation Is Critical for Future Implementations - Spiceworks" (Spiceworks, 2021) <<https://www.toolbox.com/tech/artificial-intelligence/articles/ai-regulation-best-approach/>> accessed November 1, 2023.

applications.

Risk Level	Examples	Requirements
Unacceptable	<ul style="list-style-type: none"> • social credit systems for evaluating the "trustworthiness" of people • toys using voice assistants that encourage dangerous behavior in children 	Prohibited from deployment
High-risk	<ul style="list-style-type: none"> • Autonomous vehicles • AI for scoring exams that impact a person's education opportunities • AI-assisted surgical robots • AI for evaluating evidence in criminal cases 	<ul style="list-style-type: none"> • use "relevant" and "representative" datasets • maintain human oversight • ensure the accuracy and robustness of the system • multiple other requirements
Low-risk	<ul style="list-style-type: none"> • AI chatbots • Deepfakes 	<ul style="list-style-type: none"> • flag that user is interacting with AI-generated content
Minimal-risk	<ul style="list-style-type: none"> • AI for product recommendations 	No additional requirements

Figure 11. The EU’s categories of risk and corresponding requirements (Source: European Commission AI Proposal)

The EU’s risk-based approach involves determining the scale or scope of the risk associated with specific AI situations and recognised threats. This approach is useful in a technological environment where companies must assess their own operational risks.

However, there is an argument that a risk-based approach to regulation may have negative consequences for the AI industry. In applying this approach to regulation, the EU’s attitude seems more like a preference for comprehensive regulation of the full range of AI, but this may impose excessive obligations on AI producers and users, disproportionately hindering the development of socially desirable and economically profitable AI. Paradoxically, the purpose and utility of a risk-based approach are not primarily to govern risk, but rather to ensure the proportionality of legislation.⁵⁰⁸

For human beings, regulation aims to change social behaviour, preventing and deterring

⁵⁰⁸ Tobias Mahler, “Between Risk Management and Proportionality: The Risk-Based Approach in the EU’s Artificial Intelligence Act Proposal” [2022] *Nordic Yearbook of Law and Informatics* 247 <<https://doi.org/10.53292/208f5901.38a67238>>.

unlawful conduct by working with individuals and organisations in the public, private and voluntary sectors.⁵⁰⁹ Regulation is also intended to improve equality, human rights and good relations in society. At the same time, however, regulation means more than just enforcement actions such as investigations and enquiries. It also means providing advice, raising awareness and understanding, transferring expertise, and supporting organisations in their efforts to comply with the law.

Compared to a rights-based approach to regulation, the EU's approach allows companies to assess their own operational risks in relation to the people's fundamental rights. AccessNow, an international NGO working on human rights, public policy, and advocacy for an open and free network, evaluates the EU's approach to AI regulation thus: "they do not balance the interests of companies, which are also interested in downplaying risk in order to develop products. Therefore, risk-based regulation is not sufficient to protect human rights. Because people's fundamental rights are non-negotiable, they must be respected regardless of the level of risk associated with external factors."⁵¹⁰ From a fundamental rights perspective, AI can act in unpredictable ways that may lead to damage to human rights. Some AI applications may be misclassified as 'low risk', which means that they will not be properly regulated and protected.

In recent years, deepfakes have garnered significant attention and criticism due to their use in producing child sexual abuse material, celebrity porn videos, revenge porn, fake news, and financial fraud.⁵¹¹ Additionally, the potential of deepfakes to interfere in

⁵⁰⁹ Kenworthy Bilz and Janice Nadler, "Law, Moral Attitudes and Behavioral Change" in Eyal Zamir and Doron Teichman (eds), *The Oxford Handbook of Behavioral Economics and the Law* (Oxford University Press 2014).

⁵¹⁰ Fanny Hidvegi, Daniel Leufer and Estelle Massé, "The EU Should Regulate AI on the Basis of Rights, Not Risks" (Access Now, 2021) <<https://www.accessnow.org/eu-regulation-ai-risk-based-approach/>> accessed November 1, 2022.

⁵¹¹ Examples See Alec Banks, "What Are Deepfakes & Why the Future of Porn Is Terrifying" (Highsnobiety, 2018) <<https://www.highsnobiety.com/p/what-are-deepfakes-ai-porn/>> accessed November 1, 2022.; Kevin Roose, "Here Come The Fake Videos, Too" (The New York Times, 2018) <<https://www.nytimes.com/2018/03/04/technology/fake-videos-deepfakes.html>> accessed November 1, 2022.; Jon Christian, "Experts Fear Face Swapping Tech Could Start an International Showdown" *The Outline* (2018) <<https://theoutline.com/post/3179/deepfake-videos-are-freaking-experts-out>> accessed

elections and wars poses a serious threat to national and international security. The increasing sophistication of deepfakes enables the creation of highly convincing fake content, which can be used to manipulate public opinion, undermine democratic processes, and escalate conflicts. This list of activities underscores the serious threats to privacy, data protection, and democratic integrity posed by deepfake technology. Hence, the impact of deepfakes extends beyond defamation, necessitating a reassessment of their risk classification and the regulatory measures needed to mitigate their potential harms.

6.7.2 China's Potential Rights-Based Regulatory Approach to AI

In contrast to the EU's risk-based approach to AI regulation, due to criticism in recent years and the government's willingness to promote progress in human rights, AI regulation in China mainly focuses on the right to personal information.⁵¹² Against this backdrop, it appears that China may be taking a rights-based approach to AI regulation. There is currently no uniform or specific set of regulatory legislation for AI in China, either in policy or in academia. In practice, the rights-based approach to AI regulation in China is mainly reflected in the fact that at this stage, the government is primarily concerned about the impact of AI on personal information protection, personal privacy and data security, which are all related to the fundamental rights of natural persons. For example, Article 1032 of the Civil Code of the People's Republic of China provides that natural persons have the right to privacy, and Article 1034 provides that the personal information of natural persons is protected by law. In addition, rules on the collection and use of personal information in AI practice and data security systems are set out in the Cyber Security Law⁵¹³ and the Data Security Law⁵¹⁴. Even the Personal Information Protection Law, which was enacted in November 2021, highlights that the State Ministry of Internet and Information Technology should promote the process

November 1, 2022.

⁵¹² Shaowei Lin, "The Impact Of Artificial Intelligence On Corporate Law: Challenges And Responses (人工智能对公司法的影响: 挑战与应对)" (2018) 3 Journal of East China University of Political Science and Law (华东政法大学学报) 61.

⁵¹³ See Article 40, 41 and 42 of Cybersecurity Law of the People's Republic of China

⁵¹⁴ See Article 28 and 32 of Data Security Law of the People's Republic of China

related to the protection of personal information in the AI industry.⁵¹⁵

However, because the AI field and the regulatory regime for AI are evolving on a daily basis, at this stage, it is not possible to conclude whether the Chinese government is adopting a binary approach⁵¹⁶ to regulation based on high and low risk, or a rights-based approach. Other actions taken to date may also suggest a broader regulatory approach, since some local regulations in China, such as the Shenzhen Special Economic Zone on Promoting the Artificial Intelligence Industry (Draft), propose the establishment of statistical classification standards for the entire AI industry.

A binary high-low risk approach to the regulation of AI in China may not offer clear and coherent criteria, and there is the possibility that companies be able to find loopholes in order to avoid risk or regulation. Even a ‘high risk’ classification may not be sufficient to address the dangers posed by certain uses of AI. However, the development of AI applications such as remote biometrics, automated gender ‘detection’ and other forms of behavioural prediction means that it is no longer a question of whether there is a ‘risk’ to human rights; these applications are simply incompatible with the enjoyment and protection of human rights.

Defining the rights-based approach in terms of risk encourages companies and organisations to introduce safeguards or ethical codes that can ‘reduce risk’. Using a rights-based approach to regulation, therefore makes it possible to identify more directly and clearly when AI is having a significant impact on individuals, specific groups or society as a whole, and also to minimise the undermining of rights and dignity.

⁵¹⁵ Article 62 of Personal Information Protection Law 2021

⁵¹⁶ Generally speaking, a binary system of governance is made up of two components and both will be complementary to each other. In terms of regulatory approach, a binary approach to regulation or binary governance refers to the individual (the company) and the system (the legal framework) that comprises it. The company itself can make valuable contributions, such as monitoring and detecting risky AI processes, while the legal framework provides accountability, etc. For example, the EU's General Data Protection Regulation ("GDPR") is a binary governance system. See Margot E Kaminski, “Binary Governance: Lessons from the GDPR’s Approach to Algorithmic Accountability” (2019) 92 Southern California Law Review 1529 <<https://doi.org/10.2139/ssrn.3351404>>.

6.8 Trustworthy AI

AI is trending towards becoming a required business capability, which means that the majority of technology companies can no longer simply sidestep the unique risks of AI by avoiding its use altogether. Instead, they must learn how to identify and manage AI risks effectively.⁵¹⁷ By developing an ethical framework, organisations can create a common language for expressing trust among internal and external stakeholders, thereby helping to ensure the integrity of data. Having a common framework to consistently apply the governance and management of AI-related risks across the enterprise also enables the faster and more consistent adoption of AI.

In 2019, the EU High Level Expert Group on Artificial Intelligence presented the Ethical Guidelines for Trustworthy Artificial Intelligence,⁵¹⁸ a framework that defines trustworthy AI and covers a number of key requirements. In order to better solve the challenges related to AI ethics and governance, the Ethical Guidelines introduce seven key dimensions that can help to preserve ethics and build a trustworthy AI strategy if they are considered in a comprehensive manner during the design, development, deployment, and operational phases of AI system implementation. The section on privacy and data governance regulations specifically states that the quality and integrity of the data should be considered,⁵¹⁹ and the section on diversity, non-discrimination and fairness emphasises that unfair biases must be avoided.

If a company adopts a trustworthy AI system as set out in the framework, it will not only help to reduce the workload of the directors but also take care of internal and external stakeholders, which to some extent promotes the development of the company's CSR. From a corporate governance perspective, if the AI adopted by a

⁵¹⁷ Irfan Saif and Beena Ammanath, “‘Trustworthy AI’ Is a Framework to Help Manage Unique Risk” *MIT Technology Review* (2021) <<https://www.technologyreview.com/2020/03/25/950291/trustworthy-ai-is-a-framework-to-help-manage-unique-risk/>> accessed November 1, 2022.

⁵¹⁸ European Commission, 'Ethics Guidelines For Trustworthy AI' (High Level Expert Group on AI 2021).

⁵¹⁹ Ibid 13-15

company's board of directors is designed to be trustworthy and applied in compliance with ethical guidelines,⁵²⁰ the AI will take into account the requirements of 'institutions, democracy and society as a whole'. The use of trustworthy AI emphasises the corporate purpose of being socially beneficial, and considers a wider range of stakeholders so that the company can promote the development of CSR at the same time.

As mentioned earlier, in scenarios where directors delegate to AI to assist in decision-making, if the AI meets trustworthiness criteria, it can potentially contribute to mitigating the agency problem in the company,⁵²¹ especially problems featuring conflicts between directors and shareholders. The AI system's data, models and outputs should be established by a multidisciplinary and diverse team to ensure compliance with ethical principles, since its algorithms are far less likely to be biased in this scenario.⁵²² Responsible AI must also be accompanied by ongoing monitoring and fairness assessment. Therefore, if responsible AI is able to participate in corporate decision-making in the future, it can potentially go some way to ensuring that decisions are in line with the wishes of and benefits for the majority of stakeholders in the organisation.

Moreover, with the development of machine learning processes, the use of Big Data can also contribute to the sustainable development of companies and the progressive application of artificial intelligence in different ways. The diversity of Big Data applications can provide companies with information from environmental, biological and other perspectives to explain the impact of their decisions on society.⁵²³ The

⁵²⁰ The High-Level Expert Group on AI, "Ethics Guidelines For Trustworthy AI" (European Commission, 2019) <<https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>> accessed November 1, 2022.

⁵²¹ Reinier Kraakman, John Armour and Henry Hansmann, "Agency Problems, Legal Strategies, and Enforcement" (2009) 21 Oxford Legal Studies Research Paper <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3298533_code1688367.pdf?abstractid=1436555&type=2>.

⁵²² Ray Eitel-Porte, Medb Corcoran and Patrick Connolly, "Responsible AI: From Principles To Practice" (Accenture, 2021) <<https://www.accenture.com/us-en/insights/artificial-intelligence/responsible-ai-principles-practice>> accessed November 1, 2022.

⁵²³ Jake Luo and others, "Big Data Application in Biomedical Research and Health Care: A Literature Review" (2016) 8 Biomedical Informatics Insights BII.S31559, 2-4

application of Big Data to enhance company performance or drive CSR activities is demanding for decision makers in organisations,⁵²⁴ because they need to be able to derive valuable insights from the rapidly changing volume, velocity, diversity, accuracy and value of information through the use of Big Data analytics, a process that is costly in terms of time and manpower. However, the inclusion and application of Big Data in conjunction with AI can enable organisations to develop specific AI applications to enhance biodiversity and promote environmental sustainability,⁵²⁵ thereby meeting the resource and service needs of current and future generations without compromising the health of ecosystems.⁵²⁶ These issues will be explored further in the next section.

<<https://doi.org/10.4137/bii.s31559>>.

⁵²⁴ Nada Elgendy and Ahmed Elragal, “Big Data Analytics in Support of the Decision Making Process” (2016) 100 *Procedia Computer Science* 1071 <<https://doi.org/10.1016/j.procs.2016.09.251>>.

⁵²⁵ Concepts and themes of environmental sustainability include low-impact transport, sustainable agriculture and a combination of environmental asset protection (e.g. biodiversity, water resources, energy use, renewable energy, raw materials such as food and minerals, land use sustainability), waste management and pollution (e.g. waste reduction, recycling, reuse, remediation, use of environmentally responsible materials, pollution monitoring, pollutant treatment). See J Baird Callicott and Karen G Mumford, “Ecological Sustainability as a Conservation Concept. Sustentabilidad Ecologica Como Concepto de Conservacion” (1997) 11 *Conservation Biology* 32 <<https://doi.org/10.1046/j.1523-1739.1997.95468.x>>.

⁵²⁶ Rohit Nishant, Mike Kennedy and Jacqueline Corbett, “Artificial Intelligence for Sustainability: Challenges, Opportunities, and a Research Agenda” (2020) 53 *International Journal of Information Management* 102104, 102105–102107 <<https://doi.org/10.1016/j.ijinfomgt.2020.102104>>.

CHAPTER 7: ANALYSIS AND COUNTERMEASURE: TRIPLE U APPROACH

7.1 Introduction

The potential solution to how to promote CSR in Chinese listed technology companies using a hybrid of soft and hard laws to be explored by this thesis is a new approach called the Triple U approach. This approach is divided into three components: uniqueness (which recognises the distinctive conditions in China), urgency (keeping up with China's economic, social development and the rapidly evolving field of AI) and the concept of the CCP as an “umbrella” (The term 'umbrella' metaphorically illustrates the CCP's extensive political influence on corporate governance, symbolising how the Chinese government functions not merely as a guide and promoter, but also as a protector, shaping and regulating CSR practices within its political and regulatory framework). Moving forward in the following sections, I will delve into a thorough background and provide explicit explanations of the setting for each element of the Triple U approach - uniqueness, urgency, and umbrella - to illuminate their relevance and application in the context of promoting CSR in Chinese listed technology companies. Furthermore, the Triple U approach can be applied to various stakeholders involved in promoting CSR in Chinese high-tech companies listed in the ChiNext Market, including policy makers, tech companies and other stakeholders. In the following sections, the specific stakeholders to whom this applies are analysed and explained accordingly.

The element of uniqueness reflects the unique conditions that exist in China, such as the three features mentioned in the previous Chapter 4. of Corporate Governance: political ideology (Harmonious Society), cultural (Guanxi & Mianzi) and policy (Belt and Road).

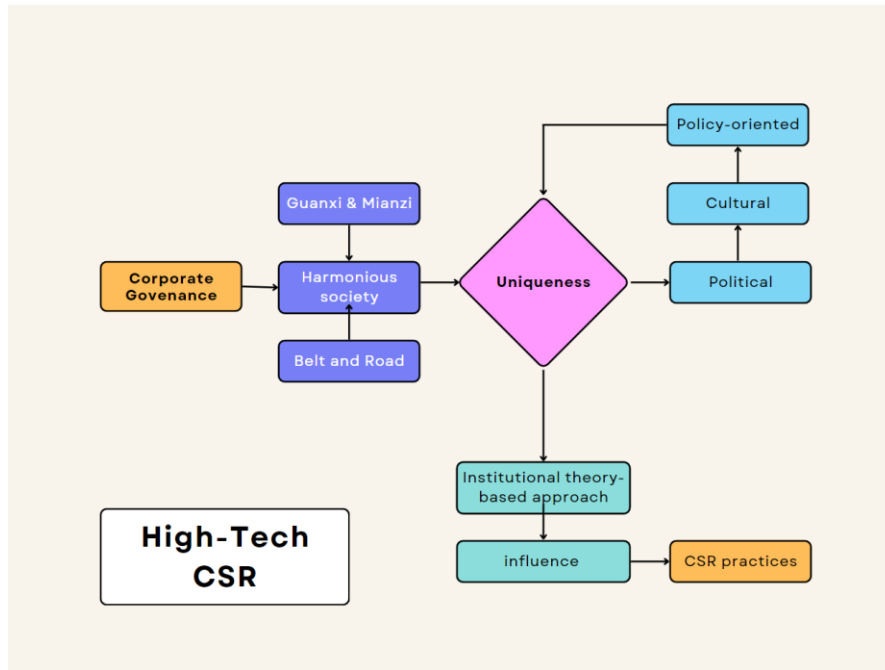


Figure 12. Conceptual Model of the Triple U Approach in Promoting CSR among Chinese High-Tech Firms

Path dependency theory can be applied to the analysis of the uniqueness of CSR's corporate model in China. Specifically, China's long historical process, unique cultural traditions and complex political structure should all be considered as path-dependence⁵²⁷ factors. This set of factors have all significantly influenced the unique development of CSR in contemporary Chinese companies. In this manner, the Triple U approach not only considers the unique aspects of Chinese corporate culture and the historical processes that have shaped its current state of CSR but also acknowledges that these distinct factors are likely to continue influencing the evolution and implementation of CSR in the future. This understanding of the institutional environment can help to identify the norms and values relevant to CSR in this context. For example, Confucian values that prioritise social harmony and responsibility could be leveraged to promote CSR in high-tech Chinese companies. A real-life example of this can be demonstrated by the unique corporate governance of Huawei, as previously mentioned in Section 4.4.4 Huawei: A Unique Paradigm of Corporate Governance.

⁵²⁷ Hathaway, (n 286) 138-141

Similarly, relevant analyses will be developed in the following Section 6.2.1 Understanding the Cognitive Drivers of Unique CSR Initiatives.

In terms of urgency, as an economic power and a globally influential country, the development of China's CSR should match the pace of its social and economic development and progress.

Since embarking on economic reforms in 1978, China has transitioned from a centrally-controlled economy to one that is more market-oriented. This shift has sparked rapid economic and social advancements. In fact, the annual growth rate of China's GDP has averaged nearly 10%⁵²⁸, marking the fastest enduring expansion ever seen in a major economy. Moreover, these developments have led to significant poverty reduction, with over 850 million individuals elevating themselves above the poverty line⁵²⁹. Boasting a population of 1.3 billion, China holds the position of the world's second-largest economy,⁵³⁰ and when evaluated in terms of purchasing power parity, it stands as the largest. In a more specific examination of China's economic trajectory, World Bank data indicates that the country's GDP was \$191.50 billion in 1980 and climbed to \$17.73 trillion by 2021⁵³¹. This signifies that the average annual growth rate of China's GDP from 1980 to 2021 is approximately 9.48%.

The economic rise of China is an undeniably significant global phenomenon. Moreover, rapid economic growth and the transition to a market-driven economy have placed

⁵²⁸ Wayne M Morrison, "China's Economic Rise: History, Trends, Challenges, and Implications for the United States" (Congressional Research Service, 2019) <<https://crsreports.congress.gov/product/pdf/RL/RL33534/96>> accessed November 1, 2022.

⁵²⁹ Clara Ferreira Marques, "Xi Jinping Scores Big Against Extreme Poverty But China Still Has Its Poor" *Bloomberg.com* (2020) <<https://www.bloomberg.com/opinion/articles/2020-11-29/xi-jinping-scores-big-against-extreme-poverty-but-china-still-has-its-poor?leadSource=uverify%20wall>> accessed November 1, 2022.

⁵³⁰ Nargis Zaman, "A Political Roadmap of Modern China and Its Transformation through Economic, Political and Educational Development (2011-2018)" (2019) 2 *Pakistan Journal of Humanities & Social Sciences Research* 109, 117 <<https://doi.org/10.37605/pjhssr.2.1.8>>.

⁵³¹ The World Bank, "GDP (Current US\$) - China" (World Bank Open Data, 2022) <<https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CN>> accessed November 1, 2022.

China among the world's leading economies, which might be continuing to grow.⁵³² However, this transformation presents complexities and contradictions in its socio-economic structure, particularly in the area of CSR. Previously, China's traditional State-owned enterprise, operating under central planning, offered social welfare programmes as part of their social responsibility commitments.⁵³³ These programmes included long-term stable employment, company-provided education and healthcare facilities. However, due to the shift to a free market, some of these companies have found these initiatives no longer viable, resulting in the cancellation or reduction of these programs.⁵³⁴ Nevertheless, as China's economic model continues to evolve, there is evidence that SOEs continue to play an essential role in balancing market-driven policies⁵³⁵ with social responsibility⁵³⁶. Despite the changes, these companies are increasingly seen as critical implementers of reforms and procedures and are likely to maintain their role in providing social welfare, albeit in an evolved form. However, there have been concerns about the decline of corporate social responsibility (CSR) in China, with companies potentially scaling back on social welfare programs, including long-term and stable employment and company-provided education and health facilities, due to market demands.⁵³⁷ More specifically, in a recent study, scholars point to the involvement of both the public and private sectors in the development of a long-term care system for China's rapidly aging population. The growing trend of private sector involvement is characterised by a rapidly growing home care industry, a slow

⁵³² Jorgenson and others, "China's Economic Growth and Carbon Emissions" in Michael B McElroy, Chris P Nielsen and Peter Lydon (eds), *Energizing China: Reconciling Environmental Protection and Economic Growth* (Cambridge: Harvard University Press 1998).

⁵³³ Ken Wills, "Seeking Balance" (IMF, 2018) <<https://www.imf.org/en/Publications/fandd/issues/2018/12/social-protection-in-china-wills>> accessed November 1, 2022.

⁵³⁴ Zhang and others (n 16).; Brad Hebert, "Is Reform on the Horizon for China's Weak Social Safety Net?" (New Perspectives on Asia | CSIS, 2020) <<https://www.csis.org/blogs/new-perspectives-asia/reform-horizon-chinas-weak-social-safety-net>> accessed November 1, 2022.

⁵³⁵ Dong Zhang and Owen Freestone, "China's Unfinished State-Owned Enterprise Reforms" (2013) 2 Economic Roundup Issue 79.; Karen Jingrong Lin and others, "State-Owned Enterprises in China: A Review of 40 Years of Research and Practice" (2020) 13 China Journal of Accounting Research 31 <<https://doi.org/10.1016/j.cjar.2019.12.001>>.

⁵³⁶ Irina Ervits, "CSR Reporting in China's Private and State-Owned Enterprises: A Mixed Methods Comparative Analysis" (2021) 22 Asian Business & Management 55 <<https://doi.org/10.1057/s41291-021-00147-1>>.

⁵³⁷ Zhang and others (n 530).

development of home- and community-based services, and minimal public funding, which is largely limited to supporting welfare recipients and subsidising the construction of home care facilities.⁵³⁸ These developments suggest that social welfare programmes, including stable employment and the provision of educational and medical facilities by companies, are being scaled back in response to market demand.

Hence, there is an urgent need to regulate the CSR of companies in China as well as to address stakeholder issues. Furthermore, considering the relationship between AI and CSR discussed in the previous chapter, it is crucial to update the diversity and applicability of CSR practices to keep pace with the rapidly evolving field of AI. AI has the potential to revolutionise the way businesses operate, creating opportunities and challenges for tech CSR in particular, as tech companies are likely to have greater access to AI technologies than other companies. For instance, AI can facilitate effective monitoring of supply chain practices, waste reduction, emissions control and enhanced worker safety. However, it also raises concerns about privacy, data ethics and employment impacts. Moreover, the environmental impact of AI technologies cannot be ignored. Artificial intelligence, especially machine learning, requires algorithmic training on large amounts of data, which requires a large amount of computational resources. These resources include processing power and storage capacity, which in turn often involves significant energy consumption. Precisely because of the stricter mandatory disclosure requirements for listed companies introduced by the SZSE as well as the HKSE in recent years, this potential indirect threat to the environment adds new challenges and requirements to the CSR considerations of tech companies, such as those listed on ChiNext.

A specific example can be seen in Data centres' issue, which are vital to the operation of AI and are often massive consumers of energy. Large tech companies such as Google

⁵³⁸ Zhanlian Feng and others, "Long-Term Care System for Older Adults in China: Policy Landscape, Challenges, and Future Prospects" (2020) 396 *The Lancet* 1362 <[https://doi.org/10.1016/s0140-6736\(20\)32136-x](https://doi.org/10.1016/s0140-6736(20)32136-x)>.

and Amazon operate massive data centres,⁵³⁹ leading to increased energy consumption and greenhouse gas emissions.

Globally, data centres consume around 1% of total electricity, which could rise to 3-13% by 2030.⁵⁴⁰ Unfortunately, this energy often comes from non-renewable sources, adding significantly to carbon emissions. In other words, the carbon footprint of a large data centre can reflect the carbon footprint of a small city.

In response, Google and Amazon have committed to renewable energy use and efficiency. Google reports that its data centres will be carbon-free by 2022,⁵⁴¹ while Amazon aims to be 100% renewable by 2025.⁵⁴² These actions highlight how tech companies are becoming increasingly aware of their environmental footprint and adapting their operations to mitigate adverse impacts.

However, integrating CSR into the tech industry is more than simply adopting renewable energy. It exemplifies the need to balance CSR in the technology sector, while also emphasising the need to integrate technological advances with environmental protection. This includes, for example, developing energy-efficient algorithms, enhancing cooling systems to reduce energy waste, and making strategic decisions about data centre siting to take advantage of natural cooling. The intersection between CSR and technology brings new dynamics. Not only is CSR influencing decisions and operations in the technology sector, but technological advances are also guiding how CSR is implemented. In a nutshell, AI offers great potential for operational

⁵³⁹ N Jones, “How to Stop Data Centres from Gobbling up the World’s Electricity” (2018) 561 *Nature* 163 <<https://doi.org/10.1038/d41586-018-06610-y>>.

⁵⁴⁰ Lucy Alderson, “Data Centres Feel the Heat over Energy Consumption” (Egi, 2020) <<https://www.egi.co.uk/news/data-centres-feel-the-heat-over-energy-consumption/>> accessed November 1, 2022.

⁵⁴¹ Urs Hölzle, “Our Commitment to Climate-Conscious Data Center Cooling” *Google* (2022) <<https://blog.google/outreach-initiatives/sustainability/our-commitment-to-climate-conscious-data-center-cooling/>> accessed November 1, 2022.

⁵⁴² Matt Mace, “Amazon Added 8GW to Clean Energy Portfolio in 2022” *Edie* (2023) <<https://www.edie.net/amazon-added-8gw-to-clean-energy-portfolio-in-2022/>> accessed November 1, 2023.

efficiency and innovative solutions, but it also brings new CSR challenges, mainly in terms of environmental sustainability.

Therefore, it is crucial for high-tech companies, especially those listed in China, to update their CSR practices. These practices need to reflect China's unique CSR institutional environment, acknowledge the urgency of CSR issues, and recognise the importance of government guidance and protection. Importantly, these updated practices should incorporate the opportunities and challenges posed by artificial intelligence, given its growing prominence in the technology sector. This highlights the evolving relationship between technology and CSR, in which technology and CSR each influence CSR.

In China, the scale of the tech industry and its potential impact on society and the environment make it an important public policy concern. This is particularly important in the context of the rapid development of artificial intelligence and the attendant challenges in areas such as environmental sustainability, privacy and data ethics. On the one hand, the technology sector is highly complex, with rapidly evolving technologies, business models and markets. Given this dynamic nature, there is a risk that the "laws of the market" may not adequately address CSR issues. Market forces tend to prioritise short-term profitability, possibly at the expense of long-term sustainability and ethical considerations. Government guidance can, therefore help ensure that a broader perspective balances economic growth with social responsibility and environmental stewardship. On the flip side, the government's ability to set laws and regulations means that it can set the 'rules of the game', thereby incentivising responsible behaviour and discouraging harmful behaviour. This guidance can take the form of soft law instruments such as guidelines, codes of conduct and voluntary standards to guide organisations in implementing CSR practices. This dual role - guiding and enforcing – can be treated as a powerful tool to ensure that CSR becomes an integral part of business practices in the high-tech industry and not just an optional

add-on.

In this background, the Chinese government should provide an “umbrella” function in addition to playing an interfering role in regulating CSR projects in China. In terms of reference and the formulation and implementation of relevant laws and regulations, the government should guide, promote and ensure their implementation. First, the government’s function is that of a policy maker; this guidance can assume the form of soft law instruments such as guidelines, codes of conduct and voluntary standards to navigate the implementation of CSR practices in organisations. In addition, the government's role as a guide could also include capacity building for the CSR practices of Chinese high-tech companies. More importantly, in its role as a protector the government could enforce CSR practices through a hard legal mechanism (e.g. regulation and sanctions). Finally, the potential and effectiveness of this approach is assessed and evaluated to understand how to effectively regulate Chinese listed companies and promote CSR programmes to address related issues.

Overall, the Triple U approach, as applied to CSR issues in Chinese listed companies, is able to address how these issues can be promoted more specifically via a combination of soft and hard law.

7.2 Triple U: An Institutional Theory-Based Approach

The intention of this section in proposing Triple U is to regard CSR as an institutional theory that encompasses a combination of soft as well as hard law. There are three key reasons why it can be considered as such.

First, CSR is a broad concept that plays different roles both internally and externally within organisations. According to Campbell, the ecological conditions within companies, including their economic health and level of competition, influence their

behaviour towards social responsibility.⁵⁴³ In other words, companies in an unhealthy economy are less likely to adopt socially responsible behaviour, while moderate competition tends to induce more socially responsible behaviour. To promote socially responsible behaviour, institutional conditions such as solid regulation, collective self-regulation, and monitoring by NGOs and independent organizations can create a regulated institutional environment. Additionally, companies can engage in institutionalised dialogue with industry or employee protesters. Overall, these factors can contribute to promoting socially responsible behaviour in companies. In this case, a comprehensive theoretical framework that considers various factors might be more feasible for analysing CSR-related measures in the context of developing countries when addressing how CSR should be practised in a concrete manner in China. For example, it has been suggested that in analysing institutional trends in CSR from the Lebanese context, a multi-level model of institutional flows⁵⁴⁴ and the theoretical framework can be used to explore convergence and divergence in CSR from the developing country perspective. This reveals that although there appears to be some similarity or convergence in CSR globally, this is only at a surface or superficial level and may not reflect deeper underlying cultural or institutional differences.⁵⁴⁵ More specifically, this convergence may be described as a situation where companies adopt similar CSR practices or policies globally, but only to meet external pressures such as consumer demand or regulatory requirements. In reality, the implementation and impact of these practices may vary considerably depending on the cultural and institutional context in which they are embedded. Furthermore, the theoretical framework of CSR, cultural factors and health policy path dependency has been used to analyse the current reform policies and the challenges involved when examining the health insurance scheme in another developing country, Nigeria.⁵⁴⁶ Therefore, an integrated theoretical

⁵⁴³ John L Campbell, "Why Would Corporations Behave in Socially Responsible Ways? An Institutional Theory of Corporate Social Responsibility" (2007) 32 *Academy of Management Review* 946 <<https://doi.org/10.5465/amr.2007.25275684>>.

⁵⁴⁴ Scott WR, *Institutions and Organizations: Ideas and Interests* (Sage 2008)

⁵⁴⁵ Dima Jamali and Benjamin A Neville, "Convergence versus Divergence of CSR in Developing Countries: An Embedded Multi-Layered Institutional Lens" (2011) 102 *Journal of Business Ethics* 599 <<https://doi.org/10.1007/s10551-011-0830-0>>.

⁵⁴⁶ Reynatou Mounkaila Noma, "Corporate Social Responsibility, Path Dependency and Cultural

framework that considers a wider range of factors (e.g. culture, path dependency, etc.) may be more efficient when analysing CSR-related initiatives or solutions. In this respect, it is the uniqueness component of the Triple U which precisely provides and considers at least three dimensions of influencing factors.

Second, the practical implementation and practice of CSR is always related to national legislation⁵⁴⁷, social norms⁵⁴⁸, culture⁵⁴⁹, society⁵⁵⁰ and ethics⁵⁵¹, etc. Similarly, the concept of “institution” can be briefly explained as an established law or practice, which encompasses the majority of these elements. Hence, the two concepts can be described as non-conflicting and remarkably comparable. Specifically, institutions are defined as “the regulatory, normative and cognitive structures and activities that provide stability and meaning to social behaviour”⁵⁵². Meanwhile, institutions can also be interpreted more broadly as both formal constraints (rules, laws, constitutions) and informal constraints (norms of behaviour, practices and self-imposed codes of conduct).⁵⁵³ This is comparable to the division of CSR provisions into hard and soft law in this chapter.

Overall, The Triple U framework provides a comprehensive institutional theory-based approach that considers various influencing factors and may be more efficient when

Influence: An Analysis of Equitable Health Insurance Schemes for Niger” (2019) 04 University of Plymouth Research Theses <<http://dx.doi.org/10.24382/364>>.

⁵⁴⁷ Li-Wen Lin, “Andatory Corporate Social Responsibility Legislation Around the World: Emergent Varieties and National Experiences” (2021) 23 University of Pennsylvania Journal of Business Law 429.

⁵⁴⁸ Brett G Johnson, “Facebook’s Free Speech Balancing Act. Corporate Social Responsibility and Norms of Online Discourse” (2016) 5 University of Baltimore Journal of Media Law & Ethics 19.

⁵⁴⁹ Soojung Kim and Jisuk Bae, “Cross-Cultural Differences in Concrete and Abstract Corporate Social Responsibility (CSR) Campaigns: Perceived Message Clarity and Perceived CSR as Mediators” (2016) 1 International Journal of Corporate Social Responsibility <<https://doi.org/10.1186/s40991-016-0009-1>>; Maria Ivanova-Gongne and others, “Cultural Sensemaking of Corporate Social Responsibility: A Dyadic View of Russian–Finnish Business Relationships” (2022) 101 Industrial Marketing Management 153 <<https://doi.org/10.1016/j.indmarman.2021.12.010>>.

⁵⁵⁰ Esben Rahbek Gjerdrum Pedersen, “Modelling CSR: How Managers Understand the Responsibilities of Business towards Society” (2009) 91 Journal of Business Ethics 155 <<https://doi.org/10.1007/s10551-009-0078-0>>.

⁵⁵¹ Mridula Goel and Preeti E Ramanathan, “Business Ethics and Corporate Social Responsibility – Is There a Dividing Line?” (2014) 11 Procedia. Economics and Finance 49 <[https://doi.org/10.1016/s2212-5671\(14\)00175-0](https://doi.org/10.1016/s2212-5671(14)00175-0)>.

⁵⁵² W Richard Scott, “W. Richard SCOTT (1995), Institutions and Organizations. Ideas, Interests and Identities.” (2014) 17 M@N@Gement 136 <<https://doi.org/10.3917/mana.172.0136>>.

⁵⁵³ Julio Faúndez, “Douglass North’s Theory of Institutions: Lessons for Law and Development” (2016) 8 Hague Journal on the Rule of Law 373, 385 <<https://doi.org/10.1007/s40803-016-0028-8>>.

analysing CSR-related initiatives or solutions, particularly in developing countries such as China. At the same time, effective change should also consider the values, normative obligations and behavioural reasoning that depend on the institutional background.⁵⁵⁴ Correspondingly, some recipients of change may change because they are regulated by company policy (*have to change*), others may change simply because it becomes the expected norm (*ought to change*), and others may personally value the change and therefore accept it (*want to change*).⁵⁵⁵

	<i>Regulative</i>	<i>Normative</i>	<i>Cognitive</i>
Legitimacy	Legal systems	Moral and ethical systems	Cultural systems
Central Rudiments	Policies and rules	Work roles, habits and norms	Values, beliefs and assumptions
System Change Drivers	Legal obligation	Moral obligation	Change values are internalized
System Change Sustainers	Fear and coercion	Duty and responsibility	Social identity and personal desire
Behavioral Reasoning	Have to	Ought to	Want to

Figure 13. Regulative, Normative and Cognitive Elements Associated with Organizational Change (Palthe, 2014)

Based on the above, a theoretical framework for organisational change is suggested in Table 2 below which illustrates the link between institutional elements and organisational change.⁵⁵⁶ Such values, norms and obligations arise from the institutional context, so that their three elements – normative, regulatory and cognitive – support and constrain change in an organisation.⁵⁵⁷

⁵⁵⁴ Jennifer Palthe, “Regulative, Normative, and Cognitive Elements of Organizations: Implications for Managing Change” (2014) 1 Management and Organizational Studies 59, 59 <<https://doi.org/10.5430/mos.v1n2p59>>.

⁵⁵⁵ Ibid. 61

⁵⁵⁶ Ibid. 60

⁵⁵⁷ Scott (n 548) 138

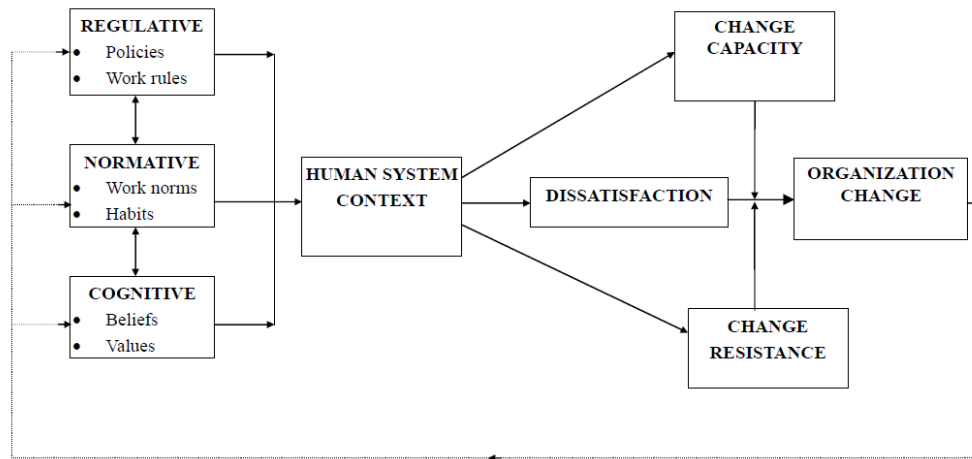


Figure 14. Conceptual Model of the Influence of Regulatory, Normative and Cognitive Elements on Organizational Change (Palthe, 2014)

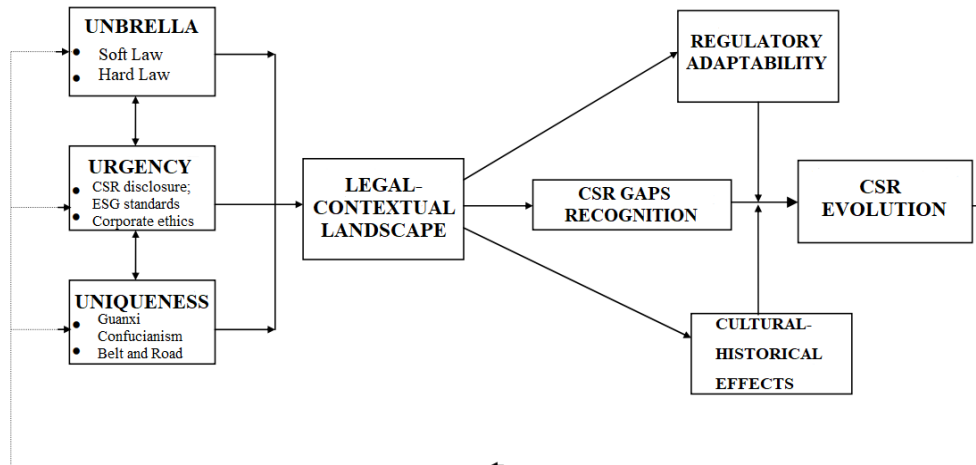


Figure 15. Triple U Approach of the Influence of Regulatory Adaptability, CSR Gaps Recognition, and Cultural-historical Effects on CSR Evolution in China's Tech Sector

In the following discussion, I will provide a comprehensive interpretation of Table 3, with analyses centred on three key dimensions: regulatory adaptation, CSR gaps recognition, and cultural-historical effects, which will be explored in more detail in subsequent paragraphs.

1. Regulatory Adaptability

From a CSR perspective, the outlook of Chinese companies is undoubtedly influenced by the institutional context. Drawing inspiration from Triple U's concept of the

'umbrella', this emphasises the essential role of the Chinese government in shaping, guiding and monitoring domestic CSR. At its core, the government's position is not merely regulatory, but embodies the spirit of institutional theory, encompassing both legal obligations and the complex relationships that legitimise such a position to advance the process of 'institutionalising' long-term perceptions.

Looking back at the evolution of regulatory engagement in China, it is clear to recognise the supplemented of government regulation through both soft and hard law. For example, guidelines for CSR disclosure for foreign-invested enterprises were issued in 2008. In 2015, the CSRC improved the quality of CSR reports; and in 2019, the Ministry of the Environment issued a decree on environment-focused corporate disclosure. Such a chronology highlights the government's intention to build a panoramic and nuanced CSR regulatory landscape that ensures adaptability across different industries.

However, such regulatory adjustments are not simply conceptual, but also enforceable. The severe impact of the Wei Zexi incident⁵⁵⁸ on Baidu demonstrates the urgency of the state's response to CSR failures and further calls for companies to prioritise ethics and public welfare over profits. Such incidents act as an alarm call to drive regulatory modifications, as evidenced by the increased regulation of online medical advertisements in the wake of the Baidu incident. Conversely, the regulatory environment is not one of singularly punitive measures. In particular, the Chinese government has taken the visionary step of promoting and encouraging CSR-centred business development with a different approach to incentives. A model in this regard is the blueprint for tax incentives designed for companies that advocate for environmental protection, providing them with substantial tax breaks and thus fostering a sustainable

⁵⁵⁸ The Wei Zexi incident involved a 21-year-old Chinese student who died in 2016 after undergoing an ineffective cancer treatment advertised on Baidu, China's major search engine. The case triggered public outrage and scrutiny over Baidu's ethical responsibilities in promoting healthcare information. It led to tighter government regulations on online medical advertising and raised questions about CSR enforcement in the high-tech sector.

culture of corporate responsibility.

In sum, the 'umbrella' approach suggests that the trajectory of CSR in China goes beyond mere compliance with government regulations and embodies a guiding-guided relationship. This is where the government guides companies through the various challenges of CSR, ensuring that they meet the expectations of society and the government, while enriching the evolving legal framework. Thus, the evolution of CSR in China is evidence of a symbiotic relationship between business and the regulatory sphere, with both sides adapting and growing.

2. CSR Gaps Recognition

This term refers to the institutional paradigm that emphasises the critical nature of social norms and expectations in influencing corporate behaviour. This is particularly evident in the recent wave of China's booming technology industry, where the government, stakeholders and the public have created an environment in which businesses are not only encouraged but also required to fulfil their social responsibilities. In other words, it also means that companies must harmonise with the trajectory of society as a whole and take on social responsibility while ensuring growth.

Over time, China's legislature has meticulously fine-tuned the CSR agenda, integrating it into policies that incentivise companies to follow a responsible, transparent and ethical path. Since 2021, China has required companies to disclose their environmental governance practices under public scrutiny. In addition, the introduction of ESG standards by the SZSE in 2022 signals the country's commitment to setting global standards in the dynamic assessment of CSR, especially for companies listed on the ChiNext board.

However, as the tech sector grows, the responsibilities placed on companies are becoming more substantial and often not without challenges. Issues relating to labour

rights, ethical supply chain management and human rights have drawn attention to the gap that exists between societal expectations and corporate realities. There are many reasons for this gap, including cultural differences, regulatory intricacies and, sometimes, weak enforcement systems. Notably, China's tech forerunners, including corporate giants like Alibaba and Tencent, have recently faced public and media concerns about issues related to data privacy and monopolistic behaviour.⁵⁵⁹ But the way they are doing it is by integrating CSR practices into their corporate culture and genes. More specifically, Tencent's involvement in sustainable social value initiatives and Baidu's establishment of a CSR committee are prominent practice changes to note in this process. In addition, one additional example is NetEase's integration of CSR with its strategy to deal with pandemics and disasters, demonstrating adaptability and immediate response to society's urgent needs.

Returning to this theme, the sense of urgency is unavoidable. Delving into the spirit of CSR simultaneously, ethics is at its root, as evidenced by the "ISO 2600-2010" standard. It is not only a demand for a more refined corporate strategy, but also a recognition of the challenges of CSR and a call for swift response. CSR is no longer an accessory, but a core principle of business that needs to be realigned from a purely profit-driven model to one that empathises with social norms, ethics and expectations.

3. Cultural-historical Effects

China's cultural and historical structures play a pivotal role in the integration of CSR in high-tech firms. Rooted in path-dependency theory, China's rich tapestry of history, unique cultural elements (e.g., "Guanxi" and "Mianzi"), and pluralistic political structures are intertwined in a way that has a profound impact on the CSR model. On the one hand, Chinese core values derived from Confucianism, which emphasise social

⁵⁵⁹ Huilun Lin and others, "Legal Governance of Internet Platform Monopoly Based on Big Data Analysis: A Review of Alibaba Case" (2022) 2022 *Mobile Information Systems* 1 <<https://doi.org/10.1155/2022/1776598>>; Cao Yang, "Regulating Digital Platforms in China: Current Practice and Future Developments" (2020) 11 *Journal of European Competition Law & Practice* 173 <<https://doi.org/10.1093/jeclap/lpaa001>>.

harmony and responsibility, have served as a catalyst for promoting altruistic and philanthropic endeavours among corporations. The most prominent of these is the prevalence of "Guanxi" cultural practices among Chinese companies, which often leads to biased hiring, promotion and supply chain decisions that prioritise established networks over objective performance indicators or competitive advantages. In other words, this may result in companies prioritising long-term connections over objective measures of performance or efficiency in decision-making. This cultural nuance, while symbolic of Chinese society, shapes the contours of CSR and influences its perception and application. To gain a comprehensive understanding of CSR in China's high-tech industry, it is necessary to recognise these cultural-historical influences and the dynamic relationship required with CSR.

In accordance with Campbell's article, a more in-depth understanding of the range of institutional conditions under which CSR behaviour may occur can be gained if institutional theory and CSR theory are integrated.⁵⁶⁰ This is because scholars⁵⁶¹ have similarly emphasised that how companies treat their stakeholders depends on the institutions in which they operate, whether within the company or the state. Moreover, institutional reform may be necessary in this process, especially in the context of today's globalised economy. Because institutional reform has proved valuable, reformers have recognised the need for external institutions to encourage companies to consider interests other than their own or those of social elites, to ensure that companies are responsive to interests other than their own.⁵⁶² To put it differently, the manner in which companies approach their stakeholders, including their CSR activities, is frequently influenced by the institutions and frameworks that shape their operations.

⁵⁶⁰ Campbell (n 539) 946

⁵⁶¹ Neil Fligstein and Robert F Freeland, "Theoretical and Comparative Perspectives on Corporate Organization" (1995) 21 Annual Review of Sociology 21 <<https://doi.org/10.1146/annurev.so.21.080195.000321>>; Peter A Hall and David Soskice, "An Introduction to Varieties of Capitalism" in Peter A Hall and David Soskice (eds), *Varieties Of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford University Press 2001) <<https://doi.org/10.1093/0199247757.003.0001>>.

⁵⁶² W Richard Scott, *Organizations: Rational, Natural, and Open Systems* (Prentice Hall 2003) 346.

A review of the management literature suggests that most studies on the determinants of CSR have considered the impact of some aspects of corporate financial performance and not others.⁵⁶³ However, some studies have investigated whether low tax rates and normative or cultural institutions can provide appropriate incentives for the practice of social responsibility, such as low tax rates, which may be an institutional factor of property rights that influences corporate behaviour in relation to philanthropy.⁵⁶⁴ Given this complex interplay, an analysis of CSR activities that fail to consider the institutional context may lead to a biased or incomplete understanding of CSR motivations, challenges and strategies. Therefore, when discussing CSR, it is essential first to consider the institutional context or establishment. This initial analysis is a lens through which we can observe and understand the dynamics of CSR in a given corporate context.

Furthermore, institutional theory actually argues for the importance of regulation in promoting CSR behaviour and suggests that the ability of the state to monitor corporate behaviour and enforce regulations is crucial. For example, the deregulation of the US government in the 1980s and 1990s led to a series of US companies beginning to engage in more liberal and socially irresponsible behaviour (the Savings and Loan Crisis (S&L), accounting firm scandals such as Enron and other corporate crimes in the US between the 1980s and 1990s can be partly attributed to the deregulation of finance at the time).⁵⁶⁵ However, firms may resist the relevance of regulation and try to control or clamp down on regulators to bend them to their will, with regulatory capture through lobbying or swaying the appointment of regulators, being common tactics used by such firms. So, the relationship between institutions and responsible social behaviour often requires consideration of the importance of institutional or state regulation.

⁵⁶³ Campbell (n 539) 954

⁵⁶⁴ Nicholas J Bailey, "Exploring the Relationship between Institutional Factors and FDI Attractiveness: A Meta-Analytic Review" (2018) 27 *International Business Review* 139 <<https://doi.org/10.1016/j.ibusrev.2017.05.012>>; Kiridaran Kanagaretnam and others, "Societal Trust and Corporate Tax Avoidance" (2018) 23 *Review of Accounting Studies* 1588 <<https://doi.org/10.1007/s11142-018-9466-y>>.

⁵⁶⁵ Joseph E Stiglitz, *The Roaring Nineties: A New History of the World's Most Prosperous Decade* (W W Norton & Company 2011) chs 4–5.

Hence, the regulatory, normative and cognitive structures of institutional theory and its aim of finding norms that are meaningful and stable for social behaviour are somehow consistent with the main purpose of this thesis. In this way, the Triple U approach should be analysed in the context of the institutional theory. The following sections will now examine respectively the uniqueness and cognitive aspects, the urgency normativity and, the umbrella approach and the regulatory environment in order to provide a more integrated and detail-supported approach.

7.2.1 Understanding the Cognitive Drivers of Unique CSR Initiatives

For uniqueness, path dependency theory should be used as a theoretical assumption and hypothesis, and China's historical processes, unique cultural factors and complex political structures should be considered as influencing factors for path dependency.⁵⁶⁶ More importantly, path dependency theory can be applied to analyse and explain the uniqueness of the corporate model of CSR in China.⁵⁶⁷ This is linked to the cognitive aspect of institutional theory, which primarily considers legitimacy from a cultural system perspective. In addition, it is important to understand why individuals in Chinese companies, such as employers and employees, want to change and what factors motivate them to implement CSR initiatives (e.g. the political factor of a harmonious society, the Guanxi & Mianzi cultural factor and the policy factor of the Belt and Road).

From the perspective of CSR practices of Chinese high-tech companies, uniqueness implies the need to consider the unique institutional context of CSR in China, including the influence of historical processes and cultural values on business practices. In the context of cognitive institutional theory, this assumes that CSR practices in China are shaped not only by formal rules and regulations but also by informal norms and beliefs

⁵⁶⁶ Kun Liu and Hanmin Liu, "Path Dependence and Path Breaking in Chinese State-Owned Enterprise" [2013] International Conference on the Modern Development of Humanities and Social Science (MDHSS 2013) 104 <<https://www.atlantis-pess.com/article/10011.pdf>>.

⁵⁶⁷ Caroline Chagas Prates, Eugênio Ávila Pedrozo and Tânia Nunes Da Silva, "Corporate Social Responsibility: A Case Study in Subsidiaries from Brazil and China" (2015) 10 Journal of Technology Management & Innovation 131 <<https://doi.org/10.4067/s0718-27242015000300014>>; Jingchen Zhao, "Promoting More Socially Responsible Corporations through a Corporate Law Regulatory Framework" (2017) 37 Legal Studies 103, 122–124 <<https://doi.org/10.1111/lest.12140>>.

that influence how companies perceive their responsibilities to their stakeholders. Such norms and beliefs are rooted in the cultural, social and historical context of China and may differ from those of other countries. This highlights the necessity to consider the unique institutional context when designing and implementing CSR practices.

Particularly among listed high-tech companies in China, there is a unique range of influences on work culture that may affect their CSR practices to varying degrees. For example, the Guanxi factors mentioned in previous chapters describe the practice of building and maintaining personal relationships, frequently based on mutual obligations and trust. In fact, Guanxi is pervasive throughout Chinese society and prominent in workplace relationships. In the setting of Chinese high-tech companies, Guanxi may play a role in the decision-making process and influence how different stakeholders in the company approach CSR practices. Guanxi may also be present in companies' hiring and promotion decision-making processes. In such cases, companies may prioritise the hiring of candidates with connections to their Guanxi networks rather than selecting them based on performance or qualifications.⁵⁶⁸ This can lead to challenges in implementing diversity and inclusion initiatives.⁵⁶⁹ Similarly, in supply chain selection, companies may prefer to maintain relationships in favour of suppliers in their network, even if other suppliers can offer the company better quality or cheaper prices.⁵⁷⁰ These examples all demonstrate how Guanxi factors can lead to barriers to implementing CSR, as companies may place a priority on maintaining Guanxi relationships instead of promoting diversity and equality in a competitive business society.

⁵⁶⁸ Yulei Weng and Xu Hao, "How Guanxi Affects Job Search Outcomes in China? Job Match and Job Turnover" (2018) 51 *China Economic Review* 70, 70-72 <<https://doi.org/10.1016/j.chieco.2018.05.006>>.

⁵⁶⁹ Yanjie Bian and Xianbi Huang, "The Guanxi Influence on Occupational Attainment in Urban China" [2015] *Chinese Journal of Sociology* <<https://doi.org/10.1177/2057150x15593709>>; Philip Rose, "Guanxi Social-Network Ties: Predicting Graduate Employment with Internship Host-Organisations in China" (2020) 11 *Journal of Teaching and Learning for Graduate Employability* 81, 81.

⁵⁷⁰ Ming Juan Ding and Ferry Jie, "The Moderating Effect of Guanxi on Supply Chain Competencies of Logistics Firms in China" (2020) 24 *International Journal of Logistics* 407 <<https://doi.org/10.1080/13675567.2020.1763280>>; Ruoqi Geng and others, "The Role of Guanxi in Green Supply Chain Management in Asia's Emerging Economies: A Conceptual Framework" (2017) 63 *Industrial Marketing Management* 1 <<https://doi.org/10.1016/j.indmarman.2017.01.002>>.

However, conversely, uniqueness engagement is possible at a certain level to advance the process and conduct of CSR in Chinese listed companies. For example, the main emphasis of Chinese Confucianism – which is a core tenet of Chinese culture – is on social harmony and responsibility. Furthermore, such good deeds have a high cognitive legitimacy over the historical process in China as engaging in philanthropy is a consistent behaviour of Chinese entrepreneurs or wealthy individuals, who aim to meet social expectations and gain a positive reputation.⁵⁷¹ For a long time, philanthropy has been widely recognised in China by local people and acknowledged and praised by the government.⁵⁷²

In this scenario, Confucian values may positively influence the approach of Chinese high-tech companies to CSR, such as placing the needs of the community and society above personal interests and contributing to social philanthropy and the community in line with Confucian values. This is because, in Confucianism, those who are kind and charitable or save lives are usually considered saints.⁵⁷³ Some scholars have also demonstrated that the philanthropy of modern Chinese entrepreneurs is also closely related to the Confucian ideas of “benevolence” and “coexistence of justice and benefit”,⁵⁷⁴ while there is a strong link between the CSR of this type of philanthropy and a company’s financial performance.

7.2.2 Cognition and the Uniqueness Factor: A Literature Synopsis

The uniqueness of Chinese corporate culture and the influence of historical processes

⁵⁷¹ Limin Chen and Xuelin Bu, “Enhance or Inhibit? Unveiling the Influence of Chairman’s Hometown Attachment on the Corporate Philanthropy–Corporate Financial Performance Relationship” (2022) 13 *Frontiers in Psychology* 01, 05 <<https://doi.org/10.3389/fpsyg.2022.956689>>.

⁵⁷² Lin Zhang, Yiru Xu and Honghui Chen, “Do Returnee Executives Value Corporate Philanthropy? Evidence from China” (2021) 179 *Journal of Business Ethics* 411, 411–412 <<https://doi.org/10.1007/s10551-021-04870-9>>.

⁵⁷³ Xingqiang Du and others, “Religion, the Nature of Ultimate Owner, and Corporate Philanthropic Giving: Evidence from China” (2013) 123 *Journal of Business Ethics* 235 <<https://doi.org/10.1007/s10551-013-1804-1>>; Heli Wang and Cuili Qian, “Corporate Philanthropy and Corporate Financial Performance: The Roles of Stakeholder Response and Political Access” (2011) 54 *Academy of Management Journal* 1159 <<https://doi.org/10.5465/amj.2009.0548>>.

⁵⁷⁴ Xixiong Xu, Zhineng Long and Wanli Li, “Confucian Culture and Corporate Philanthropy” (2020) 42 *Foreign Economics & Management* 124, 125–127.

have been identified as significant factors that can affect the CSR practices of Chinese high-tech listed companies. The analysis in the Chapter 4. Corporate Governance demonstrates that unique cultural factors, such as Confucian values and the concept of Guanxi, can have a considerable effect on the CSR behaviour of Chinese companies to varying degrees.

Correspondingly, the cognitive aspects of institutional theory emphasise the relevance of how organisations and individuals perceive and interpret the wider social and cultural contexts in which they operate,⁵⁷⁵ and how these perceptions shape their behaviour and decisions regarding CSR practices. Although this is consistent with the interpretation of an individual's values, values are perceptions, understandings, judgements or choices based on a certain set of human thinking senses above all else.⁵⁷⁶ Critically, an individual's internal cognitive power (or cognitive beliefs)⁵⁷⁷ is able to clarify the relationship between socially responsible values and CSR practices.⁵⁷⁸

Therefore, the key link between cognitive aspects and uniqueness can be explained by how individuals or organisations use their perceptions to judge the role of unique social and cultural variables and in turn, how these cognitions progressively shape and influence their CSR behaviours and practices.

⁵⁷⁵ David Risi and others, "Institutional Theory-based Research on Corporate Social Responsibility: Bringing Values Back In" (2022) 25 *International Journal of Management Reviews* 3, 8, 14 <<https://doi.org/10.1111/ijmr.12299>>.

⁵⁷⁶ Sara Constantino and others, "Cognition and Behavior in Context: A Framework and Theories to Explain Natural Resource Use Decisions in Social-Ecological Systems" (2021) 16 *Sustainability Science* 1651 <<https://doi.org/10.1007/s11625-021-00989-w>>; Vanessa A Masterson and others, "The Contribution of Sense of Place to Social-Ecological Systems Research: A Review and Research Agenda" (2017) 22 *Ecology and Society* <<https://doi.org/10.5751/es-08872-220149>>.

⁵⁷⁷ Jesús Barrena Martínez, Macarena López-Fernández and Pedro Miguel Romero Fernández, "Corporate Social Responsibility: Evolution through Institutional and Stakeholder Perspectives" (2016) 25 *European Journal of Management and Business Economics* 8, 8-10 <<https://doi.org/10.1016/j.redee.2015.11.002>>.

⁵⁷⁸ Charlotte M Karam and Dima Jamali, "Gendering CSR in the Arab Middle East: An Institutional Perspective" (2013) 23 *Business Ethics Quarterly* 31, 32 <<https://doi.org/10.5840/beq20132312>>; Kenneth Amaeshi and others, "Corporate Social Responsibility in SMEs: A Shift from Philanthropy to Institutional Works?" (2015) 138 *Journal of Business Ethics* 385 <<https://doi.org/10.1007/s10551-015-2633-1>>.

The literature has shown that corporate governance and cultural contexts (e.g. individualism, feminism, etc.) are relevant to a company's corporate environmental performance and CSR.⁵⁷⁹ In addition, China's corporate law legislative context and regulatory environment have been identified as possible risks to the implementation of CSR practices.⁵⁸⁰ For example, the lack of strict environmental regulations and their weak enforcement may lead companies to prioritise economic growth over environmental sustainability. Furthermore, the development of CSR financing and philanthropic activities in developing countries has challenged the model of individual empowerment as well as environmental protection as their compatibility with national CSR standards needs to be considered first.⁵⁸¹ Differences in corporate attitudes towards CSR practices may also be influenced by the legal system, with companies in civil law countries having been identified as showing a more direct approach to their CSR practices and disclosure than those in common law countries.⁵⁸² To gain legitimacy in the new institutional context, Chinese companies are required to adopt global CSR practices to remain competitive. However, the scholarly debate on CSR in China highlights that responsible corporate governance is exercised in a unique manner that differs from Western CSR practices.⁵⁸³ In terms of convergence, Chinese companies should be advised to adopt the requirements of global CSR practices, but there is also a need to underline that China has its unique approach to responsible corporate governance. Based on these examples, the focus on CSR in Chinese

⁵⁷⁹ Lu Jing and Jun Wang, "Corporate Governance, Law, Culture, Environmental Performance and CSR Disclosure: A Global Perspective" (2021) 70 *Journal of International Financial Markets, Institutions and Money* 101264 <<https://doi.org/10.1016/j.intfin.2020.101264>>; Shayuti Mohamed Adnan, David Hay and Chris J Van Staden, "The Influence of Culture and Corporate Governance on Corporate Social Responsibility Disclosure: A Cross Country Analysis" (2018) 198 *Journal of Cleaner Production* 820 <<https://doi.org/10.1016/j.jclepro.2018.07.057>>.

⁵⁸⁰ Jeehye You, *Legal Perspectives on Corporate Social Responsibility: Lessons from the United States and Korea* (Springer 2015). In this book, the author identifies a major risk to CSR legislation in Korea, which originally extensively adopted the traditional US Shareholder Primacy model.

⁵⁸¹ Juha Kalevi Karhu, "Corporate Social Responsibility and the Law" (2015) 7 *Review of Market Integration* 62, 62–64 <<https://doi.org/10.1177/0974929215593877>>.

⁵⁸² Victor Amor-Esteban, Isabel-María García-Sánchez and Purificación Galindo-Villardón, "Analysing the Effect of Legal System on Corporate Social Responsibility (CSR) at the Country Level, from a Multivariate Perspective" (2017) 140 *Social Indicators Research* 435 <<https://doi.org/10.1007/s11205-017-1782-2>>.

⁵⁸³ Sai Lan, "CSR Adoption by Chinese Firms for Global Competitiveness: An AMC Perspective" in René Schmidpeter and others (eds), *Sustainable Development and CSR in China A Multi-Perspective Approach* (Springer Cham 2015) <https://doi.org/10.1007/978-3-319-17371-9_5>.

companies should differ from that of the rest of the world.⁵⁸⁴

Furthermore, scholars have combined CSR with new trends in corporate governance, suggesting the need to achieve long-term sustainability and develop a socially responsible corporate culture.⁵⁸⁵ Especially for developing countries, path dependency theory is also more significant when considering and analysing CSR-related implementation and activities, whereas factors such as the historical context of the country, socio-political structures and culture influence and challenge it to varying degrees.⁵⁸⁶ Path dependency theory is an important concept to consider when analysing CSR-related implementation and activities, particularly in developing countries. This theory emphasises the influence of historical context, socio-political structures, and cultural factors on current practices and decisions. According to Hoff, although the concept of path dependence is commonly applied in the study of technological diffusion or change, it has become increasingly common in the study of the humanities and social sciences, where it is used to understand the processes of change in society.⁵⁸⁷

According to Hathaway, path dependence is broadly defined as an outcome or decision that has been shaped in a specific and systematic manner as a result of a historical path.⁵⁸⁸ Path dependency as a theoretical framework emphasises the importance of historical, socio-political and cultural factors in the evolution of CSR in China. China's unique cultural traditions, economic development trajectory and political structure, have greatly influenced the perception and implementation of CSR in China. This historical context has actually created a unique path for the development of CSR in

⁵⁸⁴ Irina Ervits, "CSR Reporting by Chinese and Western MNEs: Patterns Combining Formal Homogenization and Substantive Differences" (2021) 6 *International Journal of Corporate Social Responsibility* 1 <<https://doi.org/10.1186/s40991-021-00060-y>>.

⁵⁸⁵ Mia Mahmudur Rahim, "Legal Regulation of Corporate Social Responsibility" in Samuel O Idowu (ed), *CSR, sustainability, ethics & governance* (Springer 2014) <<https://doi.org/10.1007/978-3-642-40400-9>>.

⁵⁸⁶ Jamali and Neville (n 541) 541-543; Noma (n 542)

⁵⁸⁷ Débora Nayar Hoff, "A História Importa: Proposta de Estrutura Analítica Para o Estudo de Path-Dependence" (2011) 32 *Ensaaios FEE* <https://repositories.lib.utexas.edu/bitstream/handle/2152/13798/ensaaios_v32_n1_2011.pdf;sequence=2>.

⁵⁸⁸ Hathaway, (n 286) 106-108

China. Given its unique cultural background and rapid economic development, Chinese CSR has arguably become the focus of controversy in academia and corporate practice on a global scale,⁵⁸⁹ and its continuous enhancement and implementation process is equally important to global sustainable development.⁵⁹⁰ This debate stems mainly from the unique path of CSR development in China, which is different from the typical Western CSR model. The debate is not necessarily a critique of Chinese CSR, but rather a reflection of the uniqueness of China's CSR development path. This is because different cultural interpretations, economic models and political structures inevitably lead to different CSR practices.

In terms of temporal progression, path dependence suggests that what happens at an earlier point in time affects the likely outcome of a series of events that occur at a later point in time. Generally, every country has certain path-dependent factors that contribute to corporate governance, distinguishing it from other countries. China's long historical process, unique cultural heritage and complex political structure should be considered path-dependence factors.⁵⁹¹

This section delineates and systematises three perspectives – including the unique development path of CSR in China at the macro level, the urgent requirements and needs for CSR promotion, and the changes in government policy guidance and supervision and promotion of CSR – based on the different historical stages of China's economic system reform over the past 40 years. Finally, the basic features, experiences and practical transformation of CSR development in China are summarised from these different perspectives.

The “Uniqueness” of this part is based on a progressive timeline which focuses on

⁵⁸⁹ Dongyong Zhang, Stephen Morse and Qiaoyun Ma, “Corporate Social Responsibility and Sustainable Development in China: Current Status and Future Perspectives” (2019) 11 *Sustainability* 4392 <<https://doi.org/10.3390/su11164392>>.

⁵⁹⁰ Ervits (n 532) 59-61

⁵⁹¹ Tianshu Zhou, “Rethinking China's Reform of Corporate Governance: A Perspective of Path Dependence” (2016) 17 *Australian Journal of Asian Law* 355.

China's unique historical culture, political background, industrial structure and market players, and various other factors to elaborate on China's different internal and external influences in the process of promoting CSR development.

7.2.3 Historical progress of CSR in China

The evolution of CSR in modern China is related to economic reform and can be initially divided into two periods⁵⁹²: the period of the “Socialist Planned Economy” (社会主义计划经济) (1950–1978) and the transition period when China initiated the change from a “Socialist Planned Economy” to a “Socialist Market Economy” (社会主义市场经济) (after 1978).⁵⁹³

In fact, before the 14th Congress of the Chinese Communist Party (CCP) (中共十四大) in 1992, Chinese economic reforms did not formally and explicitly confirm the reform objective of establishing a socialist market economy.⁵⁹⁴ The “Decision of the Central Committee of the Communist Party of China on Some Issues Concerning the Improvement of the Socialist Market Economy”, adopted at the Third Plenary Session of the 14th Central Committee (十四届三中全会) in November 1993, proposed the construction of a modern enterprise system as the main direction for the reform of state-owned enterprises (SOEs).⁵⁹⁵ Concerning the specific institutional design and operational solutions, the Company Law of the People's Republic of China was adopted at the Fifth Session of the 8th National People's Congress (第八届人大五次会议) in 1993 and, in a proper sense, Chinese modern corporate legal system was initially

⁵⁹² Zhang and others (n 16) 7649

⁵⁹³ Jianli Liu, “Internationalisation of State-Owned Enterprises in 40 Years: The Development History and Its Institutional Logic (国有企业国际化 40 年：发展历程及其制度逻辑)” (2018) 39 *Research on Economics and Management (经济与管理研究)* 13, 14.

⁵⁹⁴ State Council Information Office of China, “The 14Th Congress Of The Chinese Communist Party Was Held From 12 To 18 October 1992(1992 年 10 月 12 日至 18 日 中共十四大召开)” (Scio.gov.cn, 2011) <<http://www.scio.gov.cn/zhzc/6/2/Document/1023815/1023815.htm>> accessed November 1, 2022.

⁵⁹⁵ Xinhua News Agency, “The Third Plenary Session Of The 14Th Central Committee Of The Communist Party Of China Adopted The Decision On Several Issues Concerning The Establishment Of A Socialist Market Economy System (中共十四届三中全会通过《关于建立社会主义市场经济体制若干问题的决定》)” (Reformdata.org, 1993) <<http://www.reformdata.org/1993/1114/23386.shtml>> accessed November 1, 2022.

established.⁵⁹⁶

Subsequently, The Fifth Plenary Session of the 14th Central Committee (十四届五中全会) held in 1995 concluded that the capital structure and investment structure of enterprises should be further optimised through the strategic restructuring of SOEs.⁵⁹⁷ To summarise, this historical period between 1978 and 1995 can be regarded as the “initial exploration period” for analysis.

The Chinese Company Law, which was substantially revised in 2005 and published in 2006, separates CSR into a separate Article 5.⁵⁹⁸ The revised Company Law 2006 places particular emphasis on the fact that the operational conduct of a company not only concerns the interests of internal stakeholders such as shareholders and employees but also plays an essential role in influencing the market economic order and the public interest. In September of the same year, the Shenzhen Stock Exchange issued Guidelines on Social Responsibility of Listed Companies,⁵⁹⁹ which require companies to actively fulfil their social responsibilities, regularly assess the fulfilment of their social responsibilities and voluntarily disclose their social responsibility reports.

In 2008, the State Council issued “Guiding Opinions on the Fulfilment of Social Responsibility by Central Enterprises”. The social responsibility of central enterprises (especially SOEs) was clearly defined in terms of content and five major topics for fulfilling social responsibility.⁶⁰⁰ In the same year, China held the 2008 Olympic

⁵⁹⁶ National People's Congress of China, “Company Law Of The People's Republic Of China (中华人民共和国公司法)” (2018) <<http://www.npc.gov.cn/npc/c12435/201811/68a85058b4c843d1a938420a77da14b4.shtml>> accessed 2 October 2022.

⁵⁹⁷ Tianyong Zhou, “The History Of SOE Reform In China (我国国有企业改革的历程)” [2022] China Reform Information Database <<http://www.reformdata.org/2008/0905/5261.shtml>> accessed November 1, 2022.

⁵⁹⁸ Chen Bin, “Corporate Social Responsibility: Status, Focus and the Role of the Exchange (企业社会责任: 现状、重点与交易所角色)” [2011] Shenzhen Stock Exchange General Research Institute 12.

⁵⁹⁹ Shenzhen Stock Exchange, “Events Of The Shenzhen Stock Exchange In 2006 (2006 年深圳证券交易所大事记)” (Shenzhen Stock Exchange, 2006) <https://www.szse.cn/aboutus/sse/events/t20070328_497840.html> accessed November 1, 2022.

⁶⁰⁰ Central Government Portal, “Notice On The Issuance Of The Guidance On The Fulfillment Of Social

Games, with the noteworthy Olympic Social Responsibility Conference held in Beijing promoting the two significant concepts of “Responsible Business” and “Harmonious World”.⁶⁰¹

Regarding current social issues, the 2008 contamination of dairy products, known as “the Melamine Case” in China, received widespread public attention and accusations.⁶⁰² CSR has also become the focus of social discussion and debate. From the perspective of legal documents, the Shanghai Stock Exchange (SSE) issued their respective corresponding guidance documents on the social responsibility of listed companies in 2008. This triggered the exploration of institutional norms for CSR information disclosure by listed companies in Shanghai.⁶⁰³ In 2011, China’s Henan Shuanghui Food Company (i.e. the largest meat processing company in China) was found to have used the illegal animal drug “Clenbuterol” to raise live pigs and pork quality, causing toxic pork product to flow into the market.⁶⁰⁴ In the same year, the State-owned Assets Supervision and Administration Commission drafted and confirmed the publication of the “Guidelines for Social Responsibility of Central Enterprises”.⁶⁰⁵ As the first document on social responsibility applied in China, this guidance document will promote central enterprises to play an exemplary role in fulfilling social responsibilities. The above timeline from 1995 to 2011 can be regarded

Responsibility By Central Enterprises (关于印发《关于中央企业 履行社会责任的指导意见》的通知)” (Gov.cn, 2008) <http://www.gov.cn/zwjk/2008-01/04/content_850589.htm> accessed November 1, 2022.

⁶⁰¹ Sina Finance, “Olympic Social Responsibility - A ‘Catalyst’ For Corporate Social Responsibility (奥运社会责任 — 企业社会责任的 ‘ 催化剂 ’)” (Sina, 2008) <<http://finance.sina.com.cn/hy/20080201/11054482902.shtml>> accessed November 1, 2022.

⁶⁰² Ian Ransom, “China Dairy Boss Pleads Guilty in Melamine Case” *Reuters* (December 31, 2008) <<https://www.reuters.com/article/us-china-melamine-idUSTRE4BU00T20081231>> accessed November 1, 2022.

⁶⁰³ People’s Bank of China, “Establishing China’s Green Financial System: Detailed Recommendation 14: Make Environmental Information Disclosure Mandatory” (People’s Bank of China, 2015) <<https://www.cbd.int/financial/privatesector/china-ecgfs-14Mandatory%20Disclosure.pdf>> accessed November 1, 2022.

⁶⁰⁴ Bloomberg News, “Shuanghui Plunges as Meat Recalled amid Probe into Additives” *Bloomberg.com* (2011) <<https://www.bloomberg.com/news/articles/2011-04-19/shuanghui-plunges-as-trading-resumes-following-meat-recall-1-?leadSource=uverify%20wall>> accessed November 1, 2022.

⁶⁰⁵ Legal Daily, “State-Owned Assets Supervision And Administration Commission To Issue Guidelines On Social Responsibility Of Central Enterprises” (Sina, 2011) <<http://news.sina.com.cn/c/2011-11-23/094523511446.shtml>> accessed November 1, 2022.

as the period during which China’s CSR initially flourished and boomed.

Since the 2010s, legal documents related to CSR, such as the Food Safety Law and the Environmental Protection Law, have been revised and published, gradually improving the rules and regulations for various CSR-related activities of companies in different sectors. In addition, in 2015, the State Council proposed the construction of a support platform for Mass Entrepreneurship and Innovation (大众创业, 万众创新) to promote corporate innovation and entrepreneurship policies,⁶⁰⁶ and the innovative capacity of private enterprises and their CSR practices were promoted. Hence, the most recent Chinese CSR historical timeline can be considered as 2012 to the present.

Based on the above general discussion and analysis, the historical progression of Chinese CSR development can be divided into four periods:

1. Missing Window Period: 1950–1978
2. Initial Exploration Period: 1978–1995
3. Flourish and Booming Period: 1995–2012
4. Refinement and Promotion: 2012–present

<i>Evolutionary dimensions</i>	<i>1950–1978 (Missing Window Period)</i>	<i>1978-1995 (Initial Exploration Stage)</i>	<i>1995–2012 (Flourish and Booming Period)</i>	<i>2012–present (Refinement and Promotion)</i>
The main body for the promotion of social responsibility	Government-led	Government-led	Multiple led from enterprises, government and social organisations (Initial formation)	Multiple led from enterprises, government and social organisations (Progressive development)
Scope of social responsibility content	Politicised economic responsibility	Market-based financial responsibility	Economic responsibility is primary; social and environmental	Combining economic, social and environmental responsibility

⁶⁰⁶ Central Government Portal, “Creating A Market Environment Conducive To Entrepreneurship And Innovation (营造有利于创业创新的市场环境)” (Gov.cn, 2012) <http://www.gov.cn/xinwen/2015-12/02/content_5018876.htm> accessed November 1, 2022.

			responsibility is secondary	
The relationship between the company and society	No great relevance; blurred boundaries	Separation of company and society, with progressively more precise boundaries	The company embeds and influences society	Company and society form a symbiotic integration relationship
Socially Responsible Practice Paradigm	Attempt to cover	Purely competitive market behaviour	Social responsibility issue-based promotion	Platform-based supervision of social innovation for responsible enterprises
Social responsibility institutional and system support	A severe lack of demand and supply for the system	Beginning to shape institutional supply and support	Mandatory social responsibility system supply for SOEs	Combination of compulsory and voluntary system provision
Cultural logic driven by social responsibility	Moral behaviour	Market cultural logic dominates	Market logic and social logic are gradually mixed	Dual system, value co-creation and shared logic
Social responsibility management model	Almost no social responsibility management	Exploration of a small number of management models	Multi-dimensional construction of social responsibility management system	The innovation of CSR Management Model
Socially responsible value creation effect	No distinction between economic and social value creation	Primarily for economic value creation	Economic value and social value creation coexist	Integrated value and shared value creation based on economy, society and environment

Figure 16. The evolutionary characteristics of Chinese CSR over the past 40 years

China provides a vivid example of path dependence, as the early evolution of the Chinese legal system reveals a unique path dependence. It demonstrates a clear separation between law and morality, which led to a legal culture in which law was seen as an instrument of governance distinct from morality. This separation, entrenched since the Chinese Empire, forms a key feature of the Chinese legal culture's worldview and influences its approach to corporate social responsibility and corporate governance.

As described by the Husa, in traditional Chinese legal culture, law is considered "a

positivist instrument of governance that is independent of morality".⁶⁰⁷ In other words, Chinese law is regarded as an instrumental system, continuously enforced through prescribed procedures, with minimal involvement in private disputes. This is very different from a market-oriented state.⁶⁰⁸

Thus, the legacy of state ownership in China (referring to the long tradition of the state holding controlling stakes in major industries, with state-owned enterprises influencing business practices and policies), underpinned by its unique legal and cultural worldview, may lead to a different approach to CSR and corporate governance than would be taken in those countries with a market-oriented approach. The nature of this path dependency needs, therefore, to be taken into account when designing and implementing CSR strategies in China.

7.2.4 Normative Pressures and Urgent Responses: CSR in China's Tech Sector

Institutional theory suggests that corporate behaviour is influenced by the norms and expectations of the broader institutional environment in which the company operates.⁶⁰⁹ In the context of Chinese tech companies, the normative expectations of government, stakeholders and the public are particularly salient in shaping CSR practices. In fact, an essential normative expectation is that companies should contribute to the overall development of society and be socially responsible. In China, such expectations are reflected in government policies and regulations in addition to public discourse.

For example, the Chinese government has implemented a range of policies to promote CSR practices, including tax incentives⁶¹⁰, social responsibility reporting requirements,

⁶⁰⁷ Jaakko Husa, "Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law" (2018) 6 *The Chinese Journal of Comparative Law* 129 <<https://doi.org/10.1093/cjcl/cxy008>>.

⁶⁰⁸ Noma (n 542). 1-2

⁶⁰⁹ Stephen Brammer, Grégory Jackson and Dirk Matten, "Corporate Social Responsibility and Institutional Theory: New Perspectives on Private Governance" (2011) 10 *Socio-economic Review* 3, 3–5 <<https://doi.org/10.1093/ser/mwr030>>.

⁶¹⁰ Dongmin Kong, Mengxu Xiong and Ni Qin, "Business Tax Reform and CSR Engagement: Evidence from China" (2022) 82 *International Review of Financial Analysis* 102178, 102178 <<https://doi.org/10.1016/j.irfa.2022.102178>>.

and the establishment of a CSR assessment system⁶¹¹. Furthermore, in recent years, the regulatory requirements for CSR disclosure practices have become more explicit. For example, among the corporate environmental information disclosure requirements, from 2021, companies with a high degree of public concern should disclose information on environmental governance within the deadline in accordance with the law.⁶¹² Another example is that in the ESG scoring criteria related to CSR, especially for companies listed on the ChiNext of the SZSE, the ESG evaluation can be conducted on the basis of the national ESG rating methods (which considers a wider range of governance dimensions and themes while drawing on international experience) published by the SZSE in 2022.⁶¹³

Another normative expectation is that companies should prioritise environmental sustainability and corporate ethics. This expectation is reflected in the growing importance of ESG standards for investors and the public pressure placed on companies to adopt ethical business practices. In recent years, concerns have also been argued about the adequacy of the CSR practices of Chinese technology companies,⁶¹⁴ particularly regarding labour practices⁶¹⁵, human rights⁶¹⁶ and supply chain management⁶¹⁷. These concerns reflect the gap between normative expectations and

⁶¹¹ Lauren Yu-Hsin Lin, “Promoting Social Responsibility through Ratings: China’s Corporate Social Credit System — U.S.-Asia Law Institute” (U.S.-Asia Law Institute, 2022) <<https://usali.org/asia-pacific-symposium-essays/promoting-social-responsibility-through-ratings-chinas-corporate-social-credit-system>> accessed November 1, 2022.

⁶¹² Administrative measures for the legal disclosure of corporate environmental information 2022, issued by the Chinese Ministry of Ecology and Environment

⁶¹³ CNI Index, “SZSE Releases ESG Evaluation Methodology and ESG Index to Improve SZSE’s Special Index System to Serve Low Carbon Sustainable Development (深交所发布 ESG 评价方法和 ESG 指数 完善深市特色指数体系 服务低碳可持续发展)” (CNI Index (国证指数网), 2022) <http://www.cnindex.com.cn/zh_information/notices_news/2022/202207/t20220725_17806.html?act_menu=2> accessed November 1, 2022.

⁶¹⁴ Chen Ma, Changjiang Yu and Yasir Latif, “CSR and Sustainable Growth in China’s Technology Firms between 2010 and 2021” (2023) 15 *Sustainability* 2101 <<https://doi.org/10.3390/su15032101>>.

⁶¹⁵ Ngai Pun and others, “Apple, Foxconn, and Chinese Workers’ Struggles from a Global Labor Perspective” (2016) 17 *Inter-Asia Cultural Studies* 166, 166–167 <<https://doi.org/10.1080/14649373.2016.1170961>>.

⁶¹⁶ Taixia Shen and Chao Wang, “Big Data Technology Applications and the Right to Health in China during the COVID-19 Pandemic” (2021) 18 *International Journal of Environmental Research and Public Health* 7325 <<https://doi.org/10.3390/ijerph18147325>>.

⁶¹⁷ Qing Ye and others, “Embedded Philanthropic CSR in Digital China: Unified View of Prosocial and pro-Environmental Practices” (2021) 12 *Frontiers in Psychology* 1 <<https://doi.org/10.3389/fpsyg.2021.695468>>.

actual practice, which may be influenced by factors such as weak enforcement mechanisms, cultural differences, and China's complex political and regulatory environment.⁶¹⁸

Since the CSRC released its ESG disclosure guidelines for listed companies in 2020, companies have been required to disclose information on their environmental impact,⁶¹⁹ social responsibility and governance practices.⁶²⁰ In recent years, Chinese tech giants such as Alibaba and Tencent have faced increased public and media criticism and scrutiny of their business practices, particularly data privacy and anti-monopoly issues.⁶²¹ Consequently, this has led to increasing pressure on these companies to adopt more ethical business practices and improve their governance.

Chinese technology companies have responded to these normative expectations in a variety of ways. Several companies have established CSR programmes and initiatives, including environmental sustainability initiatives, charitable donations and employee volunteer programmes. For example, technology giant Tencent officially announced the establishment of a separate Sustainable Social Value Business Unit and invested 50 billion CNY in sustainable social value innovation,⁶²² resonating with the EU's early RRI concept. Leading online company Baidu also set up a CSR committee back in 2008

⁶¹⁸ Kenny Z Lin, Suwina Cheng and Fang Zhang, "Corporate Social Responsibility, Institutional Environments, and Tax Avoidance: Evidence from a Subnational Comparison in China" (2017) 52 *The International Journal of Accounting* 303 <<https://doi.org/10.1016/j.intacc.2017.11.002>>.

⁶¹⁹ Mark Uhrynuk, Alexander W Burdulia and Joey CY Lee, "China Publishes Environmental and Social Disclosure Rules for Listed Companies" (Eye on ESG, 2021) <<https://www.eyonesg.com/2021/07/china-publishes-environmental-and-social-disclosure-rules-for-listed-companies/>> accessed November 1, 2022.

⁶²⁰ Elizabeth Meager, "China's New ESG Disclosure Standard 'of Limited Use' to Investors" *Capital Monitor* (2022) <<https://capitalmonitor.ai/regions/asia/china-esg-disclosure-standard-investors/>> accessed November 1, 2022.

⁶²¹ Catherine Cadell, "Alibaba, Tencent Back Chinese Cyber Law Facing Overseas Critics" (Reuters, 2016) <<https://www.reuters.com/article/us-china-internet-idUSKBN13C1OB>> accessed November 1, 2022.; Yawen Chen, "Review: Tencent Reflects China's Blunted Tech Edge" *Reuters* (2022) <<https://www.reuters.com/breakingviews/review-tencent-reflects-chinas-blunted-tech-edge-2022-09-23/>> accessed November 1, 2022.; Bloomberg, "Alibaba and Tencent Face End of an Era as Sales Start to Shrink" *The Business of Fashion* (2022) <<https://www.businessoffashion.com/news/china/alibaba-and-tencent-face-end-of-an-era-as-sales-start-to-shrink/>> accessed November 1, 2023.

⁶²² Pandaily, "Tencent Announces 50 Billion Yuan Investment in Sustainable Innovation" (Pandaily, 2021) <<https://pandaily.com/tencent-announces-50-billion-yuan-investment-in-sustainable-innovation/>> accessed November 1, 2022.

to oversee the coordinated development of overall CSR.⁶²³ A particularly interesting example is that Internet company NetEase has emphasised CSR practices in the fight against pandemics and natural disasters, through industry mutual partnerships and charity education⁶²⁴. More companies have also developed internal codes of conduct and ethics to guide their business practices in recent years.

Regarding Urgency, the two principles of business ethics and CSR are clearly connected, with ISO quality standard “ISO 2600–2010: A guide to social responsibility including “ethical behaviour” among its seven key principles of socially responsible behaviour.⁶²⁵ In discussing the case for justice and the urgency of the need, a multi-principled theory is also proposed by scholars⁶²⁶ whereby a company or organisation should regard a growing social problem as normative when addressing it as a CSR problem and consider certain normative reasons (such as the organisation’s qualifications, competence, contribution and fair competition etc). Undoubtedly, the original intent of CSR was to shift from a shareholder-driven model of interest in companies to a broader consideration of how organisations should now consider a range of normative issues such as business ethics or social norms.

7.2.5 The Intersections of Urgency and Normativity: A Literature Review

It has been suggested that the normative nature of CSR should require companies to prioritise social responsibility and contribute to the overall development of society.⁶²⁷ This expectation is reflected in government policies and regulations in addition to public discourse. For developing countries, this logic of normative isomorphism (i.e. the process by which organisations adopt beliefs, values and practices similar to those

⁶²³ Baidu, “‘Baidu ESG Site’ (百度 ESG 网站)” (Baidu, 2019) <<https://esg.baidu.com/en>> accessed November 1, 2022.

⁶²⁴ Tigerbrokers, “NetEase Youdao’s First CSR Report, a Quick Look in One Chart! (网易有道首次发布企业社会责任报告，一张图速看)” (Tigerbrokers (老虎社区), 2022) <<https://www.laohu8.com/post/614037335>> accessed November 1, 2022.

⁶²⁵ ISO Standards, ISO 26000 - Social Responsibility

⁶²⁶ Risi and others (n 571) 3-5.; Miguel Alzola, “When Urgency Matters. On Non-Discretionary Corporate Social Responsibility” [2008] Human Systems Management <<https://doi.org/10.3233/hsm-2008-0683>>.

⁶²⁷ Brammer, Jackson and Matten (n 605) 3

of other organisations in their institutional environment to gain legitimacy and social acceptance) is critical to CSR disclosure,⁶²⁸ which underlines the need for stronger policies to encourage the development of these institutions in this environment.

Based on institutional theory, the historical role of different countries can combine with a societal relationship to produce considerably different normative CSR formulations in each country, even though two countries may have very similar institutions.⁶²⁹ For example, in South Korea, there is more of a normative focus on the short-term benefits of CSR than a strategic focus on business, and CSR practices lie at the intersection of implicit and explicit CSR behaviour.⁶³⁰ More specifically, these practices reflect a multitude of Korean institutional factors that interact in intricate ways, creating complex and dynamic pressures on CSR practices. Therefore, from the perspective of normative institutional theory, CSR research still requires careful consideration of these interactions and dynamic processes. Institutional theory provides a sufficiently complex and social mechanism-based research framework that identifies and explores the key social mechanisms that institutionalise it, such as discourse, imitation, normative learning and coercion.⁶³¹

The urgency for CSR is a result of the inadequate legal framework for CSR in many countries, including China. This urgency calls for solutions to the CSR-related issues faced by high-tech companies listed on the stock exchange. More importantly, the lack of a global consensus on what constitutes CSR and when CSR should link accountability and corporate legal responsibility has hindered the consistency of the CSR legislative process.⁶³² Multinational companies face challenges with CSR due to

⁶²⁸ Waris Ali and Jędrzej George Frynas, “The Role of Normative CSR-Promoting Institutions in Stimulating CSR Disclosures in Developing Countries” (2017) 25 *Corporate Social Responsibility and Environmental Management* 373, 373 <<https://doi.org/10.1002/csr.1466>>.

⁶²⁹ Maribel Blasco and Mette Zølner, “Corporate Social Responsibility in Mexico and France” (2008) 49 *Business & Society* 216 <<https://doi.org/10.1177/0007650307309434>>.

⁶³⁰ Chung Hee Kim and others, “CSR and the National Institutional Context: The Case of South Korea” (2013) 66 *Journal of Business Research* 2581 <<https://doi.org/10.1016/j.jbusres.2012.05.015>>.

⁶³¹ Sara Bice, “Corporate Social Responsibility as Institution: A Social Mechanisms Framework” (2015) 143 *Journal of Business Ethics* 17, 17–19 <<https://doi.org/10.1007/s10551-015-2791-1>>.

⁶³² Mallika Tamvada, “Corporate Social Responsibility and Accountability: A New Theoretical

differences between international public law (broad, collectively agreed principles) and national private law (country-specific regulations). This "distance" can complicate CSR practices as companies must navigate varying requirements across jurisdictions, potentially impacting areas like human rights, working conditions, and environmental protection.⁶³³ This distance poses a major problem for the protection of human rights, working conditions and the environment.

More specifically, multinational companies operate in multiple jurisdictions, and the laws and regulations governing their operations may vary considerably from country to country. At the international level, various public laws and regulations relating to CSR exist, such as international labour standards, environmental conventions and human rights treaties.⁶³⁴ However, these international standards are not always binding and may not be consistently enforced in different countries. This can occur for several reasons.

Firstly, international laws often require national legislation to be implemented effectively, and countries may interpret and incorporate these laws differently.⁶³⁵ For instance, the International Labour Organisation sets labour standards, but enforcement varies as it depends on how each member state translates these into their national laws. The ILO's Convention No. 182, also known as the "Worst Forms of Child Labour Convention," is a binding international law aimed at the prohibition and immediate action for the elimination of the worst forms of child labour.

Foundation for Regulating CSR" (2020) 5 International Journal of Corporate Social Responsibility <<https://doi.org/10.1186/s40991-019-0045-8>>.

⁶³³ Valentin Jentsch, "Corporate Social Responsibility and the Law: International Standards, Regulatory Theory and the Swiss Responsible Business Initiative" (2018) 05 Working Paper - EUI Max Weber Programme 1.

⁶³⁴ Daniel Bodansky, "Legally Binding versus Non-Legally Binding Instruments" in Scott Barrett and Carlo Carraro (eds), *Towards a Workable and Effective Climate Regime* (VoxEU eBook 2015) <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2654468_code366811.pdf?abstractid=2649630&mirid=2>; Kenneth W Abbott and Duncan Snidal, "Hard and Soft Law in International Governance" (2000) 54 International Organization 421 <<https://doi.org/10.1162/002081800551280>>.

⁶³⁵ Tt Arvind, "The 'Transplant Effect' in Harmonization" (2010) 59 International and Comparative Law Quarterly 65, 67 <<https://doi.org/10.1017/s0020589309990017>>.

However, despite this unanimous ratification, the prevalence and nature of child labour vary significantly from one country to another, reflecting differences in how the convention is interpreted and enforced. For instance, in many developed countries, comprehensive laws against child labour are well enforced, reflecting a high degree of alignment with the ILO convention.⁶³⁶ However, in some developing countries, while the laws may formally exist, enforcement can be weak due to factors such as resource constraints, cultural norms, economic conditions, or political issues.⁶³⁷

Secondly, not all countries have the resources or infrastructure to enforce these standards effectively. In this scenario, developing countries may lack the resources to enforce environmental regulations, leading to variations in their implementation.

Finally, political will also plays a role. Some countries might prioritise economic growth over enforcing certain standards, leading to inconsistent enforcement. An example is the Paris Agreement on climate change, where countries have pledged to reduce their greenhouse gas emissions, but progress varies significantly between nations due to differing political commitments.⁶³⁸

On the other hand, private law, often associated with the theory of 'nexus of contracts' (i.e. proponents of the theory argue that all disputes over particular corporate obligations should be resolved by the methods used to interpret the contract, and that the courts should not imply the existence of a trustee to perform duties on behalf of corporate officers and directors)⁶³⁹, comprises the multitude of legal rules that dictate

⁶³⁶ Alexis Foua and Wilson Diriwari, "The ILO's Endeavour to Eliminate Child Labour Worldwide: A Discourse on Legitimacy and Standards Fit for Purpose" (2019) 10 *Beijing Law Review* 1262 <<https://doi.org/10.4236/blr.2019.105068>>.

⁶³⁷ Lorenza B Fontana and Jean Grugel, "To Eradicate or to Legalize? Child Labor Debates and ILO Convention 182 in Bolivia" (2015) 21 *Global Governance: A Review of Multilateralism and International Organizations* 61, 61 <<https://doi.org/10.1163/19426720-02101006>>.

⁶³⁸ Dustin Tingley and Michael Tomz, "International Commitments and Domestic Opinion: The Effect of the Paris Agreement on Public Support for Policies to Address Climate Change" (2019) 29 *Environmental Politics* 1135 <<https://doi.org/10.1080/09644016.2019.1705056>>; Robert Falkner, "The Paris Agreement and the New Logic of International Climate Politics" (2016) 92 *International Affairs* 1107 <<https://doi.org/10.1111/1468-2346.12708>>.

⁶³⁹ Marios Koutsias, "Shareholder Supremacy in a Nexus of Contracts: A Nexus of Problems" (2017) 38 *Business Law Review* 136, 136–138 <<https://doi.org/10.54648/bula2017021>>.

the complex contractual relationships within a corporation.⁶⁴⁰ This includes the diverse agreements between various parties, such as shareholders, directors, employees, suppliers, and customers, each with their distinct roles, rights, and obligations.

In this case, private law includes the legal rules that govern the conduct of individuals and companies in their relationships with each party. In the realm of CSR, private law may involve contracts between companies and suppliers, labour agreements with employees, and liability for environmental damage. Private law is usually enforced at the national level, and the legal systems of different countries may also differ significantly in their treatment of CSR-related issues.⁶⁴¹

This situation creates a distance between international public law and national private law, which raises significant issues for protecting human rights, working conditions and the environment.⁶⁴² This is because multinational companies may be subject to conflicting legal requirements and expectations in different jurisdictions, making it difficult to implement consistent and effective CSR practices.⁶⁴³ For example, a company may face higher environmental standards in one country but lower standards in another or may be subject to different labour laws and regulations in different jurisdictions. For companies, the simplest solution to this situation may be for companies to adopt universally high standards that meet or exceed the most stringent requirements of all the jurisdictions in which they operate. This would not only ensure comprehensive compliance, but also enhance the company's reputation and relationships with stakeholders. However, there are a number of challenges that may make it difficult for companies to take this approach. As an example, the cost of

⁶⁴⁰ Ewan McGaughey, "Ideals of the Corporation and the Nexus of Contracts" (2015) 78 *The Modern Law Review* 1057 <<https://doi.org/10.1111/1468-2230.12161>>.

⁶⁴¹ Larry Catá Backer, "Multinational Corporations, Transnational Law: The United Nation's Norms on the Responsibilities of Transnational Corporations as Harbinger of Corporate Responsibility in International Law" (2006) 37 *Columbia Human Rights Law Review* 101, 101–102 <[http://csb.uncw.edu/people/everisp/classes/bls361/intl law/required readings/20.un norms of transnatl as intl law.ssm.pdf](http://csb.uncw.edu/people/everisp/classes/bls361/intl%20law/required%20readings/20.un%20norms%20of%20transnatl%20as%20intl%20law.ssm.pdf)>.

⁶⁴² Tamvada (n 628) 2–4

⁶⁴³ Jentsch (n 629) 1–4

achieving high standards can be prohibitive, particularly for companies operating in countries where there are no legal requirements or cultural expectations.

More specifically, this is because these higher standards may require significant investment in technology, infrastructure or staff training. For example, companies operating in manufacturing may need to invest in clean technology or more advanced waste management systems in order to meet high environmental standards. Similarly, reaching high labour standards may imply investing in better working conditions, employee benefits or broader human resource practices at the same time. These costs may not be feasible for all companies, particularly small and medium-sized enterprises with limited resources. A very similar phenomenon exists with respect to the subject of this thesis, as ChiNext companies are usually small and medium-sized enterprises (SMEs) specialising in high-tech and innovative fields and facing unique challenges in terms of CSR. In addition to the often limited resources they are able to devote to CSR activities, the nature of their work and their inclusion on the ChiNext board of the SZSE means that they are also subject to intense scrutiny by the public and regulators.

A key challenge lies in the cost of implementing comprehensive CSR initiatives. As mentioned earlier, higher standards may require significant investment in technology, infrastructure or staff training. This can place a considerable financial burden on these smaller, innovation-driven companies. For example, a company developing AI technology may need to invest heavily in data protection measures to ensure that it complies with privacy standards or to develop a code of ethics for AI. Similarly, a biotech company may need to invest in specialised waste management systems to dispose of biohazardous materials safely, which is necessary to meet environmental standards.

In addition, the lack of a consistent and enforceable legal framework for CSR can have

a race-to-the-bottom effect⁶⁴⁴ (in economics, this generally means that one company, state or country tries to undercut competitors by sacrificing quality standards or worker safety (often in defiance of regulations), or by lowering labour costs). The result is that firms seek to locate their operations in countries with weak regulatory systems to minimise costs and maximise profits. This can lead to situations where companies seek to pursue economic growth to compromise human rights, working conditions and environmental protection. An example of this is Google's use of a 'double Irish-Dutch sandwich' arrangement (i.e. an international tax avoidance technique used by large companies involving the use of a combination of Irish and Dutch subsidiaries to shift profits to low- or no-tax jurisdictions. This technique makes it possible for certain companies to significantly reduce their overall corporate tax rate.) for international tax avoidance, which has received much criticism despite being legal.⁶⁴⁵ This deficiency in the tax system also prompted Ireland to adopt measures in 2015 to remedy a loophole in the annual budget.⁶⁴⁶

Another challenge involves potential reputational damage. In today's highly interconnected world, companies are under scrutiny from a more informed and engaged public. Any perceived failure in their CSR practices can lead to public outcry, consumer boycotts, or negative publicity, which can harm their brand image and bottom line.

The case of Boohoo, the British multinational fashion retailer, is a poignant reminder of the potential consequences of failures in CSR practices, the company was in the spotlight over allegations of exploitative working conditions and low pay at its supplier

⁶⁴⁴ BA Hepple, *Labour Laws and Global Trade* (Hart Publishing 2005) 62.; Eva Kocher, "Transnational Labour Law? 'Corporate Social Responsibility' and the Law," *Springer eBooks* (2021) <https://doi.org/10.1007/978-3-030-73835-8_11>.

⁶⁴⁵ Reuters, "Google Shifted \$23 Billion to Tax Haven Bermuda in 2017: Filing" *Reuters* (2019) <<https://www.reuters.com/article/us-google-taxes-netherlands-idUSKCN1OX1G9>> accessed November 1, 2022.

⁶⁴⁶ Kelly Phillips Erb, "Ireland Declares 'Double Irish' Tax Scheme Dead" *Forbes* (2014) <<https://www.forbes.com/sites/kellyphillipserb/2014/10/15/ireland-declares-double-irish-tax-scheme-dead/>> accessed November 1, 2022.

factories in Leicester, UK.⁶⁴⁷ More specifically, an investigation into Boohoo's supply chain revealed that workers were allegedly paid well below the minimum wage and claimed poor working conditions, including a lack of social isolation during the COVID-19 pandemic.⁶⁴⁸

In response, despite Boohoo's public commitment to responsible business behaviour, these allegations have raised serious questions about its CSR practices. The allegations sparked a public outcry, with consumers taking to social media platforms to express their shock and disappointment. On online social media in particular, the hashtag #BoycottBoohoo (Boycott Boohoo) was trending on Twitter, with many consumers pledging not to purchase the brand's products again.⁶⁴⁹

The result was significant and immediate damage to Boohoo's reputation. In the days following the revelations, the company's share price plummeted by nearly 30 per cent.⁶⁵⁰ The negative publicity also reverberated through the business community, with major online retailers such as ASOS and Zalando temporarily ceasing to sell Boohoo products on their platforms. Despite Boohoo's corrective actions and commitment to improve its supply chain practices, the incident demonstrates that failures in CSR can lead to serious public backlash, financial losses and lasting damage to a company's reputation. It also underscores the importance of not only having a CSR policy in place, but also ensuring that it is effectively implemented and monitored throughout the supply chain.

⁶⁴⁷ Sarah Butler, "Activists to Question Boohoo on Living Wage for Leicester Garment Workers" *The Guardian* (2022) <<https://www.theguardian.com/business/2022/jun/17/activists-to-question-boohoo-on-living-wage-for-leicester-garment-workers>> accessed November 1, 2022.

⁶⁴⁸ Mona Nassar, Tara Goddard and Regine Freeman, "Walk the Talk: The Boohoo Case Study" (2023) 43 *Journal of Macromarketing* 274, 274 <<https://doi.org/10.1177/02761467231164960>>.

⁶⁴⁹ Greg Barradale, "People Call for Boohoo Boycott after It's Claimed Factory Workers Are Paid £3.50 an Hour" *The Tab* (2020) <<https://thetab.com/uk/2020/07/07/people-call-for-boohoo-boycott-after-its-claimed-factory-workers-are-paid-3-50-an-hour-165171>> accessed November 1, 2022.

⁶⁵⁰ Shalini Nagarajan, "Boohoo Stock Tumbles 30%, Wiping \$1.25 Billion off Its Market Value, after an Explosive Report into Working Conditions at One of Its Factories" *Markets Insider* (2020) <<https://markets.businessinsider.com/news/stocks/boohoo-stock-price-reaction-criticism-over-low-factory-worker-wages-2020-7-1029371727>> accessed November 1, 2022.

In conclusion, the gap between international public law and national private law creates significant challenges for multinational companies in their efforts to implement effective CSR practices. To address these challenges, there is a need for greater coordination and harmonization of international and national legal frameworks, as well as increased stakeholder engagement and collaboration between companies, governments, and civil society organisations. One potential approach would be to develop international standards and guidelines for CSR. Such standards could provide a common framework for companies to comply with, regardless of the jurisdictions in which they operate. The United Nations Global Compact is an example illustration of a voluntary common framework that encourages companies to adopt sustainable and socially responsible policies and practices. Similarly, the International Organisation for Standardisation (ISO) has developed a range of standards on corporate social responsibility (e.g., ISO 26000) that provide guidance on issues such as environmental management, social responsibility and anti-corruption. In China, the Shenzhen Stock Exchange and the Shanghai Stock Exchange issued guidelines for listed companies as early as 2006 and 2008, respectively,⁶⁵¹ with the aim of encouraging listed companies to publish CSR reports on a voluntary basis.

One of the main issues is that these standards are often voluntary and lack legal enforcement mechanisms.⁶⁵² Without binding laws or significant consequences for non-compliance, companies might choose to ignore these guidelines or only implement them superficially.⁶⁵³ Also, the interpretation of these standards can vary widely,

⁶⁵¹ SZSE, “Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies” [2006] Sseinitiative.org <<https://sseinitiative.org/wp-content/uploads/2019/12/en-SZSE-Rules.pdf>> accessed November 1, 2022.; SSE, “Notice on Strengthening the Social Responsibility of Listed Companies and Issuing the “guidelines for Environmental Information Disclosure of Listed Companies on the Shanghai” (SSE, 2008) <https://sseinitiative.org/wp-content/uploads/2019/12/Shanghai-Stock-Exchange-social-responsibility-guidance_ENG.pdf> accessed November 1, 2022.

⁶⁵² Xiaojuan Wu and Patrycja Hąbek, “Trends in Corporate Social Responsibility Reporting. The Case of Chinese Listed Companies” (2021) 13 Sustainability 8640 <<https://doi.org/10.3390/su13158640>>.

⁶⁵³ Tai-Yuan Chen, Mingyi Hung and Yongxiang Wang, “The Effect of Mandatory CSR Disclosure on Firm Profitability and Social Externalities: Evidence from China” (2018) 65 Journal of Accounting and Economics 169 <<https://doi.org/10.1016/j.jacceco.2017.11.009>>; Kuo-Cheng Huang and Yuchun Wang, “Do Reputation Concerns Motivate Voluntary Initiation of Corporate Social Responsibility Reporting? Evidence from China” (2022) 47 Finance Research Letters 102611 <<https://doi.org/10.1016/j.flr.2021.102611>>.

leading to inconsistent implementation.⁶⁵⁴ As a result, there might also be differing views on what constitutes 'responsible' behaviour, leading to potential conflicts and disagreements.

Finally, in the context of CSR and CFP, some scholars argue that companies should choose appropriate metrics to improve the economic benefits of engaging in CSR. Regardless of environmental factors,⁶⁵⁵ CSR needs to be effectively implemented and prioritised in a company's strategy. Companies should therefore, integrate CSR into their business models and strategies to achieve long-term sustainable development and a socially responsible corporate culture.

7.2.6 Navigating the Regulatory Environment: Power of the Umbrella Approach

Institutional theory suggests that the regulatory environment in which a company operates can significantly influence its behaviour and decisions related to CSR.⁶⁵⁶ The concept of the “umbrella” in the Triple U approach symbolises and emphasises the key role of the Chinese government in guiding and regulating CSR programmes in China, whereby the government has played the role of an intervener in the development and implementation of relevant laws and regulations. This regulatory function is part of the corresponding institutional theory and refers to legal obligations driven by the legal system, such as those that individuals are compelled to comply with and fulfil. The legitimacy of the government's regulatory role is also an important aspect of institutional theory. In addition, the concept of legitimation is frequently referred to in discussions of institutional theory; for example, legitimation as a long-term cognitive process of “institutionalisation”⁶⁵⁷ and the efforts of institutions to gain stability

⁶⁵⁴ Ruixin Su and Zhong Wang, “Corporate Communication of CSR in China: Characteristics and Regional Differences” (2022) 14 Sustainability 16303, 16303–16305 <<https://doi.org/10.3390/su142316303>>; Shaozhen Han and others, “Lie of the Weak: Inconsistent Corporate Social Responsibility Activities of Chinese Zombie Firms” (2020) 253 Journal of Cleaner Production 119858 <<https://doi.org/10.1016/j.jclepro.2019.119858>>.

⁶⁵⁵ Zhi Tang, Clyde Eirikur Hull and Sandra Rothenberg, “How Corporate Social Responsibility Engagement Strategy Moderates the CSR-Financial Performance Relationship” (2012) 49 Journal of Management Studies 1274, 1274–1277 <<https://doi.org/10.1111/j.1467-6486.2012.01068.x>>.

⁶⁵⁶ Brammer, Jackson and Matten (n 605) 3-5

⁶⁵⁷ Roy Suddaby and Royston Greenwood, “Rhetorical Strategies of Legitimacy” (2005) 50

through legitimacy⁶⁵⁸.

In terms of guided soft law, the Chinese government has played a prominent role in promoting organisations in different industries or sectors in CSR through regulations and policies. In addition, in terms of the timeline of CSR disclosure, in 2008, the government first issued the "Guidance on Promoting the Sustainable Development of Foreign Invested Enterprises", highlighting the requirement for foreign-invested enterprises in China to disclose their CSR information. In 2015, the CSRC issued guidelines on information disclosure for listed companies, encouraging them to produce high-quality reports and ensure their credibility. Subsequently, in 2019, the Ministry of Environment issued guidelines on the disclosure of information in the corporate environment category. All the above demonstrates that the government is gradually attempting to cover diverse aspects and industries year after year to establish a comprehensive and integrated CSR disclosure regime which better reflects the guidance and direction role it claims to play in the regulatory environment.

Furthermore, in addition to providing mandatory CSR-related regulations in, for example, Article 5 of the Company Law, the Chinese government is simultaneously and actively enforcing the monitoring of CSR regulations and imposing penalties on companies that violate them. For instance, the 2016 Wei Zexi case (related to the Chinese tech giant company Baidu) sends a clear signal that companies must undertake their CSR more seriously.⁶⁵⁹ Specifically, Wei Zexi was a university student who died of cancer after receiving dubious treatment from a hospital that ranked highly on China's largest search engine, Baidu. The incident sparked nationwide outrage, and Baidu faced severe criticism from the public and the government for putting profits ahead of its users' well-being. At the same time, the incident highlighted the inadequacy

Administrative Science Quarterly 35 <<https://doi.org/10.2189/asqu.2005.50.1.35>>.

⁶⁵⁸ Christine Oliver, "Strategic Responses to Institutional Processes" (1991) 16 *Academy of Management Review* 145, 145–148 <<https://doi.org/10.2307/258610>>.

⁶⁵⁹ Bien Perez, Jack Liu and Zen Soo, "Baidu May Face Tough Penalties in Fallout from Student's Death: Analysts" *CNBC* (May 5, 2016) <<https://www.cnbc.com/2016/05/04/analysts-say-baidu-may-face-tough-penalties-in-fallout-from-students-death-scmp.html>> accessed January 1, 2022.

of China's regulatory framework for healthcare as well as online information, and the need to strengthen CSR in the sector. Consequently, in addition to being fined by the Chinese government, Baidu was forced to overhaul its medical advertising policy.⁶⁶⁰ At the same time, the Chinese government implemented new regulations to strengthen the oversight of online medical advertising and information.

In addition to the hard and soft laws mentioned above, the government also provides incentives for companies to engage in CSR activities. For example, the Chinese government has established a tax incentive scheme for companies that invest in environmental protection and energy conservation. Under the scheme, companies who invest in approved energy conservation and environmental protection projects can apply for tax reductions or rebates of up to 50% of their actual investment.⁶⁶¹ The scheme was introduced in 2008; since then, the regulations and guidelines have been updated annually to encourage different types of companies to participate in the scheme.⁶⁶²

The “umbrella” approach primarily argues that all CSR practices are subject to guidance, mentoring and protection by the government. In this sense, the government plays an instrumental role as a mentor or instructor, providing resources and support to assist companies in developing CSR programmes that meet the needs and expectations of both the government and wider society. It is crucial to ensure that the government's regulatory role is guided by legitimate legal and ethical principles and creates a supportive environment in which companies can effectively implement CSR practices. This guiding role also helps to address the inadequacy of the legal framework for CSR

⁶⁶⁰ Tom Phillips, “China Investigates Baidu after Death of Student Who Sought Cancer Cure on Internet” *The Guardian* (2017) <<https://www.theguardian.com/world/2016/may/03/baidu-investigated-in-china-after-death-of-student-who-sought-cancer-cure-on-internet>> accessed November 1, 2022.; Yue Wang, “Baidu’s Ad Business May Crack under Student’s Cancer Death” *Forbes* (2016) <<https://www.forbes.com/sites/ywang/2016/05/05/baidus-ad-business-heads-for-shakeout-after-college-student-death/?sh=752081022f22>> accessed November 1, 2022.

⁶⁶¹ Art. 27, Chinese Corporate Income Tax

⁶⁶² Hannah Feng, “Tax Incentives in China” (China Briefing, 2022) <<https://www.china-briefing.com/doing-business-guide/china/taxation-and-accounting/tax-incentives-in-china>> accessed November 1, 2022.

in China, which is still evolving and lacks a clear legal framework.

7.2.7 Synthesis of Literature on the Umbrella Approach of Regulatory Environment

Institutional theory suggests that organisations are shaped by the broader institutional environment in which they operate, including laws, regulations and policies.⁶⁶³ The regulatory environment, in the context of institutional theory, refers to the formal laws, regulations and policies that govern a company's social and environmental responsibilities.⁶⁶⁴ More specifically, regulatory mechanisms can be coercive or prescriptive. Coercive mechanisms include laws, regulations and penalties that force companies to comply with social and environmental standards,⁶⁶⁵ whereas normative mechanisms include social norms, values and expectations which influence companies to adopt socially responsible practices.

In this scenario, when discussing the role of the relationship between the regulatory environment and the umbrella approach (government role) in advancing CSR, it is important to compare the relationship between laws and regulations and CSR. The relationship between law and CSR is complex, as companies are frequently driven by a combination of legal obligations and ethical considerations.⁶⁶⁶ The three bottom lines of CSR – labour, human rights, and environmental considerations – provide a useful starting point for understanding companies' social and environmental responsibilities.

Legal principles and legislation can play an important role in guiding companies' CSR

⁶⁶³ Lynne G Zucker, "Institutional Theories of Organization" (1987) 13 *Annual Review of Sociology* 443 <<https://doi.org/10.1146/annurev.so.13.080187.002303>>.

⁶⁶⁴ Jane Glover and others, "An Institutional Theory Perspective on Sustainable Practices across the Dairy Supply Chain" (2014) 152 *International Journal of Production Economics* 102, 102–103 <<https://doi.org/10.1016/j.ijpe.2013.12.027>>.

⁶⁶⁵ Doreen McBarnet, "Corporate Social Responsibility beyond Law, through Law, for Law" (2009) 03 *University of Edinburgh School of Law Working Paper* <<https://doi.org/10.2139/ssm.1369305>>.

⁶⁶⁶ Karin Buhmann, "Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR" (2006) 6 *Corporate Governance* 188, 188 <<https://doi.org/10.1108/14720700610655187>>; Onyeka K Osuji, "Corporate Social Responsibility, Juridification and Globalisation: 'Inventive Interventionism' for a 'Paradox'" (2015) 11 *International Journal of Law in Context* 265 <<https://doi.org/10.1017/s1744552315000154>>.

actions.⁶⁶⁷ For example, human rights laws can provide guidance on issues such as non-discrimination and fair labour practices, whereas environmental laws can set standards for pollution control and natural resource conservation.⁶⁶⁸ However, the coercive force of law also plays a significant role in promoting companies' social and environmental commitments. Companies may face legal sanctions for non-compliance with environmental or labour laws, which can motivate them to adopt more responsible practices. Important legislation and legal principles play a role as universal values that guide companies' CSR actions.⁶⁶⁹ Furthermore, in the Chinese context, China has developed a set of regulations and standards that specifically guide companies' CSR actions. For instance, the guidelines issued by Shanghai and Shenzhen Stock Exchanges, or the State-owned Assets Supervision and Administration Commission (SASAC) directives for state-owned enterprises, represent the country's efforts to establish universally accepted values in CSR practices.

Corporate law can also play a role in promoting CSR principles within companies. Directors' duties, for example, can ensure that companies take a long-term and sustainable approach to decision-making, whereas disclosure requirements can promote transparency and accountability.⁶⁷⁰ Despite this, there are also limitations on the use of corporate law in promoting CSR. For example, legal requirements may not always align with ethical considerations, and there may be a lack of legal frameworks to address emerging issues such as social inequality or climate change.⁶⁷¹ In particular, Chinese company law provides a general legal framework for the establishment, organisation and operation of companies in China. While the legislation has no explicit reference to CSR or sustainability, it certainly outlines the fiduciary duties and obligations of directors to the company and shareholders, which can be interpreted as requiring

⁶⁶⁷ Latapí, Jóhannsdóttir and Davíðsdóttir (n 200) 4-6.

⁶⁶⁸ Alvise Favotto and Kelly Kollman, "When Rights Enter the CSR Field: British Firms' Engagement with Human Rights and the UN Guiding Principles" (2021) 23 *Human Rights Review* 21, 21-24 <<https://doi.org/10.1007/s12142-020-00614-w>>.

⁶⁶⁹ Buhmann (n 662). 188-190

⁶⁷⁰ Guglielmo Bevivino, "Corporate Social Responsibility and Duties of Directors" (2014) 25 *European Business Law Review* 923 <<https://doi.org/10.54648/eulr2014039>>; Zhao (n 563) 19-21

⁶⁷¹ Amor-Esteban, García-Sánchez and Galindo-Villardón (n 578). 435

directors to ensure the long-term viability and sustainability of the company. According to Article 147 of the Chinese Company Law 2018:

"Directors shall have a fiduciary duty and a duty of diligence to the company...A director must be faithful to the interests of the company and must not use his or her relationship with the company for personal gain".

This fiduciary duty means that directors should act in the best interests of the company, which naturally includes making decisions that ensure the long-term sustainability of the company. More importantly, it may involve considering social and environmental impacts, as well as considering the long-term impact of their decisions on all stakeholders, which may be consistent with the principles of CSR.

In conclusion, the relationship between law and CSR is complex and multi-faceted. Although legal principles and legislation can play an important role in guiding and promoting companies' CSR actions, there are also limitations in the use of corporate law to promote CSR, and innovative approaches are thus required to address emerging social and environmental issues.⁶⁷² In response, the umbrella approach (i.e. the role of government) provides a complementary role to the inadequate legal framework, encompassing a number of guiding, protective and monitoring functions.

⁶⁷² Zhao (n 563) 35-37

CHAPTER 8: CONCLUSION

8.1 Restatement of Research Questions

In exploring the area of corporate social responsibility (CSR) of listed companies in China, this thesis engages with the intricacies of hard and soft law, corporate governance, and the special challenges posed by high-tech companies.

Guided by a series of illustrative research questions, this thesis has sought to explore the depth and breadth of CSR implementation in China's legal structure. It identifies CSR issues specific to high-tech firms and envisions a modern and effective CSR process in China. Central to this vision is the Triple U framework—a hybrid approach focusing on Urgency, Uniqueness, and an Umbrella (Government oversight)—which offers a novel synthesis of hard and soft law to better govern CSR activities in the rapidly evolving landscape of China's high-tech sector.

In conducting a comprehensive study of CSR in China's legal and regulatory environment, this thesis has focused the research on five key questions:

1. How does the existing CSR regulatory framework in China influence the practices of high-tech companies listed on the ChiNext, and what are the strengths and limitations of this framework in addressing contemporary CSR challenges?
2. What unique CSR challenges and opportunities do Chinese high-tech companies face, and how do these shape their strategic and operational approaches to CSR?
3. Based on the analysis of 99 legal cases, how is CSR practised and enforced in the Chinese high-tech sector, and what discrepancies exist between the legal mandates and real-world application?

4. How is Artificial Intelligence being integrated into the CSR strategies of Chinese high-tech firms, and what are the implications of this integration for ethical, regulatory, and operational aspects of CSR?
5. How do historical, cultural, and political factors influence the practice of CSR in China's high-tech industry, and how can these institutional factors be aligned with CSR objectives to promote sustainable and ethical business practices?

Each question has revealed a unique dimension of CSR and its regulation of high-tech listed companies in China, aiming to provide unique and valuable insights into the interplay between hard and soft law and corporate governance.

8.2 Summary of the Main Findings

8.2.1 Overview of the Existing CSR Regulatory Regime

The first research question initially aimed to reveal the existing CSR regulatory regime for listed companies in China. By elucidating the current system's structure, operation and impact, this analysis sought to develop a coherent understanding of the starting point of CSR regulation in China. CSR regulation of listed companies in China is not as strict or extensive as in some other countries. However, CSR has been progressively integrated into Chinese regulations and policy documents, especially as sustainable development and social responsibility have become increasingly important globally.

In response to the first research question, the results show that although a series of measures have been introduced, listed companies are mainly "government-led and enterprise-executed" in terms of CSR, and their motivation to fulfil their social responsibilities basically stems from the government's requirements. Along with the promulgation and implementation of a series of policy documents, the content requirements and CSR system for listed companies in China have been continuously

developed and revised, gradually transitioning from voluntary to mandatory requirements.

Firstly, some CSR provisions are related to China's Company Law and Securities Law. Listed companies are encouraged to engage in public welfare and increase social responsibility information disclosure. In particular, Article 5 of China's Company Law provides a series of more general CSR provisions, but the overall implementation has not been consistent.

Among voluntary guidance documents, from 2006, when the Shenzhen Stock Exchange proposed the Guidelines on Social Responsibility of Listed Companies, suggesting that companies voluntarily disclose their social responsibility reports, to 2008, when the Shanghai Stock Exchange also issued the Notice on the Implementation of Social Responsibility of Listed Companies, encouraging listed companies to strengthen their social responsibility and disclose relevant information.

This situation changed in 2018 when the CSRC issued a revised Code of Governance for Listed Companies, setting out more detailed and specific standards. The Governance Code also mentions adopting a combination of mandatory and voluntary disclosure, establishing a corporate governance structure for information disclosure.

Regarding mandatory requirements, the Hong Kong Stock Exchange took the lead in 2019 by publishing a consultation paper on revising the ESG Reporting Guidelines and the related Listing Rules. This revision reflects that the ESG disclosure requirements in CSR will be continuously upgraded, from voluntary disclosure in the past to explanation in case of non-compliance to mandatory disclosure for some indicators.

Overall, while these regulations are based on sound principles, they are often not fully utilised due to their weak enforceability and lack of specific practice guidance and

standards of practice, and they are more voluntary than mandatory. This can lead to issues such as inconsistent implementation by different companies. For example, larger or internationally orientated companies in China may adopt more extensive CSR practices to meet the standards set by foreign investors or international agreements.

As of January 2023, the Chinese government has also reconsidered and introduced a new draft (2nd draft) of the Company Law, with the second review incorporating the principle of "improving the modern enterprise system with Chinese characteristics and promoting entrepreneurship" as emphasised in the report of the 20th Party Congress. Simultaneously, this principle has also been incorporated into Article 1 of Chapter 1, General Provisions.

In addition, a new article, Article 20, has been introduced to provide for the social responsibility of companies. This article stipulates that companies should also consider the interests of employees, consumers and other stakeholders when carrying out business activities and fulfilling their obligations under laws and regulations. In addition, companies must also pay attention to public interests, such as ecological protection and environmental protection, thereby assuming a more comprehensive range of social responsibilities. At the same time, the State further encourages enterprises to participate in social welfare activities and publish social responsibility reports. This additional provision emphasises enterprises' social responsibility more clearly within the legislative framework.

Compare this with Article 5 in the Companies Act 2018, highlighted throughout this thesis, both of which require companies to comply with laws and regulations. However, Article 5 also refers to the need to comply with "social ethics and business ethics". This broad requirement may give more interpretations and options and cover a wide range of ethical behaviours. But compared to Article 5's "upholding integrity and accepting government and public supervision," Article 20 of the draft expands on these

obligations by stating that companies should consider the interests of stakeholders and society, such as ecological and environmental protection. This adds a more specific dimension to the social responsibilities that companies should fulfil. There is also the fact that whereas the original Article 5 vaguely requires enterprises to "assume social responsibility", Article 20 is more explicit in that it encourages enterprises to participate in social welfare activities and publish social responsibility reports.

In essence, while both articles emphasise the need for corporate social responsibility, the requirements and expectations of Article 20 in the new draft appear to be clearer and more comprehensive, similar to the findings analysed in the first section of this thesis. Most importantly, the new article expands on the slightly vague exhortation in Article 5 by adding substance and specificity to the concept of CSR.

8.2.2 CSR Reporting and Its Reflection on Practices Among Listed Companies

Regarding the second question, the study of Chinese companies' CSR practices is a multifaceted and dynamic area of investigation. From an academic perspective, this research question provides a snapshot of the current state of CSR practice under the existing legal framework in China, which can be used as a benchmark for future research. More directly, the answer to this question can reveal how the legal framework supports or hinders CSR practices, thus reflecting the effectiveness of existing laws and regulations. In this case, it is possible that China's unique socio-economic and cultural environments both influence CSR practices, so this analysis will assist in identifying gaps between the legal requirements of CSR and the actual practices of companies, highlighting challenges while introducing areas where improvements can be made.

Within this context, it is crucial to emphasise the role of regulators, such as stock exchanges, in mandating and promoting CSR reporting. Regulatory measures, as evidenced by regulatory comparisons between China, the UK and the US, play a key role in creating the conditions for CSR disclosure. This regulatory impetus, albeit with different approaches and emphases across countries, is essential in ensuring that a

uniform framework guides listed companies. This is exemplified by the measures taken by the Hong Kong Stock Exchange, which introduced rules that moved from a 'comply or explain' to a mandatory ESG disclosure requirement. However, this comparison also highlights the need for Chinese regulators to further their efforts, particularly in promoting ESG reporting.

An analysis of CSR reporting by China's top-listed companies further illustrates the progress and gaps in this area. Notably, these companies have made notable efforts to align their practices with global CSR standards, with examples including environmental efforts, employee welfare initiatives, community contributions and corporate governance. However, it is clear that these efforts are not evenly distributed across companies, with some sectors (particularly high-tech and real estate) showing higher levels of CSR activity and disclosure.

On the issue of transparency and disclosure, it is clear that there is a complex dynamic between listed companies and their different stakeholders. The challenges in terms of disclosure are twofold: there are differences between the quantity and quality of information companies wish to disclose, and the requirements of investors, and regulatory oversight affects the type and quantity of information disclosed.

In addition, it is evident that different types of investors have different information needs, with institutional investors seeking large amounts of raw data for in-depth analysis, while public investors prefer processed, easily digestible information. These differences highlight the existing 'expectations gap' in the area of information disclosure and raise the need for stock exchanges to promote more effective and targeted information exchange.

Based on an in-depth study of Article 5 of the Chinese Company Law, the role of the law in promoting CSR in China cannot be overstated. Article 5 is unique because it

attempts to place CSR at the forefront of corporate decision-making, pushing companies to balance their economic goals with their social and environmental responsibilities.

A key observation in our analysis is the evolving interpretation of Article 5, which social, economic and political changes have influenced in China. Initially seen as a statute with ambiguous implications for CSR, Article 5 has, over the years, become a cornerstone of China's efforts to integrate CSR into corporate practice. As our discussion points out, this shift has been driven by a number of factors, such as China's drive towards sustainable development, the government's increasing focus on social harmony, and increased public awareness of CSR.

However, this analysis also highlights some of the complexities surrounding the implementation and enforcement of Article 5. The issue of enforcement gaps, where the spirit of the law is not fully reflected in business practices, remains a major challenge. Poor regulatory enforcement, differing interpretations of the law by businesses, and the pressure to meet short-term economic goals have combined to contribute to this gap. The lack of clarity on the legal implications of non-compliance with Article 5 also undermines its potential to drive CSR practices.

In addition, this thesis of the role of the China Stock Exchange in promoting CSR highlights the importance of institutional efforts to improve CSR disclosure. Despite mandatory and voluntary CSR disclosure requirements, inconsistency and variation in information disclosure persists. This stems from the divergent information needs of different investor groups, varying levels of voluntary disclosure across industries, and financial bias in disclosure requirements. This underlines the need for comprehensive and uniform disclosure standards and the development of a culture of transparency in the corporate sector.

Industry associations have a role to play in setting standards and guidelines for CSR. Global reporting frameworks like the UN Global Compact Principles or GRI (Global Reporting Initiative) already exist, but there is a lack of uniform application in China. Some companies adhere to guidelines developed by multinational companies, NGOs or industry associations, resulting in various disclosure methods and uneven application in the Chinese capital market. This lack of uniformity hinders the comparability of CSR reporting and, in turn, the usefulness of CSR reporting.

More importantly, the inconsistency of CSR reporting across different industry sectors is a vital issue. While various CSR reporting guidelines exist, their application is often haphazard and lacks a clear standard. In fact, the use of these guides often results in reports that are more promotional than a true reflection of a company's environmental or social impact. Harmonizing disclosure reporting requirements is necessary to provide clearer information to investors and other stakeholders.

In this regard, while the need for harmonised standards is clear, it is also essential to take into account the variability in the level of corporate governance and the costs associated with disclosure. Drawing on more established mechanisms in industry disclosure rules can help balance standardisation and consideration of company capabilities. One way to do this is to encourage companies to engage third-party assurance in preparing and publishing CSR reports to enhance their reliability and value.

In addition, CSR reporting should not be seen as an isolated task but as an ongoing process integrated into a company's overall operations. Companies should emphasise regular data collection and collation to ensure a robust and effective CSR reporting process. Establishing a CSR management system and considering CSR reporting factors as internal control management indicators may be an essential step in promoting the sustainability of CSR activities of listed companies.

In conclusion, the current state of CSR reporting in China has been found by this thesis to be one of both progress and challenges. While considerable progress has been made in integrating CSR into business practices, there is a clear need for more comprehensive, consistent and effective CSR reporting. Achieving this will require a concerted effort by regulators, listed companies, investors and industry associations to strengthen China's CSR reporting framework. Moving towards such an improved reporting framework will not only strengthen trust and transparency in China's capital markets but also contribute to the Sustainable Development Goals, make China's economic growth more inclusive and resilient, and bring benefits to all stakeholders. Therefore, the future of CSR reporting in China offers a wealth of opportunities to drive sustainability and social responsibility to the heart of business operations.

Incorporating CSR into Chinese company law, particularly through Article 5, represents an important step in integrating business practices with social and environmental objectives. However, in order to fully realise this vision, this thesis has found that concerted efforts will be required to address implementation gaps, regulate CSR disclosure and improve CSR reporting guidelines. In the future, China's approach to CSR will serve as an important case study to understand how the legal framework can be used to promote socially responsible and environmentally sustainable business practices.

8.2.3 The Unique Landscape of CSR in High-Tech Companies

The third question addressed the main object of this thesis, which is listed technology companies in China, so CSR-related analyses are conducted in the initial chapters of this thesis, applying stakeholder theory to build a more comprehensive picture. This question aimed to recognise the unique challenges and opportunities presented by these highly influential and rapidly growing entities in the Chinese economy.

The first conclusion drawn is that a combination of hard and soft law approaches to CSR implementation is increasingly regarded as an effective means of promoting

responsible behaviour by negative Chinese companies. The broader meaning of CSR and the unique face of CSR in China, including the role of different stakeholders and the unique dynamics of high-tech companies like Huawei, are nuances of the topic that are recognised. In particular, the findings suggest that these organisations face unique challenges when considering CSR issues related to high-tech companies. Notably, these firms' rapid innovation and growth require more flexible and responsive CSR practices that are not fully addressed by the current regulatory framework.

The research analysis in Chapter 1 highlights the significant role that CSR plays in shaping the business landscape of China's ChiNext-listed companies. An approach to CSR enforcement that combines hard and soft laws is increasingly recognised as an effective means of fostering responsible business behaviour. The nuances of this topic were recognised in terms of the broad meaning of CSR and the unique landscape of CSR in China, including the role of different stakeholders and the unique dynamics of a high-tech company like Huawei.

Throughout the discussion, the importance of CSR was continually emphasised, and this importance continues to grow as the global business environment evolves. Modern companies are prioritising not only their financial bottom line but also their social and environmental impact. Chinese companies in the ChiNext Market are no exception to this expectation as their influence rapidly expands. CSR initiatives have the potential to enhance their reputation, build trust with stakeholders and even provide a competitive advantage. In the Chinese context, a state-led model of CSR is crucial. It aligns corporate practices with national priorities and objectives and promotes a harmonious relationship between business development and social welfare.

However, CSR in China is more complex than simply complying with government regulations and expectations. It has been observed that companies in China face unique challenges in implementing CSR, some of which stem from societal expectations, while

others relate to market competition, governance structures and cultural norms. For example, Chinese companies are under pressure to balance growth and profitability with responsible practices that meet government expectations and societal demands. In such a context, interaction and collaboration between companies and NGOs (both domestic and international) can help promote CSR practices, create mutual benefits and provide key checks and balances.

The analysis also highlights different stakeholders' roles, interactions, and influence on CSR practices in Chinese high-tech companies. These stakeholders include shareholders, employees, customers, suppliers, partners, competitors and government, each with different interests and expectations. High-tech companies like Huawei demonstrate a complex web of stakeholder relationships, illustrating how they must navigate their different stakeholders' sometimes conflicting demands. It indicates that a company's success in CSR depends to a large extent on its ability to balance the interests and expectations of these different stakeholders, particularly given its unique position in the high-tech industry.

A specific aspect of the review process was the key role of human capital, exceptionally skilled employees such as engineers and designers, in shaping high-tech companies' business and CSR strategies. The success of these companies in the area of CSR is closely linked to their ability to attract and retain these critical employees while promoting innovation and maintaining a competitive advantage. Therefore, high-tech companies must integrate CSR into their human resource management strategies to attract, retain and motivate good employees while fostering an organisational culture that values and promotes responsible business practices.

Another key point that emerged from the discussion was the growing importance of a hybrid approach to CSR implementation that blends hard and soft laws among high-tech companies in China. Hard law refers to established legal rules and regulations that

companies must comply with, while soft law represents non-binding norms, standards and principles. In China, hard law plays a vital role due to its state-led solid approach to CSR. However, through guidelines, voluntary standards and self-regulation, soft law also provides a flexible mechanism to promote CSR. This hybrid approach provides the rigidity needed to ensure minimum compliance, while allowing flexibility to adapt to the unique circumstances and challenges faced by each company.

The case of Huawei provides compelling insights into this hybrid approach. While complying with the Chinese government's CSR-related regulations and policies (hard law), it also adheres to various international standards and principles, participates in global initiatives, and works with NGOs and other stakeholders (soft law). This approach allows Huawei to demonstrate its commitment to CSR while maintaining its competitive edge in the global marketplace.

Particularly in the high-tech industry, where innovation is crucial, and products are developing rapidly, this hybrid approach seems helpful. It ensures compliance with legal requirements, promotes innovation and competitive advantage, and maintains the trust and support of various stakeholders. This analysis suggests that other Chinese companies in the ChiNext market could also benefit from adopting a similar approach.

However, challenges remain. Notable is the potential conflict between core employees' interests and the company's direction, the balance between profitability and responsible practices, and the potential social and employee issues caused by outsourced production. These challenges underline the need for ongoing commitment to CSR, transparency, stakeholder engagement and continuous improvement of CSR strategies.

In conclusion, implementing CSR by Chinese companies listed on ChiNext has been found to require a comprehensive, flexible and balanced approach. A hybrid approach of hard and soft law can provide the necessary structure and flexibility to enable these

companies to effectively manage their diverse stakeholders, navigate the challenges inherent in their respective industries, and fulfil their CSR responsibilities. As they strive for success in the global marketplace, their commitment to CSR can enhance their reputation, credibility and competitiveness while contributing to the broader goals of social and environmental sustainability.

8.2.4 Enforcing CSR through Hard Law

After understanding the specifics of the subject of the thesis, the research question extended to the potential and effectiveness of the existing legal framework. In this context, this thesis scrutinises the effectiveness of 'hard law' measures, in particular China's Company Law 2018, as a tool to enhance CSR implementation. Some key conclusions are drawn through a comprehensive analysis of various articles and case studies.

Firstly, China's case reporting system, particularly the online database of Chinese judgments, has played a pivotal role in improving the transparency and consistency of judicial decisions. This has allowed us to build a relatively complete sample of corporate dispute cases relating to Article 5 of the Company Law. The availability of this data has made possible an empirical study of CSR-related cases, providing valuable insights into the application of CSR in the Chinese legal framework.

The analysis of the selected cases shows that Article 5 of the Company Law has been invoked in a wide range of corporate disputes. It was found that approximately 68% of the cases directly referenced or applied Article 5, highlighting its importance as a legal basis for addressing CSR issues. These cases were found to cover a wide range of situations, including abuse of shareholder rights, corporate dissolution, fiduciary duties and socially harmful conduct, among others. Article 5 is considered to help promote social ethics, protect the legitimate interests of companies and ensure compliance with laws and regulations.

However, it is important to note that in some instances, the application of Article 5 may not always be precise or accurate. This is due to the broad scope of the article, which covers a wide range of CSR-related issues. In some cases, other provisions of the CCL may provide a more specific and precise legal basis for a judgment. It is, therefore, crucial for judges to carefully consider the relevant provisions of the law when dealing with CSR-related cases to ensure that the legal framework is accurately applied.

In addition, Article 5 was indirectly applied in approximately 32% of cases as an additional legal resource or as a basis for supporting judgments. While Article 5 can be used as a mantra for CSR in these cases, it also provides an opportunity for judges to abuse its application, potentially reducing the accuracy and fairness of judicial decisions relating to CSR. It is essential to encourage judges to apply the correct legal provisions more accurately in CSR-related cases, to promote the development of hard law on CSR in China, and to raise awareness of the comprehensive requirements of CSR-related legal provisions.

The analysis of the selected cases also highlighted the role of Article 5 of the Company Law in protecting vulnerable parties and promoting the interests of the company as a whole. Examples were found where the court recognised the importance of balancing shareholders' rights with safeguarding the company's legitimate interests and fulfilling its social responsibilities. The application of section 5 in cases involving the acquisition of shareholders' shareholdings, the resolution of conflicts between shareholders and the protection of creditors' interests demonstrates its relevance in addressing the complex stakeholder dynamics within companies.

There are specific cases in the sample involving high-tech or technology-type companies that demonstrate the unique challenges and opportunities associated with CSR in these sectors. Complex stakeholder networks, an emphasis on the company's overall interests, and the need for innovation and value creation all raise specific CSR-

related issues. Article 5 of the CCL is considered relatively appropriate and suitable for addressing CSR issues in high-tech companies. However, it is recognised that the conceptual nature of the article limits its substantive utility and that a more comprehensive legal framework is needed to address the CSR challenges specific to the high-tech sector.

The findings of this thesis have several implications for the legal practice of CSR in China. First, there is a need to ensure the accurate and precise application of Article 5 of the Company Law. Judges should carefully consider other relevant provisions in the Company Law to provide a more accurate and specific legal basis for their decisions. This will help improve the accuracy and fairness of judicial decisions relating to CSR, ultimately enhancing legal protection for stakeholders and promoting responsible corporate behaviour.

Secondly, China's hard law on CSR needs further development. While Article 5 of the CSR Law serves as a general framework, more specific and comprehensive legal provisions that address CSR-related issues in different industries and contexts would be beneficial. This would provide clear guidance to companies and judges in addressing CSR issues and promote a higher level of corporate accountability and responsibility.

In addition, the thesis highlights the importance of transparency and consistency in judicial decisions. The availability of online databases, such as the China Judicial Documents website, has increased transparency and facilitated empirical research on CSR-related cases. Continued efforts to strengthen the reporting system and make relevant legal documents easily accessible will contribute to a better understanding of the legal practice of CSR in China and promote accountability and trust in the judicial system.

In summary, this thesis has shed light on the legal practice of CSR in China, focusing

on applying Article 5 of the Chinese Enterprise Law. The analysis of the selected cases provides valuable insights into the use of Article 5 as a legal basis for addressing CSR-related issues. While Article 5 plays an essential role in promoting responsible corporate behaviour and protecting the legitimate interests of companies, its application requires careful consideration to ensure accuracy and fairness. The findings of this thesis highlight the importance of having specific and comprehensive hard CSR laws in place, improving transparency and consistency in judicial decisions, and promoting higher levels of corporate accountability and responsibility. These steps will help advance the practice of CSR in China and promote a more sustainable and socially responsible business environment.

8.2.5 The Role of Soft Law in CSR Enforcement

The fourth question led to an exploration of the area of soft law and its ability to enhance CSR implementation. After a basic understanding of the hard law aspects, in contrast, soft law in China was found to offer additional potential to enhance CSR implementation.

In this regard, this thesis delves into the effectiveness of the Corporate Governance Code and regulations developed by regulators such as the Stock Exchange and the CSRC, revealing their roles and potential to strengthen the CSR framework. Soft law governance in CSR primarily refers to guidelines, principles, and other non-binding regulatory mechanisms that encourage firms to act in a socially responsible manner, which can include everything from industry self-regulation, and national guidance documents to the issuance of guidelines by international organisations. The impact of soft law governance on corporate governance is significant. While these instruments do not have the binding force of hard law (statutes, regulations), they can shape corporate behaviour by setting expectations for responsible behaviour. Ultimately, these soft law CSR codes influence corporate governance by shaping the values, norms and expectations of corporate behaviour in China.

More importantly, this thesis also aimed to highlight a significant correlation between CSR and soft law governance, as well as corporate governance in China, which stems from the nature of corporate governance and CSR and the role that soft law plays in shaping both. And it was found to provide a flexible and exploratory mechanism for guiding corporate behaviour that is more appropriate to China's development. Therefore, to address this issue, this thesis also provides a comprehensive analysis of the practice of CSR in corporate governance from three perspectives: cultural, historical, and policy.

An examination of corporate governance in China through the lens of Confucianism, Guanxi culture and the Belt and Road Initiative provided valuable insights into the unique characteristics of the Chinese corporate governance model. Throughout the analysis, it is evident that corporate governance in China is deeply rooted in its historical, cultural and economic context. The influence of Confucianism, with its emphasis on ethical, moral and hierarchical relationships, has shaped the values and norms within Chinese organisations. The Guanxi culture, which revolves around personal relationships, trust and mutual obligations, has significantly impacted business interactions and decision-making processes. The Belt and Road initiative has influenced corporate governance as a modern element by facilitating international cooperation and by requiring Chinese companies to adapt their governance practices to different contexts.

Confucianism is a fundamental pillar of corporate governance in China, as it places great emphasis on ethical behaviour, benevolence and moral rules. The cultural values derived from Confucianism permeate the corporate culture of many Chinese companies, including state-owned enterprises. The focus on ethics in Confucianism helps to align and optimise interpersonal relationships within organisations, promoting regulated behaviour and reducing corruption. However, excessive conformity and a solidified hierarchy can also have negative consequences. Chinese companies need to balance Confucianism's positive aspects (e.g., promoting integrity and respect) and addressing

the potential drawbacks (e.g., excessive hierarchy and lack of flexibility).

Guanxi culture plays an influential role in Chinese corporate governance as it shapes interpersonal relationships, trust and the exchange of resources. Guanxi culture has both positive and negative effects on corporate governance. On the positive side, it helps to build harmonious networks, and access to resources and prevent speculative behaviour through relationship norms. However, it can also give rise to problems such as favouritism, unequal treatment, and the prioritisation of personal relationships over organisational interests. Chinese companies need to navigate the complex Guanxi culture and strike a balance between fostering valuable relationships and maintaining ethical and fair practices in their governance structures.

The Belt and Road Initiative further influences corporate governance in China by promoting international cooperation and investment in countries along the route. Chinese companies, including state-owned enterprises, play a central role in implementing infrastructure projects and engaging in cross-border investments. The Initiative calls for the development of new mechanisms and responses to facilitate cooperation between companies with different backgrounds and cultural contexts. It provides opportunities for Chinese companies to expand their business, build relationships and contribute to partner countries' social and economic development. However, it also presents challenges in terms of regulatory issues, risk management and stakeholder engagement. Chinese companies must navigate these challenges while aligning their corporate governance practices with the objectives and requirements of the Belt and Road Initiative.

Analysis of the above showed that China's unique corporate governance model is influenced by Confucianism, Guanxi culture and the Belt and Road Initiative. Confucian values have shaped Chinese organisations' moral framework and hierarchical structure, promoting harmony and ethical behaviour. Guanxi culture

influences interpersonal relationships, trust, and resource exchange, contributing to positive and negative aspects of corporate governance. The Belt and Road Initiative brings new opportunities and challenges, requiring Chinese companies to adapt their governance practices to a diverse international environment. To successfully navigate these influences, Chinese companies need to balance traditional values and cultural norms with the demands of a rapidly changing global landscape.

Overall, understanding the uniqueness of corporate governance in China is crucial for scholars, practitioners and policymakers alike. It reveals the complexities and nuances of doing business in China, particularly for international companies seeking to work with Chinese partners. It also provides valuable insights into the dynamics of Chinese companies operating in their domestic and international contexts. Further research and analysis could broaden our understanding of corporate governance in China by delving into specific aspects of board structure, decision-making processes, stakeholder management, and the impact of regulatory frameworks.

Future research could explore the interplay between Confucian values and corporate governance practices in Chinese companies, examining how these values influence leadership styles, organisational structures and ethical decision-making. It would be valuable to examine the role of Guanxi culture in shaping corporate governance mechanisms and practices, and to explore the challenges and opportunities it presents to companies in different industries and regions of China. In addition, the Belt and Road Initiative provides a dynamic context for studying the evolution of corporate governance practices in China. Further research could analyse the impact of the initiative on the governance structures of Chinese companies involved in cross-border projects, considering issues such as risk management, stakeholder engagement and the integration of environmental and social considerations into the decision-making process. A comparative study could also be conducted to assess the similarities and differences in the corporate governance practices of Chinese companies operating

within the Belt and Road framework.

At the policy level, the unique characteristics of Chinese corporate governance can impact some extent. Policymakers should consider China's cultural and historical context when designing regulations and guidelines for corporate governance. It is important to strike a balance between promoting ethical behaviour and maintaining flexibility and innovation in the business environment. Promoting transparency, accountability and stakeholder engagement should be key objectives in the development of corporate governance policies in China.

As regards market practice, practitioners, including executives and managers of Chinese companies, could benefit from a deeper understanding of the unique elements of corporate governance in China. They should recognise the value of ethical behaviour, relationship building and stakeholder management in the Chinese business environment. Navigating the complex Guanxi culture while complying with legal and regulatory requirements is critical. In addition, Chinese companies should take advantage of the opportunities presented by the Belt and Road Initiative while mitigating risks and actively exercising social responsibility in their international dealings.

Drawing from real-life corporate practices, the case of Alibaba was found to provide valuable insights into the complexities and challenges of corporate governance for Chinese companies, particularly those operating in the technology sector. Alibaba, one of China's most prominent and successful technology companies, faces various governance issues that have sparked debate and raised questions about the effectiveness of corporate governance mechanisms in the Chinese context.

The governance challenges faced by Alibaba highlight the need to continuously improve and adapt the governance framework to the fast-growing and evolving nature of the technology industry. The company's dual-class share structure gave

disproportionate power to a small number of key executives, raising concerns about accountability and the protection of minority shareholder rights. This case highlights the importance of designing governance mechanisms that balance the need for innovation and entrepreneurship with transparency, accountability and the protection of shareholder interests.

In addition, the regulatory scrutiny and challenges faced by Alibaba demonstrate the delicate balance between state control and market-driven governance in China. The close relationship between the Chinese government and prominent companies such as Alibaba raises questions about the extent of political influence on corporate decision-making and the potential impact on shareholder rights and transparency. This highlights the importance of a strong regulatory framework that ensures fair competition, protects shareholders and promotes transparency in corporate governance.

The case of Alibaba also reveals the role of external stakeholders, such as investors and regulators, in influencing corporate governance practices. Growing investor demand for greater transparency and accountability, coupled with regulatory intervention, has put pressure on Alibaba to address governance issues and strengthen its corporate governance practices. This underscores the importance of active shareholder engagement and effective regulation in shaping corporate behaviour and promoting good governance practices.

Unlike the Alibaba case study, for Huawei, this thesis takes a more integrated approach to analysing its corporate governance practices by considering three factors in the unique Chinese context. Huawei is a Chinese multinational high-tech company that embodies a unique approach to corporate governance, characterised primarily by Confucian principles, Guanxi culture and alignment with the One Belt, One Road initiative. Confucianism inspires its entrepreneurial spirit and places great importance on people, viewing them as a strategic resource vital to business development. This is

reflected in the company's governance, which prioritises the growth of human capital over financial gain and ensures the protection of employee rights.

In addition, the influence of the Guanxi culture is evident within Huawei, particularly through the 'kinship' Guanxi (intimate internal relationship), which employs family members within the company hierarchy. Also notable is the 'Jiaoyi' Guanxi (trading relationship), which emphasises the personal relationship between the company and the government, which may explain the large amount of funding Huawei allegedly receives from the Chinese government.

Finally, Huawei's alignment with China's "One Belt, One Road" policy has facilitated its involvement in a large number of infrastructure projects and collaborations around the world. This initiative has contributed significantly to Huawei's revenues, provided local employment opportunities and helped to develop local corporate social responsibility through programmes such as the Seeds for the Future Support Programme.

In conclusion, by examining Confucianism, Guanxi culture and the Belt and Road Initiative in Chinese corporate governance, the thesis has provided valuable insights into the unique characteristics of the Chinese model. Confucian values, Guanxi culture and the Belt and Road Initiative, have shaped Chinese companies' ethical framework, interpersonal relationships and international engagement. Understanding these influences is critical for scholars, practitioners and policymakers seeking to navigate the complexities of corporate governance in China and promote sustainable and responsible business practices in the country. Future research and ongoing dialogue in this area will contribute to a deeper understanding of corporate governance in China and its impact on the global business landscape.

8.2.6 The Organic Synthesis of Hard and Soft Law

Finally, after applying stakeholder theory, and the broader context of corporate

governance, the thesis has suggested a potentially organic synthesis for the last research question.

In addition to combining the prescriptive nature of hard law with the flexibility of soft law, a robust regulatory mechanism can be developed. More importantly, this thesis explored the multiple dimensions of CSR, institutional theory, legal structure and the 'Triple U' approach in China's unique regulatory environment. These interactions present unique challenges and potential avenues for companies striving to achieve responsible and sustainable business practices. The Triple U has been proposed to consider the potential for a more dynamic and coordinated CSR process that takes into account factors beyond China's uniqueness while reducing its limitations in the Chinese context.

The 'Triple U' model - 'uniqueness', 'urgency' and 'umbrella' - provides a dynamic framework for exploring the foundations of corporate social responsibility in China. It proposes a paradigm shift from viewing CSR as an external obligation or additional cost to recognising it as an intrinsic value that can contribute to long-term sustainability. At the same time, it highlights the need for companies to understand the inextricable link between business behaviour and its social and environmental consequences.

In this regard, institutional theory plays a role in defining the impact of the regulatory environment on CSR behaviour. This is because it highlights how coercive (laws and regulations) and normative (social expectations) mechanisms shape CSR practices within firms. The theory also illustrates the importance of legitimacy and institutionalisation processes in promoting a stable, CSR-friendly environment.

Legal structures and their interaction with CSR practices have also been examined, providing insight into the complexities arising from the interaction of public international law and national and private law. Such interactions often give rise to

conflicts due to differences in legal standards and expectations in different jurisdictions. While these complexities highlight the need for greater harmonisation of international and national legal frameworks, they also expose the shortcomings of relying solely on the law as a tool for CSR implementation.

An examination of CSR in the Chinese regulatory environment presents a unique perspective. The role of the Chinese government, symbolised as the 'umbrella' in the 'Triple U' approach, is a key driver in guiding and regulating CSR programmes. At the same time, many scholars have noted that the Chinese government is gradually working to implement a comprehensive CSR disclosure system, demonstrating its commitment to promoting responsible business practices.

At the same time, however, these efforts have also revealed the limitations of the current CSR landscape in China, namely the existence of voluntary standards, the lack of binding laws, and the varying interpretations of 'responsible' behaviour. This calls for further exploration of how to establish effective and enforceable CSR norms, and how to integrate these norms into corporate strategies to achieve long-term sustainable development.

Building on this understanding, it is essential to note that while the 'Triple U' model offers a unique perspective, it must be adapted and developed to suit each organisation's specific context. Despite the inherent differences between Eastern and Western perspectives on business and society, adopting and adapting CSR principles must be seen as an opportunity, not a barrier. There is great potential to learn from the interaction of these different perspectives, creating a more comprehensive and holistic understanding of CSR and sustainability.

For example, when considering the impact of institutional theory, it is clear that the regulatory environment is dynamic and fluid. Therefore, a proactive and strategic

approach to CSR is essential for organisations to stay ahead of the curve. It is not enough to simply react to regulatory changes; organisations must anticipate these shifts and integrate sustainability and social responsibility into their core strategic planning.

Furthermore, despite its complexity and nuance, the legal framework guiding CSR is essential in ensuring that companies uphold their social and environmental responsibilities. Although sometimes perceived as restrictive, legal mechanisms can also be powerful tools to encourage, guide, and enforce sustainable business practices. However, ethical considerations should complement legal principles that promote a balanced and holistic approach to CSR to optimise its effectiveness.

With concrete regard to China, the role of the government as an 'umbrella' in the 'Triple U' model marks an important shift in perception. It recognises that the government's role is not just to enforce regulatory mechanisms. Rather, it also includes shaping social values, fostering a culture of responsibility, and facilitating the integration of CSR with corporate strategy. As the regulatory environment and social expectations change, so too must the approach to CSR, demonstrating the need to remain flexible and adaptable in this area.

Meanwhile, the regulatory environment in China has emphasised the importance of transparency and accountability, encouraging companies to disclose their CSR activities. Such transparency is essential to promote trust, enhance corporate reputation and build positive stakeholder relationships.

Given these insights, the challenges and limitations of the CSR landscape in China provide avenues for future research and potential development. There is a need to critically assess voluntary standards' effectiveness, explore ways to incorporate enforceable CSR norms, and investigate the role of government in shaping and promoting these norms. Constructing a comprehensive and robust CSR framework that

balances flexibility and enforceability and promotes sustainable development without stifling innovation remains a challenge.

In summary, this thesis has illuminated the intricacies of CSR in the regulatory environment, the institutional theoretical framework and the unique 'Triple U' approach in the Chinese context. It has highlighted the need for an integrated, multi-dimensional strategy that combines voluntary action, effective regulatory mechanisms and a supportive government role to shape responsible and sustainable business practices. This represents an original contribution to knowledge. Future research may extend this understanding to other socio-economic and cultural contexts, helping to refine strategies for embedding CSR in the global business arena.

8.3 Additional Findings

Over the past five years, an emerging topic highly relevant to Corporate Social Responsibility (CSR) has come to the forefront of the CSR debate: the role and impact of Artificial Intelligence (AI), with the introduction of a new EU Risk-Based AI Regulatory Act and the introduction of AI regulation in various countries. Given that the main focus of this thesis is on Chinese high-tech companies listed on ChiNext, research on this aspect of AI was found to be particularly urgent and necessary.

AI redefines business models and processes, creating new challenges and opportunities for CSR. On the one hand, AI has the potential to contribute to CSR goals by increasing efficiency, reducing waste, enhancing stakeholder engagement, and driving innovative solutions to social and environmental issues. On the other hand, AI introduces new ethical and governance considerations that must be managed within a company's CSR framework, such as data privacy, algorithmic bias, job displacement, and the digital divide.

Therefore, although this area was not initially included in our research questions, with AI's increasing prominence and relevance in the high-tech sector, I believe it is justified

to include it as an additional finding in this thesis. The following discussion will explore the intersection of AI and CSR in the context of Chinese high-tech firms and shed light on how AI-related CSR issues can be effectively managed under China's existing CSR regulatory regime, providing valuable insights for future research and policy directions.

The emergence of artificial intelligence as a transformative technology has profound implications for all aspects of society, the economy and governance. Its applications span many areas, including healthcare, finance, transport and more. While AI offers many benefits, such as improved efficiency, personalised services and predictive analytics, it also raises concerns related to privacy, bias, ethics and potential job displacement. These challenges underline the importance of a responsible and ethical approach to developing, deploying and using AI technologies.

Corporate social responsibility has become an essential part of modern business practice. It encompasses companies' ethical, social and environmental responsibilities towards their stakeholders and society at large. The integration of AI and CSR has the potential to yield positive results, using the capabilities of AI to drive sustainability, enhance decision-making processes, promote diversity and inclusion, and contribute to the achievement of the Sustainable Development Goals. However, it is crucial to ensure that the application of AI is ethical, respects human rights and avoids biased or discriminatory practices.

In this context, regulatory frameworks play a crucial role in shaping AI's responsible development and use. Different countries have adopted different approaches to regulating AI, reflecting their cultural, social and economic contexts. The EU has proposed a risk-based approach that classifies AI applications into different risk levels and sets out the corresponding requirements.⁶⁷³ The EU's focus on accountability and

⁶⁷³ EU, "Regulatory Framework Proposal on Artificial Intelligence" (European Commission, December 14, 2023) <<https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>> accessed November 14, 2023.

fairness aims to address bias and ensure transparency. In contrast, China's regulatory framework places a major emphasis on the protection of personal information, privacy and data security. The rights-based approach that China may adopt emphasises the importance of fundamental rights in regulating AI.

While the EU's proposed risk-based approach to AI regulation provides a systematic approach to addressing potential risks and promoting accountability, concerns have been raised about its potential impact on innovation and developing economically viable AI solutions. Critics argue that a rights-based approach, which prioritises fundamental rights regardless of the level of risk, is necessary to safeguard human rights and avoid undue restrictions on the development of AI. Striking a balance between risk management and rights protection is essential for effective AI regulation.

Furthermore, trustworthy AI, as outlined in the EU's Ethical Guidelines for Trustworthy AI, provides a framework for the creation of ethical and responsible AI systems. Trustworthiness includes considerations for privacy, data governance, fairness and diversity. By embracing trustworthy AI, organisations can strengthen their decision-making processes, mitigate agency issues and align their actions with the interests of their stakeholders. The integration of big data and AI further amplifies the potential for sustainability and environmental management, providing valuable insights and enabling the design of specific AI applications to address societal challenges.

In other words, the intersection of AI, CSR and regulatory frameworks presents opportunities and challenges for businesses and society at large. AI's responsible and ethical use can contribute to sustainable development, social welfare and business success. Regulatory approaches need to strike a balance between risk management and the protection of fundamental rights, promoting innovation while ensuring accountability. Collaborative efforts between governments, businesses, civil society and academia are essential to developing a comprehensive and adaptive regulatory

framework that responds to the evolving AI landscape and promotes its responsible and beneficial deployment.

As AI continues to evolve and shape our world, continued research, dialogue and collaboration are essential to navigate this transformative technology's ethical, social and legal dimensions. Future research should focus on the practical implementation of regulatory frameworks, assess the effectiveness of AI governance mechanisms, and identify best practices for integrating AI and CSR in different industries and regions. In addition, further research should explore the social and economic impacts of AI applications, particularly concerning employment displacement and inequality. It is important to understand the impact of AI on the workforce and to develop strategies to address any negative consequences. This may involve retraining and upskilling programmes, job creation in AI-related fields, and policies to promote inclusive growth.

In addition, efforts should be made to improve the transparency and accountability of AI systems. The interpretability and explainability of AI algorithms are essential to building trust and ensuring that decisions made by AI systems are fair and unbiased. Regulatory frameworks should include provisions for audits and third-party assessments of AI systems to ensure compliance with ethical standards and legal requirements. In this context, international cooperation is also crucial for the regulation of AI. As AI technologies transcend national borders, uniform standards and guidelines can help prevent a fragmented regulatory situation. International organisations, such as the UN and the OECD, can play an important role in facilitating dialogue and knowledge sharing and developing a global AI governance framework.

In conclusion, the ethical and responsible development, deployment and use of AI requires a holistic approach that includes regulatory frameworks, corporate social responsibility and international cooperation. Balancing the risks and benefits of AI while protecting fundamental rights and addressing social issues is essential. The EU's

proposed risk-based approach and China's potential rights-based approach provide valuable insights into different regulatory strategies. By adopting trustworthy AI and integrating CSR principles, companies can align their actions with the interests of their stakeholders and contribute to sustainable development. However, ongoing research, dialogue and collaboration are needed to navigate the changing AI landscape, address challenges and maximise the social benefits of this transformative technology.

8.4 Original Contributions and Critical Insights

8.4.1 From ChiNext to Global Stage: Expanding CSR Insights

This thesis contributes significantly to a broader understanding of global CSR trends by exploring CSR in China's high-tech industry. My findings, particularly on the unique regulatory environment and the integration of artificial intelligence into CSR strategies, enrich the global discourse on CSR practices in technology-driven industries. Meanwhile, this thesis constructs a bridge between the unique CSR landscapes of Chinese high-tech firms and the evolving global trends in CSR and AI governance. By applying the "Triple U framework" - focusing on urgency, uniqueness, and governmental "umbrellas" - this study dissects the multifaceted roles that influence CSR practices, providing targeted insights, especially in the global context of increasing regulatory scrutiny and ethical considerations in technology and business practices.

Furthermore, this in-depth analysis of the Chinese high-tech industry's approach to CSR reveals a unique blend of government influence, cultural norms, and corporate governance. These findings coincide with a global shift towards a more integrated and holistic model of CSR, suggesting that East and West approaches are converging in some respects, while also highlighting some important differences. More importantly, the need for regulatory adaptation and anticipatory governance highlighted in this research is in line with global discussions on the need for policy flexibility in the face of rapid technological advances, a topic echoed in international forums and policy debates.

In the context of rapid technological advances, particularly AI, new challenges and opportunities for CSR have been created. This study emphasises that for companies, CSR strategies must be dynamic and need to be such that they can adapt to technological innovations. Moreover, the findings suggest that global corporations need to consider not only the ethical implications of emerging technologies, but also their potential to enhance CSR. In terms of issues, the thesis reveals the transformative potential and ethical challenges of integrating AI into CSR strategies, focusing on issues such as data privacy and algorithmic bias. These findings are similar to trends in global attention to AI ethics, as exemplified by the EU's General Data Protection Regulation (GDPR) and evolving models of AI governance (both rights-based as well as risk-based). For high-tech companies, CSR cannot be static; it must evolve with the technology it covers. Overall, exploring the interplay between CSR and technology in the context of China's high-tech sector provides a forward-looking perspective that can inform global strategies for sustainable and ethical technological progress.

Considering recent developments and legal changes in CSR and AI globally, this study highlights the importance of a flexible and implementable CSR framework that can adapt to technological and socio-cultural shifts. The unique combination of hard and soft law in implementing CSR provides a basic blueprint for other countries and industries. Policymakers and business leaders can learn valuable lessons from the Chinese model, particularly in terms of combining legal frameworks with voluntary actions to promote more comprehensive and effective CSR implementation. In particular, the global CSR paradigm is shifting towards a more integrated approach, as evidenced by recent changes in global CSR legislation and voluntary standards.

8.4.2 Innovations in Research Approach

This thesis has pioneered a unique methodological approach in the examination of CSR within Chinese high-tech firms. By employing the 'Triple U' framework, which focuses on Urgency, Uniqueness, and an Umbrella (Government), this study has offered a fresh lens to understand the intricate dynamics of CSR in a rapidly evolving technological

and regulatory environment. This framework has not only highlighted the importance of governmental influence in shaping CSR practices but also emphasised the urgency and uniqueness of CSR challenges faced by high-tech companies in China. Additionally, the integration of Artificial Intelligence (AI) within CSR strategies is a novel aspect of this research. By delving into both AI's transformative potential and ethical challenges, such as data privacy and algorithmic bias, the thesis has underscored the need for regulatory adaptability and anticipatory governance, presenting a forward-looking perspective vital for both CSR and AI governance.

The methodological approach of analysing a sample of 99 CSR-related legal cases also stands out as an original contribution. This analysis provided empirical insights into the application and interpretation of Article 5 of the Chinese Company Law, revealing critical areas for improvement in legal practices related to CSR. Furthermore, the evaluation of various CSR reports issued by companies listed on the ChiNext board added depth to the understanding of the gaps in China's legal framework for CSR.

8.4.3 Personal Reflection: Journey Through the Research

Embarking on this research journey, I aimed to transcend the traditional boundaries of CSR studies by integrating multidisciplinary perspectives, particularly in the context of China's unique socio-economic and political landscape. The beginning of my PhD journey coincided with the emergence of COVID-19, a global pandemic that significantly impacted my first year. This unprecedented situation presented both challenges and learning opportunities, influencing my approach to research in unforeseen ways.

Navigating complex theoretical domains and deciphering intricate legal and corporate governance structures amidst the pandemic was both challenging and enlightening. One of the primary challenges was to balance the analytical rigor with the practical relevance of the research. The task of synthesising a vast array of legal case studies, CSR reports, and theoretical models required a meticulous approach. Moreover, integrating the

relatively new dimension of AI into CSR strategies demanded an acute understanding of technological advancements and ethical considerations, a task made more complex in the rapidly evolving landscape shaped by COVID-19.

This research has been a journey of intellectual growth and professional development. It has not only enhanced my understanding of CSR in high-tech companies but also enriched my analytical and critical thinking skills. The experience of developing the 'Triple U' approach and analysing real-world CSR practices has provided me with invaluable insights into the complexities of corporate social responsibility in the modern world.

In conclusion, the methodological originality of this thesis lies in its multi-dimensional approach, integrating institutional theory, legal analysis, and technological perspectives. The personal journey through this research has been one of discovery and growth, contributing to a deeper understanding of CSR in Chinese high-tech companies and offering implications for global CSR strategies and AI governance.

8.5 Limitation

This thesis, entitled "*The Promotion of Corporate Social Responsibility in Chinese High-tech Companies: Exploring the Unique Institutional Environment in China*", attempts to provide in-depth insights into China's CSR regulatory regime, particularly in the high-tech sector. Whilst the thesis illustrates and covers as many different aspects of this complex area as possible, it is important to recognise its limitations at the same time.

Regarding the scope of the thesis, firstly, this thesis focuses specifically on high-tech companies listed on the ChiNext market. Therefore, the findings may not be generalisable to other companies in different industries and markets in China. Whilst this thesis attempts to provide a holistic view of CSR implementation within a specific context, the author also acknowledges that various industries may face unique

challenges and opportunities in terms of CSR implementation.

In addition, along with the new draft of China's Company Law, which was introduced in early 2023, the constantly changing legal environment, in fact, implies evolving legal trends. This is because the dynamic nature of the Chinese legal environment may pose some limitations to this thesis. More specifically, laws, regulations, and soft law instruments are constantly adapting to evolving trends, technological advances, and societal needs. While the current study provides a more timely perspective at the time of writing, a rapidly shifting legal and regulatory environment may require updates or revisions in the future.

There is also the possibility of subjectivity in the interpretation of CSR, for example in the explanation of "responsible behaviour" in Article 5 of the Companies Act may appear subjective as it can vary between cultures, industries and stakeholders. Although this thesis attempts to provide an analytical objective, it is still bound by the inherent subjectivity and complexity of the concept of CSR. So ultimately, different interpretations of CSR may affect the implementation and execution of CSR initiatives.

Finally, there may be some limitations to the proposed 'Triple U' approach. Although the 'Triple U' approach - 'uniqueness', 'urgency' and 'umbrella' - provides a new dimension to understanding CSR in China, it may not be able to capture all aspects of the CSR field. More importantly, the approach still needs to be further tested and validated in different contexts and industries for wider applicability.

In the light of the above-suggested limitations, future research could consider where these limitations of this thesis exist and continue to make coverage and research in different areas in the future. Therefore, it also reveals a few areas that are worth exploring in future research. As mentioned above, this thesis mainly focused on the analysis of ChiNext-listed high-tech companies, so future research could expand the

study's scope and investigate CSR fulfilment in China across a wide range of industries. This will provide valuable insights into the impact of industry-specific factors on CSR performing mechanisms and practices. In addition to this, although this thesis mainly utilises legal and regulatory documents and case studies, further research may benefit from more empirically based approaches. Quantitative data, such as company performance indicators, or qualitative data, such as stakeholder interviews and surveys, may also provide a more enriched understanding of CSR practices and their impacts.

8.6 Recommendations for Future Research

As the 'Triple U' approach is the initial one proposed in this thesis, its validity can be tested and refined in the future if it can be applied in different contexts, industries and regions. This will facilitate the determination of its generalisability as well as applicability, and the identification of areas for improvement or adjustment. Additionally, considering the evolving nature of the legal environment and CSR practices, conducting a longitudinal study would be particularly beneficial. In this context, a longitudinal approach would involve regularly revisiting the same companies or sectors over an extended period to observe how their CSR practices evolve in response to changing regulations and societal expectations. This method would allow for a detailed understanding of the long-term effects of various CSR implementation mechanisms on business behaviour and the sustained impact of legal and technological changes.

Future research could also delve into the role of non-government actors in the domain of CSR. Specifically, exploring the influence of NGOs, civil society, and the media, among other non-government actors, on the practice and implementation of CSR would be of interest, significantly, as they might have been underrepresented or not thoroughly covered in this thesis.

These suggestions stem from the limitations and findings of this thesis and aim to advance the study of CSR in China and make a contribution to a broader comprehension

of global CSR.

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