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GOVERNMENT AND REGULATION IN PROMOTING
CORPORATE SOCIAL RESPONSIBILITY — THE CASE
OF CHINA

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Drawing on the conceptual framework of implicit-explicit corporate social responsibility (“CSR”), this paper distinguishes governmental/regulatory force and market/societal force as the two main determinants of CSR and argues that governmental/regulatory force is the dominant driver for implicit mandatory CSR while market/societal force is the dominant driver for explicit voluntary CSR. By using China, the world’s second largest economy, as an example, this paper examines how governmental/regulatory force shape a country’s CSR system, as opposed to market/societal force. Moreover, due to the rise of corporations’ explicit CSR activities and shrinking of implicit mandatory CSR rules in the West, this paper also endeavors to find out whether implicit practices of business responsibility in China will transform into explicit CSR activities. After looking into the tradition, current momentum, and the inadequacy of conventional business case reasoning in China, this paper concludes that despite the increasing role of market/societal force in advancing CSR, governmental/regulatory force remains the dominant driver for CSR development in China, which, in turn, implies more governmental intervention and regulations defining minimum standards of corporate behavior. This paper also discusses different functions that the Chinese government can potentially take in further shaping and promoting CSR.

Keywords: CSR, governmental/regulatory force, market/societal force, mandatory CSR, implicit CSR, China.

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I. INTRODUCTION

The popularity of corporate social responsibility (“CSR”) has spread onto the world scene.¹ However, corporations in different societies may express and pursue their social responsibilities differently. There are some basic institutional prerequisites for CSR, such as function of market, function of government and legal institutions, which is why meanings and practices of CSR in different countries constitute part of the research question in this area.²

In China over past decades, increased social violations and environmental degradation are side effects of fast economic development.³ Problems such as water scarcity and quality, industrial pollution, labor conditions, product safety, corruption and

¹ Archie B. Carroll & Kareem M. Shabana, *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, 12 INT’L J. MGMT. REV. 85, 86 (2010).

² Dirk Matten & Jeremy Moon, *Implicit and Explicit CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility*, 33 ACAD. MGMT. REV. 404, 405 (2008).

³ See, e.g., Shunsuke Managi & Shinji Kaneko, *Economic Growth and the Environment in China: An empirical analysis of productivity*, 6 INT’L J. GLOBAL ENVTL. ISSUES 89, 125 (2006); Richard Wike & Stefan Cornibert, *Corruption, Pollution, Inequality are Top Concerns in China: Many Worry about Threats to Traditions and Culture*, PEW RESEARCH CENTER (September 2015), <https://www.pewresearch.org/global/2015/09/24/corruption-pollution-inequality-are-top-concerns-in-china/>.

income inequality among many others are alarming.⁴ With a unique background and increasingly significant role in global affairs, China's CSR development is worth more attention and thorough examination.

While CSR is becoming a growing management issue in this world's second largest economy, most Chinese domestic researchers focus on the correlation between engaging in CSR activities and corporate financial performance.⁵ In order to fill the literature gap and identify the underlying determinant of CSR in the context of China, this paper will draw on the implicit-explicit CSR framework developed by Matten and Moon⁶ in order to examine CSR and the trend in China from an institutional and regulatory perspective.

According to Matten and Moon, implicit CSR consists of "values, norms, and rules that result in (mandatory and customary) requirements for corporations to address stakeholder issues and that define proper obligations of corporate actors."⁷ Similarly, Young and Marias argued that implicit CSR normally includes those policies and practices that are regarded as "minimum standards" and "regulated."⁸ In contrast, Matten and Moon argued that explicit CSR consists of "voluntary programs and strategies by corporations,"⁹ which is seen as *voluntary* in nature.¹⁰ That is also why Jamali and

⁴ *Id.*; see also Mehran Idris Khan & Yen-Chiang Chang, *Environmental Challenges and Current Practices in China—A Thorough Analysis*, 10 SUSTAINABILITY 2547 (2018), doi.org/10.3390/su10072547; Ting Ma et al., *Pollution Exacerbates China's Water Scarcity and Its Regional Inequality*, 11 NATURE COMM. 650 (2020), doi:10.1038/s41467-020-14532-5.

⁵ See Zheng Li, *A Study on Relation of Corporate Social Responsibility and Corporate Value: Empirical Evidence from Shanghai Securities Exchange*, 2 CHINA INDUS. ECON. 77–83 (2006); Peiyuan Guo & Yongda Yu, *The Performance of Social Responsibilities by Means of the Cooperation Between Public and Private Enterprises – A Case Study of Programs of Supporting the Poor in China's Causes of "Helping to Start an Undertaking"*, 4 MGMT. WORLD 41–47 (2006); Yanfeng Zhou et al., *Corporate Social Responsibility Behavior and Consumer Responses: The Moderator Effects of Consumer Personal Characteristic and Price Signal*, 3 CHINA INDUS. ECON. 62–69 (2007); Zhilong Tian et al., *Consumer Responses to Corporate Social Responsibility (CSR) in China*, 101 J. BUS. ETHICS 197–212 (2011); Juelin Yin & Yuli Zhang, *Institutional Dynamics and Corporate Social Responsibility (CSR) in an Emerging Country Context: Evidence from China*, 111 J. BUS. ETHICS 301–16 (2012); Junnan Hu et al., *Environmental Responsibility, Market Valuation, and Firm Characteristics: Evidence from China*, 25 CORP. SOC. RESP. & ENVTL. MGMT. 1376–87 (2018).

⁶ Matten & Moon, *supra* note 2.

⁷ *Id.* at 410.

⁸ Suzanne Young & Magalie Marias, *A Multi-level Perspective of CSR Reporting: The Implications of National Institutions and Industry Risk Characteristics*, 20 CORP. GOVERNANCE: AN INT'L REV. 432, 440 (2012).

⁹ Matten & Moon, *supra* note 2, at 410.

¹⁰ Young & Magalie, *supra* note 8, at 434.

Neville gauged explicit CSR through “the explicit voluntary deliberate design of CSR, the explicit deployment of CSR agendas, vocabulary, policies and programs in the organization.”¹¹

Matten and Moon suggested countries with strict regulatory regimes are more likely to bind corporate behavior in a mandatory manner and implicitly direct corporations to address society’s concerns, while countries with less strict regulatory regimes allow corporations to design their own discretionary CSR programs and policies explicitly to respond to stakeholder pressures.¹²

Based on the conceptual framework of implicit-explicit CSR, this paper distinguishes and discusses governmental/regulatory force and market/societal force as the two main determinants of CSR and argues governmental/regulatory force is the dominant driver for implicit mandatory CSR while the market/societal force is the dominant driver for explicit voluntary CSR. In China for example, the institutional environment and the dominant role played by governmental/regulatory forces determine its implicit and mandatory CSR system.

Meanwhile, due to the rise of corporations’ explicit CSR activities and shrinking of implicit mandatory CSR rules in the West, it is also important to see whether implicit practice of business responsibility in China would transform into explicit CSR activities. Despite the fact that both governmental/regulatory force and market/societal force are increasing in China, this paper finds that the strong political will and the comparatively weak market/societal force determine that the implicit mandatory CSR is essential and will likely remain as the norm in the foreseeable future in China, which indicates more regulations either defining minimum obligations or mandating more socially responsible behavior. Having said that, the unique situations in China make it potentially possible for corporations to engage in explicit voluntary CSR activities and at the same time meet governmental/regulatory requirements. In particular, considering the institutional limits of governmental and regulatory power, this paper calls for Chinese government and regulators, using their role of facilitation, partnership and endorsement, to provide corporations some rooms for corporations’ discretion and play some other key roles in advancing CSR such as endorsement and facilitation.

The remainder of the paper is organized as follows. Section II discusses the explicit voluntary CSR and implicit mandatory CSR as the nature of CSR. Then Section III distinguishes the

¹¹ Dima Jamali & Ben Neville, *Convergence Versus Divergence of CSR in Developing Countries: An Embedded Multi-layered Institutional Lens*, 102 J. BUS. ETHICS 599, 608 (2011).

¹² Matten & Moon, *supra* note 2, at 409.

governmental/regulatory force from market/societal force as the determinants of CSR. Section IV uses these two forces to analyze how CSR is shaped in China and the underlying rationales. After that, Section V discusses, in detail, the question “will implicit practice of business responsibility transform into explicit CSR activities in China?” Section VI continues to discuss the dominance of implicit mandatory CSR in China and its development, but also explores the multiple roles the Chinese government can play after acknowledging the limitation of governmental/regulatory force. Concluding remarks with recommendations are provided in Section VII.

II. NATURE OF CSR

CSR is traditionally seen as a voluntary action taken by businesses. For example, the U.K. Government defines CSR as “the voluntary actions that companies can take to address both its own competitive interests and the interests of wider society beyond the minimum legal obligations.”¹³ Similarly, in academia, CSR is predominantly referred as voluntary corporate commitment to exceed the explicit and implicit obligation imposed on a company by society’s expectations of conventional corporate behavior through discretionary business practices and contributions of corporate resources.¹⁴ An analysis of the 37 most used definitions of CSR also shows that *voluntary* is one of the most common dimensions.¹⁵ Such voluntary nature is predominant in the contemporary CSR literature, which implies corporations’ initiatives and governments’ minimal role in advancing CSR.¹⁶

Even Carroll who argued economic, legal, ethical and philanthropic components constitute the pyramid of CSR,¹⁷ would likely agree with the underlying *voluntary* nature of CSR. He

¹³ THE U.K. DEPARTMENT FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM (BERR), CORPORATE RESPONSIBILITY REPORT 5 (2008).

¹⁴ See, e.g., PHILLIP KOTLER & NANCY LEE, CORPORATE SOCIAL RESPONSIBILITY: DOING THE MOST GOOD FOR YOUR COMPANY AND YOUR CAUSE (2005); see also Oliver Falck & Stephan Hebllich, *Corporate Social Responsibility: Doing Well by Doing Good*, 50 BUS. HORIZONS 247, 247 (2007).

¹⁵ Alexander Dahlsrud, *How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions*, 15 CORP. SOC. RESP. & ENVTL. MGMT. 1, 5 (2008).

¹⁶ Nikolay A. Dentchev et al., *On Voluntarism and the Role of Governments in CSR: Towards a Contingency Approach*, 24 BUS. ETHICS: A EUROPEAN REV. 378, 378–97 (2015).

¹⁷ Archie B. Carroll, *A Three-Dimensional Conceptual Model of Corporate Performance*, 4 ACAD. MGMT. REV. 497, 497–505 (1979); Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders*, 34 BUS. HORIZONS 39, 39–48 (1991).

admitted “the essence of CSR and what it really refers to are the ethical and philanthropic obligations of the corporation towards society” beyond its economic and legal responsibilities.¹⁸ Put simply, CSR refers to obligations “identified as ethical and discretionary/philanthropic responsibilities” which are essentially “voluntary actions to promote and pursue social goods.”¹⁹

While CSR has long been defined as voluntary initiatives by private actors and policymakers, governments indeed do and can play a vital role in supporting and driving CSR by shaping the regulatory environment among others.²⁰ Therefore, the non-voluntary aspect of CSR cannot be overlooked. The non-voluntary aspect can be reflected by (a) mandatory CSR laws to directly promote socially responsible behavior; (b) mandatory laws defining the minimum obligations for deterring socially irresponsible behavior, and/or (c) mandatory disclosure of CSR-related issues to indirectly nudge corporations to be more socially responsible.²¹ For non-voluntary or say mandatory CSR, corporations normally have limited *discretion* in choosing whether or not to do it, because articulating and/or practicing CSR is largely equated to fulfil the mandatory requirements.²² Matten and Moon categorized such mandatory CSR as implicit on the ground that the decision of engaging CSR is mainly a reaction to, and a reflection of, a corporation’s extrinsic institutional environment rather than a deliberate and voluntary corporate decision.²³

Accordingly, apart from the voluntary and explicit CSR as conventionally understood, CSR can also be mandatory and implicit. These two different types of CSR represent two different systems that normally sit on the two ends of the spectrum. It is argued that coordinated market economies associated with a strict regulatory regime are more likely to have implicit mandatory CSR, while

¹⁸ Archie B. Carroll & Kareem M. Shabana, *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, 12 INT’L J. MGMT. REV. 85, 90 (2010).

¹⁹ *Id.* at 95.

²⁰ See SUSAN A. AARONSON & JAMES T. REEVES, CORPORATE RESPONSIBILITY IN THE GLOBAL VILLAGE: THE ROLE OF PUBLIC POLICY (Nat’l Pol’y Ass’n 2002); Laura Albareda et al., *Public Policies on Corporate Social Responsibility: The Role of Governments in Europe*, 74 J. BUS. ETHICS 391, 404 (2007).

²¹ Min Yan, *Corporate Social Responsibility vs. Shareholder Value Maximization: Through the Lens of Hard and Soft Law*, 40 NW. J. INT’L L. & BUS. 47, 70–78 (2019).

²² For example, after the promulgation of India’s *Companies Act 2013*, contributing a fraction of profits to CSR activities becomes a legal obligation for large companies in India. Companies have little discretion in choosing to do it or not. *Id.* at 70–71.

²³ Matten & Moon, *supra* note 2, at 410.

liberal market and less regulated economies tend to have explicit voluntary CSR.²⁴ When existing institutional and regulatory frameworks provide mandatory CSR requirement addressing underlying social and economic concerns—for example legislation requiring more labor protection and provision of social benefits—then corporations have “almost no need to practice voluntary CSR outside mandatory issues” as their behavior is already bound by the strict regulatory regimes.²⁵ Rather, it is mainly about complying with laws and norms.²⁶ For example, in Germany, where the existing institutional and regulatory environment made the voluntary explicit CSR largely redundant, a *Deutschland AG* (German public limited company) is required not only to pursue corporation’s economic interests but also general societal goals by law.²⁷ Section 70(1) of *Aktiengesetz* (German Stock Corporation Law) in 1937 required management to consider benefit of the enterprises, its employees and the common benefit of the people and state.²⁸ Section 76 of *Aktiengesetz* in 1965 also required *Deutschland AG* to fit in with the economy as a whole and the interest of the general public.²⁹ That is to say, running a corporation for non-shareholding stakeholders’ interests as well as societal interests is mandatorily required. In this context, a corporation belongs to a multitude of interested parties, or say stakeholders, and profitability is merely one goal among many others.

Moreover, the German codetermination laws in 1951, 1952 and 1976 established board-level employee participation, which allows for cooperative agreements and flexible relations between management and labor.³⁰ It further strengthened the stakeholder orientation in Germany. In short, the existing institutions were able to effectively bind corporate behavior, and there is then not much need for corporations to practice voluntary CSR outside these mandatory issues.

Although corporations could voluntarily make their

²⁴ *Id.* at 409–10.

²⁵ Stefanie Hiss, *From Implicit to Explicit Corporate Social Responsibility: Institutional Change as a Fight for Myths*, 19 BUS. ETHICS Q. 433, 436 (2009).

²⁶ On the other hand, if all corporations could adopt voluntary and explicit CSR, there may be also less necessity to have mandatory CSR rules.

²⁷ See *infra* notes 28–30 and accompanying texts.

²⁸ *Aktiengesetz* [AktG] [Stock Corporation Law], Jan. 30, 1937, RGBL. I 107, § 70(1) (Ger.).

²⁹ *Aktiengesetz* [AktG] [Stock Corporation Law], Sept. 6, 1965, BGBl. I 1089, § 76 (Ger.).

³⁰ See Thilo Kuntz, *German Corporate Law in the 20th Century*, in RESEARCH HANDBOOK ON THE HISTORY OF CORPORATE AND COMPANY LAW 205 (Harwell Wells ed. 2018).

attachment to CSR and assume responsibility for societal interests, many activities that corporations might describe as CSR may simply be defined as public policy or regulation, since these activities either receive subsidies from public funds or reflect some regulatory requirements. For instance, many corporations in China considering CSR should include promoting national/local economic development, paying taxes, banning child labor, protecting legitimate staff interests, reemploying laid-off employees, and providing jobs for the disabled among others.³¹ These activities largely reflect either public policies or regulatory requirements, and are thereby different from the so-called “real” voluntary CSR.

III. DETERMINANTS OF CSR

When existing institutional or other mandatory requirements bind corporations to assume responsibility for some societal interests rather than merely shareholders’ economic interests, it is not difficult to understand the motivation for corporations to engage in CSR activities. Put differently, under an implicit CSR system, doing CSR simply means to comply with CSR rules and policies set out by governments and legislators. Hence, the governmental and regulatory factor is an important determinant of CSR, particularly in coordinated market economies like Germany or transitional economies like China.

Why do corporations assume CSR if it is not compulsory in countries where they operate? There must be, of course, a few conscientious businesses willing to do good regardless of costs because they see the moral imperatives to *be good citizens* and *do the right thing*. For most other corporations, however, the determinants of CSR are more extrinsic, such as social pressure or market pressure.³² For instance, civil societies, environmental activists, ethical consumerism,³³ socially responsible investment³⁴ and the like could drive corporations not only to pay more attention to CSR but also engage in CSR activities.

³¹ Shangkun Xu & Rudai Yang, *Indigenous Characteristics of Chinese Corporate Social Responsibility Conceptual Paradigm*, 93 J. BUS. ETHICS 321, 329–30 (2010).

³² Ruth V. Aguilera et al., *Putting the S Back in Corporate Social Responsibility: A Multilevel Theory of Social Change in Organizations*, 32 ACAD. MGMT. REV. 836, 848 (2007).

³³ That is, using selected purchasing behavior to boycott irresponsible corporations and reward responsible ones.

³⁴ That is, taking both financial and environmental/social factors into account when making investment decisions, and avoiding investment in socially irresponsible firms.

While social pressure is not identical to market pressure, their ultimate impact on businesses in terms of the outcome is not essentially different. Market factors such as investors, consumers and employees can directly affect the business operation of a corporation and thereby its profitability and/or survival. On the other hand, social factors may first affect a corporation's reputation and/or legitimacy, which would, in turn, affect the choices and behaviors of investors, consumers and employees, and thereby the profitability and/or survival of the corporation. The social pressure on McDonald, Nestle and Nike at the end of last century regarding animal rights, infant milk formula and sweat shops in developing countries remain very vivid examples.³⁵ As these social pressures can ultimately convert into market pressure in one way or another, this paper will categorize market and societal force together in contrast to governmental and regulatory force.

We can therefore see, apart from the so-called moral imperative, governmental/regulatory force and market/societal force are the two main determinants of CSR. These two different determinants may also explain the two different CSR systems discussed above. When governments and regulations play a large role in shaping the institutional/regulatory environment driving corporations' CSR activities in a given jurisdiction, it is very likely there is an implicit and mandatory CSR system in place. When a country has an implicit and mandatory CSR system, governmental/regulatory force is normally the key determinant of corporations' CSR activities.³⁶ Typical examples are countries in Continental Europe that are characterized as coordinated market economies,³⁷ including the foregoing German case where the institutional environment binds corporations to serve wider than shareholder interests.³⁸

On the contrary, when corporations are pressed mainly by market and/or societal factors, rather than existing institutions, to engage in CSR activities in a given country, it is highly likely that the country's CSR would be classified as explicit and voluntary. In a country with an explicit voluntary CSR system, market and societal force is normally the key determinant for corporations' CSR

³⁵ See, e.g., Colin Boyd, *The Nestlé Infant Formula Controversy and a Strange Web of Subsequent Business Scandals*, 106 J. BUS. ETHICS 283, 283–89 (2012); Deborah Doane, *The Myth of CSR: The Problem with Assuming that Companies Can Do Well While Also Doing Good Is That Markets Don't Really Work That Way*, STAN. SOCIAL INNOVATION REV. 23, 23–29 (2005).

³⁶ See Matten & Moon, *supra* note 2, at 413.

³⁷ *Id.*

³⁸ See *supra* notes 25–30 and accompanying texts.

activities.³⁹ For example, in the U.S., a typical liberal market and comparatively less regulated economy where governments neither mandate CSR activities nor provide a regulatory environment that imposes on firms' positive obligations towards their stakeholders — i.e., companies are legitimately allowed to prioritize shareholder interest⁴⁰ — it is the market and societal force that determines the promotion and development of CSR,⁴¹ which is largely voluntary and explicit.

IV. SHAPING CSR IN CHINA

A. INSTITUTIONAL ENVIRONMENT FOR CSR

Different political systems (including power of state), financial systems (including main source for corporations), education and labor systems, cultural systems and organization of market processes, among many other factors, all materially affect the CSR systems.⁴²

Take the U.S., which features a long history of typical explicit CSR system, as an example. Its power of state is comparatively weak;⁴³ central financial source for corporations is the stock market which, in turn, leads to more dispersed shareholdings and higher demand for transparency and accountability; individualism dominates, with individuals' stronger ethic of "giving back."⁴⁴ Thus, despite weak social welfare provision under the existing institutions, corporations are under pressure from various corporate stakeholders to engage in CSR to address social problems.⁴⁵ In contrast, in Continental Europe, which features an implicit CSR system, the states are more powerful and proactive in engaging economic and social activities; corporations tend to be

³⁹ Matten & Moon, *supra* note 2, at 418.

⁴⁰ It is even argued that any corporate behavior that is inconsistent with shareholder primacy would subsequently be considered as corporate deviance. See JONATHAN R. MACEY, *CORPORATE GOVERNANCE: PROMISES KEPT, PROMISES BROKEN 2* (Princeton University Press 2008).

⁴¹ Matten & Moon, *supra* note 2, at 407–409.

⁴² *Id.*

⁴³ The power of state can be understood as the capacity of the state to be engaged in economic and social activities and whether the state is active or not. See, e.g., ARNOLD J. HEIDENHEIMER ET AL., *COMPARATIVE PUBLIC POLICY: THE POLITICS OF SOCIAL CHOICE IN AMERICA, EUROPE, AND JAPAN* (St. Martin's Press 1990).

⁴⁴ Matten & Moon, *supra* note 2, at 408.

⁴⁵ See, e.g., Timothy M. Devinney et al., *Corporate Social Responsibility and Corporate Governance: Comparative Perspectives*, 21 *CORP. GOVERNANCE: AN INT'L REV.* 413, 414 (2013).

embedded in a network of a few large investors and banks are a more important financial source for corporations; collectivism dominates, with a trend to rely more on representative organizations such as states, political parties, unions or churches.⁴⁶

In the Chinese context, the state has even greater power. Both before and after the establishment of the People's Republic of China in 1949, governments kept concentrated economic power in the hands of the state by nationalizing a majority of industrial and financial enterprises.⁴⁷ Despite the fast growth of private sectors in China, the government still plays a proactive and dominant role in economic and social domains.⁴⁸ Second, the central financial source for China's domestic corporations is still the banking sector dominated by large state-owned banks.⁴⁹ For example, according to the International Monetary Fund, banks have been dominating the Chinese financial system, providing the private sector with credit that amounts to approximately 155.8% of Gross Domestic Product ("GDP") in 2017, while the figure in the U.S. is only 52% during the same period.⁵⁰ Last, but not least, collectivism is enshrined in China where collective interests are prioritized. For example, collective ownership and cooperative economy in rural areas are highlighted in articles 6 and 8 of the *Constitution of People's Republic of China*.⁵¹ Together with the omnipresent state intervention, the general public heavily relies on the state and expects it to solve substantially all social problems.

As summarized in Table 1 below, the Chinese institutional environment is closer to Germany. Moreover, the key structural features of corporations in China—including concentrated ownership structure and comparatively lower managerial discretion—are also closer to the German model with large amount of direct ownership through networks of banks and other financial institutions. This contrasts with the market-based forms of contract-based ownership with a higher degree of managerial discretion in the U.S.

⁴⁶ Matten & Moon, *supra* note 2, at 408.

⁴⁷ Min Yan, *Evolution of the Corporation and the Shareholders' Role in China*, 26 INT'L CO. & COM. L. REV. 355, 358 (2015).

⁴⁸ Juelin Yin & Yuli Zhang, *Institutional Dynamics and Corporate Social Responsibility (CSR) in an Emerging Country Context: Evidence from China*, 111 J. BUS. ETHICS 301, 313 (2012).

⁴⁹ Franklin Allen et al., *An Overview of China's Financial System*, 9 ANNUAL REV. OF FIN. ECON. 191, 191–231 (2017).

⁵⁰ *Domestic Credit to Private Sector by Banks (% of GDP) – China, United States, Germany*, WORLD BANK, <https://data.worldbank.org/indicator/FD.AST.PRVT.GD.ZS?locations=CN-US-DE> (last visited May 16, 2020).

⁵¹ XIANFA [CONSTITUTION] (宪法), arts. 6, 8 (China), http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm.

Table 1

	The U.S.	Continental Europe	China
Political system	Power of the state is weak.	Power of the state is greater: more engaged in economic and social activities, e.g. health and pension.	Even greater state power: fully engaged in economic and social activities.
Financial system	Stock market is the central financial source for corporations. Shareholdings are more dispersed, where higher degree of transparency and accountability is needed.	Corporations tend to be embedded in a network of a small number of large investors, and banks play a major role.	A fast-growing stock market, but is still dominated by a banking sector with large state-owned banks.
Cultural system	Individualism: individual's stronger ethic of "giving back."	Collectivism: more reliant on representative organizations (e.g. state, political party, union, or church).	Collectivism: rely on the state to a large extent.

B. GOVERNMENTAL/REGULATORY FORCE FOR CSR

Following the argument in the previous section, when a nation's CSR system can be classified as implicit and mandatory, the governmental and regulatory force must be the dominant driver for CSR. In China, when CSR began to emerge, it was regarded as a solution by governments to regulate corporations that "refuse to sign their workers up to social insurance projects, fail to protect workers from injury and exploit employees by not signing proper labour contracts, [force people to] work over time ... delay wage payments

and use fraudulent accounting.”⁵² China is the first nation to explicitly stipulate mandatory CSR in their statutes.⁵³ Article 5 of *Chinese Company Law 2005* (“Company Law”) stipulates: “in its operational activities, a company shall . . . assume social responsibilities.”⁵⁴ This provision along with others under the first chapter of the Company Law entitled *General Provision* have significant influence on the corporate governance and management of corporations in China due to the political and corporate culture.⁵⁵

The Company Law also provides a wider protection for non-shareholding stakeholders. For example, article 17 specifies employee protection by stating that the corporation shall protect the lawful rights and interests of its employees, conclude employment contracts with employees, buy social insurance and strengthen labor protection so as to realize safe production.⁵⁶ This is followed by article 18, providing the foundation for labor union activity in corporations in order to safeguard the lawful rights and interests of the employees with respect to remuneration, working hours, welfare, insurance, operational safety and health of employees among other.⁵⁷ Article 18 further requires corporations to provide necessary conditions for its labor union to carry out activities.⁵⁸ It requires that the labor union shall, on behalf of the employees, conclude the collective contract with the corporation with respect to the foregoing issues.⁵⁹ When facing restructuring or other important issue in relation to business operations, the corporation is mandatorily required to solicit opinions from its labor union, or employees through other channels,⁶⁰ which makes employees’ opinions of great significance prior to making certain important corporate decisions.

Taking a cue from the German dual-board structure and co-determination, the Company Law similarly requires employee representatives to sit on the supervisory board.⁶¹ The ratio of

⁵² Todd Miller, *A Chinese Definition of CSR Ethical Corporation*, ETHICAL CORP. 34, 34–35 (2005).

⁵³ Colin Hawes, *Interpreting the PRC Company Law Through the Lens of Chinese Political and Corporate Culture*, 30 UNIV. OF NEW S. WALES L.J. 813, 820 (2007).

⁵⁴ Gongsi Fa (公司法) [Company Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 1993, revised Oct. 27, 2005) art. 5 (China). It should also be noted that Company Law 2005 was revised slightly in 2013 with some changes to its numbering. The articles cited in this paper adopt the original numbering in order to keep the consistency unless the context explicitly indicates.

⁵⁵ Colin Hawes, *supra* note 53, at 814.

⁵⁶ Company Law, *supra* note 54, art. 17.

⁵⁷ *Id.* art. 18.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* arts. 52, 118.

employee representatives cannot be lower than one third and individual corporations could, of course, set a higher ratio in its articles of association.⁶² While there are many problems with the current supervisory board system in terms of the effectiveness of monitoring the management board,⁶³ it at least provides a good chance for the supervisory board and its employee representatives to represent wider interests. Moreover, when a corporation is established by two or more state-owned enterprises (“SOEs”) or other state-owned investors or is wholly state-owned, the board of directors shall be comprised of employee representatives who are required to be elected through the employees’ representative congress, or in other ways according to articles 45 and 68 of Company Law.⁶⁴

Apart from these measures, the regulatory effort is also reflected in legislations and rules that define the minimum standards of corporate behavior. For example, the newly amended environmental protection law in 2014 obligates corporations to implement environmental protection measures to prevent and reduce environmental pollution and ecological disruption and provides severe sanctions for non-compliance.⁶⁵

Government can also use departmental regulations and polices to drive CSR development. For example, since 2008, all *yang qi* (centrally controlled corporations), normally the largest and most important corporations controlled by the central government in China, are required to protect the interests of employees and promote a balance between economic returns, social returns and employee interests.⁶⁶ These firms are also required to regularly release CSR reports.⁶⁷ In the same year, the *Measures of Environmental*

⁶² *Id.*

⁶³ Min Yan, *Obstacles to China’s Corporate Governance*, 32 COMPANY LAW. 311, 315–16 (2011).

⁶⁴ Company Law, *supra* note 54, arts. 45, 68.

⁶⁵ Chapter 6 of the amended law removes limits on fines for polluting factories and allows the environmental enforcement agency to take direct measures including close down the firms causing pollution. See Huanjing Baohu Fa (环境保护法) [Chinese Environmental Protection Law] arts. 59–62 (China).

⁶⁶ Guanyu Jiaqiang Zhongyang Qiye Qiye Wenhua Jianshe de Zhidao Yijian (关于加强中央企业企业文化建设的指导意见) [Guiding Opinion on Strengthening the Building of Corporate Culture in Centrally Controlled Corporations] (promulgated by State-owned Assets Supervision & Admin. Commission of the St. Council (SASAC), Mar. 16, 2005) art. 10.

⁶⁷ Guanyu Zhongyang Qiye Luxing Shehui Zeren de Zhidao Yijian (关于中央企业履行社会责任的指导意见) [Guiding Opinion on Fulfilling Social Responsibility of Centrally Controlled Corporations] (promulgated by State-owned Assets

Information Disclosures (for trial implementation) issued by the former State Environmental Protection Administration⁶⁸ came into effect, providing detailed requirements on both mandatory and voluntary environmental information disclosure for different types of firms.⁶⁹ Similarly, *CSR Guidelines* issued by the State-owned Assets Supervision and Administration Commission of the State Council (“SASAC”) require SOEs to take responsibility for all stakeholders and the environment, and ultimately to harmonize the enterprise with social and environmental development.⁷⁰

The political desire behind government’s effort to promote CSR is not hard to identify. “Building Harmonious Society” and “Pursuing Scientific Development” are perhaps the best reflection of such political will to develop CSR in China. Both concepts were proposed by President Hu Jintao, the then General Secretary of Chinese Communist Party and Head of State, in 2003 and 2004 respectively, and perceived as the dominant socio-economic mission for the central government and the central policy guidelines for sustainable development in China.⁷¹ For instance, following the concepts of “Building Harmonious Society” and “Pursuing Scientific Development,” the regional government in Shandong province established an indexing system and a CSR association that includes over 4,000 enterprises; and Zhejiang province created China’s first CSR evaluation system for private enterprises.⁷² The political will set energy saving, emission reduction, and labor rights protection as national strategies which had, in turn, significantly

Supervision & Admin. Commission of the St. Council (SASAC), Dec. 29, 2007, effective Jan. 4, 2008) art. 18, http://www.gov.cn/zwggk/2008-01/04/content_850589.htm.

⁶⁸ Now the Ministry of Ecology and Environment.

⁶⁹ Huanjing Xinxi Gongkai Banfa (Shixing) (环境信息公开办法 (试行)).

⁷⁰ *Guidelines to the State-owned Enterprises Directly Under the Central Government*, SASAC (2011), http://en.sasac.gov.cn/2011/12/06/c_313.htm (last visited May 16, 2020).

⁷¹ See, e.g., *Communique of the Sixth Plenum of the 16th CPC Central Committee*, XINHUA (Oct. 11, 2006), <http://www.chinese-embassy.org.uk/eng/xw/t279526.htm>.

⁷² See, e.g., Zhongguo Qiye Shehui Zeren Zhibiao Tixi (中国企业社会责任指标体系) [Chinese Corporate Social Responsibility Indexing System] (2007); Hangzhou Shi Qiye Shehui Zeren Pingjia Tixi (杭州市企业社会责任评价体系) [City of Hangzhou Corporate Social Responsibility Evaluation System] (2010); Qiye Shehui Zeren Dafen Youwu “Biaozhun Da’an?” (企业社会责任打分有无“标准答案?”) [Does Corporate Social Responsibility have a “Standard Answer” for Keeping Score?], Qiye Shehui Zenren Zhongguo Wang (企业社会责任中国网) [CSR-CHINA], <https://www.csr-china.net/a/guandian/shouyeguandian/20151127/3453.html>.

promoted individual firms' CSR policies and activities.⁷³ CSR has since been regarded as an organic part of the concept of scientific development that would lead to the construction of harmonious society.⁷⁴ Just as an Assistant Minister from the Ministry of Commerce claimed in the inaugural *CSR China Forum*, the advancement of CSR in China is “a concrete action taken by Chinese companies to implement the political aspiration of the new Communist Party collective leadership.”⁷⁵

Another important aspect of the institutional environment in China is the integrated Communist Party's leadership in corporate governance. The establishment of a “Party organization” or a “Party committee” in the corporation to carry out activities of the Chinese Communist Party is enshrined in law.⁷⁶ The law requires corporations to provide necessary conditions for the Party organization's activities.⁷⁷ By the end of 2017, “Party organizations” had been established in 185,000 public enterprises and 1.877 million non-public enterprises, accounting for 91.2% of total public enterprises and 73.1% of total non-public enterprises.⁷⁸ In recent years, increasingly more Chinese listed companies have amended their articles of association to incorporate Party organizations aiming to strengthen and clarify the leadership of Party organizations, especially after the 19th National Party Congress in 2017.⁷⁹

In addition to participating in corporate governance, Party organizations are also required to report important issues to the Communist Party.⁸⁰ Meanwhile, it should also be borne in mind that “upholding the leadership by the Chinese Communist Party” is one of the “Four Basic Principles” brought forward by the paramount

⁷³ *Id.*; see also Asian Corporate Governance Association, *Awakening Governance: The Evolution of Corporate Governance in China*, ASIAN CORP. GOVERNANCE ASS'N, 133 (Jamie Allen et al. eds., 2018).

⁷⁴ Lei Wang & Heikki Juslin, *The Impact of Chinese Culture on Corporate Social Responsibility: The Harmony Approach*, 88 J. BUS. ETHICS 433, 437, 439 (2009).

⁷⁵ Miller, *supra* note 52, at 34.

⁷⁶ Company Law, *supra* note 54, art. 19.

⁷⁷ *Id.*

⁷⁸ 2017 Nian Zhongguo Gongchan Dang Dangnei Tongji Gongbao (2017 年中国共产党党内统计公报) [*Chinese Communist Party Internal Statistical Report*], XINHUA (June 30, 2018), http://www.xinhuanet.com/politics/2018-06/30/c_1123059570.htm.

⁷⁹ Asian Corporate Governance Association, *Awakening Governance: The evolution of corporate governance in China*, ASIAN CORP. GOVERNANCE ASS'N, 41–43 (Jamie Allen et al. eds., 2018).

⁸⁰ See Zhongguo Gongchandang Guoyou Qiye Jiceng Zuzhi Gongzuo Tiaoli (Shixing) (中国共产党国有企业基层组织工作条例（试行）) [Regulations on Party Organizations of State-Owned Enterprises (Trial)], art. 29.

leader Deng Xiaoping.⁸¹ The chairman of the board, or sometimes the general manager, acting as the key person would often be the secretary of the Party of the corporation, especially where the state has a large stake.⁸² Not surprisingly, directors, if they are Party members, could be potentially required to follow the Party's policies and guidelines,⁸³ which are of course much broader than the sole focus on shareholders' economic interests.

Empirical studies have also confirmed the governmental/regulatory force behind the *unique* understandings and perceptions of CSR in China. Based on a survey on 1268 CEOs of business owners of industrial firms across China by the World Bank and Peking University in 2006, Xu and Yang highlighted some unique CSR dimensions, including promoting national/local economic development, emphasize technology and innovation, paying taxes, reemploying laid-off employees, providing jobs for the disabled, easing national employment pressure, and ensuring social stability, which reflect either government policies or regulatory requirements.⁸⁴ A more recent empirical study also reflected that complying with governmental policies/requirements and persevering corporate image/reputation are the top two motivations behind Chinese corporations getting involved in CSR and reporting CSR.⁸⁵ These are all consistent with the government-driven CSR in China as analyzed above.

C. MARKET AND SOCIETAL FORCE FOR CSR — THE BUSINESS CASE

Apart from the dominant governmental/regulatory factor, another key driver for CSR in China is the market and societal force. When the modern concepts of CSR first appeared in China in mid-1990s, global market demands and socialization by international and

⁸¹ "Four Basic Principles" as an important content was attached to the party's constitution in the *Thirteenth CPC National Congress* in October 1987. "Upholding Party's leadership" along with "keeping the socialist road" is regarded as the most important. See, e.g., Chao Xi, *Transforming Chinese Enterprises: Ideology, Efficiency and Instrumentalism in the Process of Reform*, in *ASIAN SOCIALISM AND LEGAL CHANGE: THE DYNAMICS OF VIETNAMESE AND CHINESE REFORM* 91–114 (John Gillespie & Pip Nicholson eds., Australian National University Press 2005). And until now, these four cardinal principles have been treated as the foundation on which to build and develop this country.

⁸² Regulations on Party Organizations, *supra* note 80, art. 14.

⁸³ As the ruling party in China, the Party policies may well be governmental policies.

⁸⁴ Xu & Yang, *supra* note 31, at 330–31.

⁸⁵ Sepideh Parsa et al., *How Do Chinese Businesses View Corporate Social Responsibility?*, TECHNICAL REPORT OF THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES (2016).

non-governmental organizations (“NGOs”) also prompted the passive acceptance of CSR.⁸⁶ Many Chinese exporting firms had experienced CSR assessments by their international buyer as a precondition.⁸⁷ Improving CSR performance is therefore seen as a *license* to enter the international market. Corporations, especially export-oriented ones, aiming at overseas markets cannot afford to ignore the increasing CSR concern. In order to better understand and anticipate social expectations in Western markets and thereby compete globally, Chinese corporations have to either passively or proactively accept the standards, codes of conducts relating to CSR issues, such as labor rights and environmental performance.

With higher global standards and increasing environmental pressures, economic activities are expected to support the protection of environment. A visible sign of this demand is green finance, i.e., the financial services provided to project investment and financing in the fields of environmental protection, energy conservation, clean energy, green transport, green architectures and the like.⁸⁸ In China, green finance is also becoming increasingly more important. For example, China’s green bond market⁸⁹ grew steadily in recent years.⁹⁰ According to the *China Green Bond Market Report 2018*, the total amount of green bonds issued in China has reached \$42.8bn, representing a 12% increase year-on-year.⁹¹ Although green finance is narrower than socially responsible investment (“SRI”) as it mainly focuses on environmental issues,⁹² the fast-growing green bond market undoubtedly provides a similar incentive for corporations to be at least more environmentally

⁸⁶ May Tan-Mullins & Peter S. Hofman, *The Shaping of Chinese Corporate Social Responsibility*, 43 J. CURRENT CHINESE AFF. 3, 6 (2014).

⁸⁷ Wang & Juslin, *supra* note 74, at 438–39.

⁸⁸ In short, transition to a green financial system and mobilizing investment in clean and resilient growth. For example, see the definition of Green Finance by the U.K. government: <https://www.gov.uk/government/publications/green-finance-strategy>.

⁸⁹ Green bonds can be seen as debt securities issued by financial, non-financial or public entities where the proceeds are used to finance 100% green projects and assets. Put differently, they are issued in order to raise finance for climate change solutions. CLIMATE BONDS INITIATIVE, GLOBAL GREEN BOND MARKET—OVERVIEW (Serena Vento ed. 2019), https://globalindexconference.org/giz/wp-content/uploads/2019/06/GreenBonds_SerenaVento_2.pdf.

⁹⁰ CLIMATE BONDS INITIATIVE & CHINA CENTRAL DEPOSITORY & CLEARING COMPANY (CCDC), CHINA GREEN BOND MARKET REPORT (2018), https://www.climatebonds.net/files/reports/china-sotm_cbi_ccdc_final_en260219.pdf.

⁹¹ *Id.*

⁹² Under SRI, in contrast, investors would take not only environmental but also social performance into consideration and divest in socially irresponsible companies. Min Yan & Daoning Zhang, *From Corporate Responsibility to Corporate Accountability*, 16 HASTINGS BUS. L.J. 43, 46–47 (2020).

conscientious and encourage investee corporations to more explicitly claim environmental responsibility. Further, there has also been a strong focus on the need for domestic investment managers to take account of environment, society and governance factors in their investment process.⁹³ Accordingly, if the market and societal force becomes a main driver for corporations' more responsible behavior, then an explicit CSR system may be formed, which may imply a reduced need for a strictly regulated regime.

There is also a trend towards ethical consumerism in China domestically. Consumers have become increasingly aware of CSR information, in particular concerning environmental issues, and changed purchasing behaviors accordingly. Pursuant to Ali Research and Alibaba Foundation's Report on China's Green Consumers 2016, the number of green consumers online had reached 65 million, increasing by 14 times over the previous four years at the end of 2015.⁹⁴ Green products are emerging as a new growth sector in the retail industry. Thus, in addition to capital markets, consumer markets may also drive corporations towards more explicit CSR.

In short, the market/societal force would help corporations to justify CSR from its instrumental function to increase corporate profits and shareholder values, i.e., to provide them a so-called business case.

V. FROM IMPLICIT TO EXPLICIT CSR IN CHINA?

Both the institutional environment and the dominant role of governmental/regulatory force, as discussed so far, reflect an implicit mandatory CSR system in China. There is, however, a potential challenge against such implicit CSR development in China, because a mature and comprehensive institution for protecting stakeholders is not yet established. Although there is a growing body of legal institutions for protecting various societal interests, the current institutional focus in China is still on minority shareholder protection.⁹⁵ Due in part to unique historical factors, when the corporate system was restored after the official acknowledgement of the socialist market economy status and the acknowledgement of individual property rights, it triggered a huge demand for

⁹³ Asian Corporate Governance Association, *supra* note 79, at 145.

⁹⁴ Zhongguo Lüse Xiaofeizhe Baogao (中国绿色消费者报告) [China's Green Consumers Report], ALI RESEARCH (2016).

⁹⁵ See Horace Yeung & Flora Huang, *Shareholder Protection in China from a Numerical Comparative Law Perspective*, 7 CHINESE J. COMPARATIVE L. 124, 132 (2019).

emphasizing shareholder rights and their protection.⁹⁶ In particular, shareholder interest is a relatively new concept in China, and that is exactly why academics argued that shareholders should be entitled to more rights and protection in order to encourage them to exercise their power.⁹⁷ The newly created China Securities Investor Service Center in December 2014 for increased minority investor protection is another good example of the current institutional priority.⁹⁸ As a result, there might be conflict between pursuing shareholder interests and societal interests.⁹⁹

Meanwhile, opportunities do exist for a rise of corporation's explicit and voluntary CSR activities in China. The increasing exposure to capital markets make both socially responsible investment and domestic green finance form an important force for corporations to incorporate CSR policies and activities. One good example is that Chinese listed companies are increasingly keen to signal their social and environmental responsibility to their investors.¹⁰⁰ The pressure from both international and domestic consumers on social and environmental perspectives together with the far-reaching and decentralized modern media also drive corporations to more explicitly engage in CSR activities. Put differently, the increased social expectation of businesses and businesses' own legitimacy concern caused by such market and societal force would inevitably push corporations towards more explicit CSR. Especially when the scale and scope of corporations' explicit voluntary CSR activities are on the rise while implicit mandatory CSR rules are shrinking worldwide,¹⁰¹ the crucial question here is *will implicit practice of business responsibility transform into explicit CSR activities in China?*

A. ISOMORPHIC PRESSURE: THE GERMAN EXPERIENCE

⁹⁶ MIN YAN, *BEYOND SHAREHOLDER WEALTH MAXIMISATION: TOWARDS A MORE SUITABLE CORPORATE OBJECTIVE FOR CHINESE COMPANIES* 124 (Routledge 2018).

⁹⁷ WANG BAOSHU & CUI QINZHI (王保树 & 崔勤之), *ZHONGGUO GONGSI FA YUANLI* (中国公司法原理) [THE PRINCIPLE OF CHINESE COMPANY LAW] 25–26 (1998).

⁹⁸ China Securities Investor Services Center (“ISC”) is establish under the direct administration of the China Securities Regulatory Commission (“CSRC”), the national watchdog of stock exchanges, <http://www.isc.com.cn/html/gywm/>.

⁹⁹ Min Yan, *The Corporate Objective Revisited*, 38 *BUS. L. REV.* 55, 60 (2017).

¹⁰⁰ Asian Corporate Governance Association, *supra* note 79, at 135–36.

¹⁰¹ Stefanie Hiss, *From Implicit to Explicit Corporate Social Responsibility: Institutional Change as a Fight for Myths*, 19 *BUS. ETHICS Q.* 433, 434 (2009).

The case of Germany's convergence to explicit voluntary CSR from implicit mandatory CSR may help us to better understand the question of whether China's CSR system would shift from implicit to explicit and may help us to foresee the future CSR development in China.

To begin, as discussed above, Germany had a typical implicit CSR system at least before the end of last century.¹⁰² Its institutional and regulatory environment left corporations little room to practice voluntary CSR outside mandatory issues. However, with the erosion of organized capitalism in Germany since the mid-1980s and 1990s, the power of trade unions and the binding nature of collective agreements have deteriorated and inter-corporation networks dissolved.¹⁰³ First, law broke the tradition of attempting to combine shareholders' interests with stakeholders' interests. For example, *KonTraG 1998* (Corporate Sector Supervision and Transparency Act) deliberately lacked any reference to the stakeholders' view of the corporation in order to put the shareholders' value front and center.¹⁰⁴ Similarly, in contrast to the earlier *Aktiengesetz* (German Stock Corporation Law) discussed above,¹⁰⁵ stakeholders' view is no longer mentioned in *Aktiengesetz 2009*¹⁰⁶ or *Aktiengesetz 2016*.¹⁰⁷ Corporations have shifted a large part of their added value from the public to private shareholders.¹⁰⁸ Additionally, financial markets with short-term horizons became more common and normalized.¹⁰⁹ Meanwhile, the role of banks as the financial source has become less important in Germany. In 2001, for example, domestic credit to private sector by banks amounting to 112% of

¹⁰² *Id.*

¹⁰³ Gesetz zur Kontrolle und Transparenz im Unternehmensbereich [KonTraG] [Corporate Sector Supervision and Transparency Act], Mar. 5, 1998 (Ger.); Anke Hassel, *The Erosion of the German System of Industrial Relations*, 37 BRITISH J. OF INDUSTRIAL RELATIONS 484, 487–89 (1999).

¹⁰⁴ This represented a departure from the long tradition that focuses on the interests of employee and the company as a whole rather than merely shareholders. Jürgen Beyer & Martin Hoppner, *The Disintegration of Organised Capitalism: German Corporate Governance in the 1900s*, 26 WEST EUROPEAN POLITICS 179, 191 (2002).

¹⁰⁵ See *supra* section II. "The Nature of CSR."

¹⁰⁶ Aktiengesetz [AktG] [Stock Corporation Law], Sept. 1, 2009 (Ger.).

¹⁰⁷ Aktiengesetz [AktG] [Stock Corporation Law], May 10, 2016 (Ger.).

¹⁰⁸ For example, while business taxes paid by German joint stock companies declined by 9% per year from 1996 to 2000, dividends distributed in 2001 had nearly doubled compared with 1996. See Stefanie Hiss, *From Implicit to Explicit Corporate Social Responsibility: Institutional Change as a Fight for Myths*, 19 BUS. ETHICS Q. 433, 437 (2009).

¹⁰⁹ *Id.*

GDP in Germany compared with 49.9% in the U.S.¹¹⁰ But the figure in 2017 shrank to 77.2% in Germany, compared to 52% in the U.S., according to the World Bank data.¹¹¹

In a nutshell, we can find out that the shift from implicit to explicit CSR is associated with the weakening of the governmental/regulatory force, which then provided room for the fast growth of the market/societal force in driving CSR. This means that if the governmental force and institutions that drive firms to engage with society become weaker, then there is a good chance that the implicit CSR in China will transform to explicit CSR. Otherwise, this transformation is unlikely.

B. TRADITION AND CURRENT MOMENTUM

The path dependency theory has taught us that “today’s road depends on what path was taken before” due to factors such as adaptive costs, complementarities, and network externalities among others.¹¹² In other words, the current state of a system is the result of its initial conditions, and tradition or historical preference is a good reference for the future.¹¹³

Similar to the industrial paternalism present during the 19th century industrialization—where firms tended to provide housing, education and recreational facilities for workers—there is also a tradition for firms in China to take a paternalistic role regarding their employees.¹¹⁴ This had caused firms, especially state-owned enterprises (“SOEs”), to supply social security to both employees and their families.¹¹⁵ Interestingly, firms in China had been called as “unit” or “work unit” which implies that enterprise is treated as an integrated unit of society.¹¹⁶ It was not uncommon in the 1970s or 1980s for an enterprise to have its own hospital, schools and so forth.¹¹⁷ Although not as many corporations run affiliated hospitals or schools for employees and their families nowadays, the tradition

¹¹⁰ WORLD BANK, *supra* note 50.

¹¹¹ *Id.*

¹¹² Mark J. Roe, *Chaos and Evolution in Law and Economics*, 109 HARV. L. REV. 641, 648 (1995).

¹¹³ Lucian Arye Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 STAN. L. REV. 127, 129 (1999). Therefore, tradition may be an impediment to the above convergence.

¹¹⁴ Min Yan, *Obstacles to China’s Corporate Governance*, 32 COMPANY LAW. 311, 318 (2011).

¹¹⁵ *Id.* at 319.

¹¹⁶ Danwei (单位) [Unit] or Gongzuo Danwei (工作单位) [Work unit]. *Id.* at 318–19.

¹¹⁷ *Id.*

to call a company “unit” has not materially changed.¹¹⁸ This implies that the perception of paternalism still exists to some extent and may continue to advance implicit CSR.

Also noteworthy is that the SOEs in the past functioned not materially differently from government affiliates: their almost sole objective was to complete tasks assigned by the government or say state. Under the planned economy system, everything from resource allocation to operation, production and distribution was centrally planned by the state in advance.¹¹⁹ It is not surprising to see the traditional SOEs’ implicit societal responsibility stem from political ideology. It would also be understandably clear that economic interests of the corporation had never been a priority when the government played a dominant role in corporate operation. So modern corporations that have been converted from traditional SOEs in China are less concerned about the so-called competitive advantage or market pressure like their counterparts in the West. Instead, they normally have commitments to labor or a particular stakeholder group in accordance with state preference.¹²⁰

The governmental/regulatory force has an impact on the market/societal force in driving CSR as well. Take Chinese green finance as an example. Although it is the investors/creditors who press corporations to engage in more explicit environmentally responsible behaviors (hence a market/societal force), it is not difficult to observe the governments’ shadow behind these initiatives. Apart from the fact that stated-owned banks still dominate the central financial sources for corporations, green finance is included in the Thirteenth Five-Year Plan (2016-2020) by the central government.¹²¹ And, in August 2016, the People’s Bank of China, along with other governmental departments such as the Ministry of Finance, jointly issued *Guidelines for Establishing the Green Financial System*.¹²² In the *Guidelines*, things such as disclosure of environmental information, disclosure standards of green bond issuance, third-party assessment and rating standards,

¹¹⁸ Kevin Lin, *Work Unit*, in *AFTERLIVES OF CHINESE COMMUNISM: POLITICAL CONCEPTS FROM MAO TO XI* 331–34 (Christian Sorace et al. eds., 2019).

¹¹⁹ BEYOND SHAREHOLDER WEALTH MAXIMISATION, *supra* note 96, at 118.

¹²⁰ *Id.* at 193.

¹²¹ Dishisan ge Wunian Guihua Gangyao (第三十个五年规划纲要) [The Thirteenth Five-Year Plan] (2016) (promulgated by National People’s Cong., Mar. 16, 2016) (China). Establishing China’s green finance system is an important element in this plan.

¹²² People’s Bank of China et. al., Jianli Lüse Jinrong Tixi Zhidao Yijian (建立绿色金融体系指导意见) [*Guideline for Building Green Finance System*], PEOPLE’S BANK OF CHINA (2016), <http://www.pbc.gov.cn/english/130721/3131759/index.html>.

and the supervision and coordination of green finance are emphasized.¹²³ As a result, the *status quo* of government-driven CSR can hardly be shaken.

C. WEAK BUSINESS CASE ARGUMENT

Pressures from international buyers, green finance, domestic ethical consumerism and the like discussed above indicate the strengthening of market/societal force, namely a business case to do CSR in China. Perhaps partially in response to Milton Friedman, who forcefully argued that the only responsibility of the firm is to use its resources and engage in activities to maximize its profits,¹²⁴ mainstreaming explicit voluntary CSR meant “aggressively pursuing viable business opportunities with a CSR dimension.”¹²⁵ Emphasis on contemporary CSR research in recent decades is disproportionately placed on the correlation between CSR and corporate financial performance, i.e., to establish the business justification and rationale for CSR.¹²⁶ In Vogel’s words, the “new world of CSR” is “doing good to do well.”¹²⁷ Engaging in CSR becomes a corporate strategy to reinforce corporate competitive advantage from traditional harm mitigation.¹²⁸

Based on Zadek’s four general types of business case for CSR,¹²⁹ Kurucz, Colbert and Wheeler had argued engaging in CSR activities will (1) reduce a firm’s costs and risks; (2) gain competitive advantage in the context of a differentiation strategy; (3) strengthen a firm’s legitimacy and reputation; (4) create a win-win

¹²³ *Id.*

¹²⁴ Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, *TIMES* 32, 33 (1970).

¹²⁵ Ida E. Berger et al., *Mainstreaming Corporate Social Responsibility: Developing Markets for Virtue*, 49 *CALIF. MGMT. REV.* 132, 140 (2007).

¹²⁶ Michael L. Barnett, *Stakeholder Influence Capacity and the Variability of Financial Returns to Corporate Social Responsibility*, 32 *ACAD. MGMT. REV.* 794–816 (2007); Paul Min-Dong Lee, *Review of the Theories of Corporate Social Responsibility: Its Evolutionary Path and the Road Ahead*, 10 *INT’L J. MGMT. REV.* 53, 53–73 (2008).

¹²⁷ See, e.g., David J. Vogel, *Is There a Market for Virtue? The Business Case for Corporate Social Responsibility*, 47 *CAL. MGMT. REV.* 19, 21 (2005).

¹²⁸ Michael E. Porter & Mark R. Kramer, *The Link Between Competitive Advantage and Corporate Social Responsibility*, 84 *HARV. BUS. REV.* 78, 83 (2006).

¹²⁹ That is (i) to defend reputation and avoid potential financial loss; (ii) to achieve cost benefits; (iii) for strategic business reasons; (iv) to help manage risks and promote innovation in learning in a dynamic and complex environment. See SIMON ZADEK, *DOING GOOD AND DOING WELL: MAKING THE BUSINESS CASE FOR CORPORATE CITIZENSHIP* (The Conference Board 2000).

outcome by connecting stakeholder interests.¹³⁰ As illustrated by the foregoing discussion, in addition to the governmental and regulatory requirement, CSR has been employed by Chinese corporations to enter into international markets.¹³¹ We can see that meeting green investors' preferences, attracting excellent employees at lower costs, improving risk management,¹³² improving corporate image, and strengthening their brand ultimately improve corporate economic benefits. These all fit for the business case argument and reflect market/social force as the driver.

It is argued that managers from developed countries have an overall tendency to interpret CSR in a manner consistent with shareholder wealth maximization.¹³³ Many corporate managers justify their decisions to do CSR by using "business case" discourse.¹³⁴ CSR in China is also thought to be secondary to shareholders' wealth maximization. For example, the concept of CSR is defined by the Chinese Institute of Labor and Social Security as the responsibility to take stakeholders' benefits into consideration when pursue maximum profit for shareholders.¹³⁵ Consequently, relying on a business case to justify the do-good behavior would inevitably lead to the confusion between means and end, particularly when the business case weakens or disappears. Like the so-called triple bottom line of economic, social, and environmental

¹³⁰ Elizabeth C. Kurucz et al., *The Business Case for Corporate Social Responsibility*, in THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY 85–92 (Andrew Crane et al. eds., Oxford University Press 2008).

¹³¹ This is similar to the so-called license to operate: namely, the need for tacit or explicit permission from governments, communities, and numerous other stakeholders to start doing business. But in the context of Chinese companies, it is mainly about the pressure from international buyers.

¹³² It is argued that CSR will either be used for cause-related marketing campaigns, or as a form of insurance, in the hope that a corporation's reputation for social consciousness will temper public criticism in the event of a crisis. JAMES CUNNINGHAM & BRIAN HARNEY, STRATEGY AND STRATEGISTS 218 (Oxford University Press 2012).

¹³³ See Oliver Falck & Stephan Hebllich, *Corporate Social Responsibility: Doing Well by Doing Good*, 50 BUS. HORIZONS 247, 353 (2007); Brendan O'Dwyer, *Managerial Perceptions of Corporate Social Disclosure: An Irish Story*, 15 ACCT. AUDITING & ACCOUNTABILITY J. 406, 416 (2002); Richard Macve & Xiaoli Chen, *The "Equator Principles": A Success for Voluntary Codes?*, 23 ACCT. AUDITING & ACCOUNTABILITY J. 890, 892–93 (2010); Christopher Marquis & Cuili Qian, *Corporate Social Responsibility Reporting in China: Symbol or Substance?*, 25 ORG. SCI. 127, 131 (2014).

¹³⁴ See, e.g., Crawford Spence, *Social and Environmental Reporting and Hegemonic Discourse*, 20 ACCT. AUDITING & ACCOUNTABILITY J. 855, 865 (2007).

¹³⁵ Wang & Juslin, *supra* note 44, at 434.

performance,¹³⁶ the business case argument appeals to enlightened self-interest and emphasizes long-term economic performance by avoiding short-term behavior that is socially detrimental or environmentally wasteful. It works best for CSR issues that coincide with corporation's economic interests. But the reality is that for many other issues there will be no direct economic rewards. When conflicts arise between interests of shareholders and non-shareholders, directors are only required to address shareholders' interests under such logic and take actions to produce the highest possible returns for them, even at the expense of non-shareholder groups.

In addition to the inherent flaw of the business case argument as analyzed above, the market/societal force in China is not as strong as it is in the West. Although the stock markets have grown quickly since the establishment of the Shanghai and Shenzhen Stock Exchanges at the end of 1990, and the market capitalization of listed domestic corporations in China is about \$8.7 trillion as of 2017 (second only to the U.S.),¹³⁷ banks, especially state controlled ones, remain the most important financial source for Chinese corporations.¹³⁸ Besides, the market force mainly focuses on environment due to current, severe environmental problems, which means other aspects of CSR cannot be appropriately covered and thereby insufficiently valued by market actors. It implies issues other than environmental problems may not attract investors or consumers' due attention. Also, corporations with monopolistic or oligopolistic power, such as many SOEs, are to some extent immune from market pressure and have less concern about the legitimacy issues. Considering China's large population and massive domestic consumer market, it is not surprising to see that ethical consideration may easily be outweighed by conventional product attributes such as quality, value for money, and service especially in rural areas. Meanwhile, the societal force to drive CSR is also unintentionally limited on the assumption that the growth of civil society is materially curtailed by the government. For instance, NGOs are prohibited from setting up regional offices or raising funds in order to prevent them from growing too big or too powerful; and if there is already an NGO doing similar work in the same administrative

¹³⁶ Under the framework of triple bottom line, profit is not the only bottom line; social and environmental factors must also be considered. *See, e.g.*, ADRIAN HENRIQUES & JULIE RICHARDSON EDS., *THE TRIPLE BOTTOM LINE: DOES IT ALL ADD UP* (Routledge 2013).

¹³⁷ WORLD BANK, *supra* note 50.

¹³⁸ Allen et al., *supra* note 49.

(geographical) area, then new NGOs will not be allowed to form.¹³⁹

In short, due to weak market/societal force, there is so far a lack of imperatives for corporations in China to be explicitly socially responsible as there are in the U.S.¹⁴⁰ Solely relying on corporations' explicit voluntary CSR activities is not enough or even dangerous, especially when the market/societal force is not *strong* or *robust*. On the other side, the implicit mandatory CSR could help to cover the gap by providing the institutional environment for corporations to expend resources for socially beneficial purposes without profit motive.

VI. IMPLICIT CSR WITH AN EXPLICIT ELEMENT

This paper is in line with new institutional theories and highlights the non-voluntary aspect of CSR.¹⁴¹ Besides mandatory CSR, much of the corporate attention to CSR has never been entirely voluntary.¹⁴² Most times, it is just to respond to social pressures, which can be termed as corporate social responsiveness.¹⁴³ A recent example in the U.K. is that Pret A Manger promised to label all ingredients that include allergens on its freshly made products following the death of a 15-year-old girl who had an allergic reaction after eating a Pret sandwich, despite the fact that the U.K. food labelling laws allow some foods to be sold without individual labels denoting which allergens they contain.¹⁴⁴ One of the main advantages of corporate social responsiveness is to take the "moral heat" off corporations and focus more on their tangible activities as a socially responsive entity.¹⁴⁵

¹³⁹ Tan-Mullins & Hofman, *supra* note 86, at 9.

¹⁴⁰ Even in the West, it is questionable that the market/societal force is able to make a fundamental change. For example, companies selling cigarettes or providing gambling services have enjoyed significantly higher returns than the stock market indices. The S&P 500 Tobacco index has outperformed the S&P by more than 1,000% over the last 28 years, DEUTSCHE ASSET MANAGEMENT, TOBACCO'S INVESTMENT RETURNS AND SOCIETAL COSTS (September 2017), https://www.rreefpropertytrust.com/globalassets/microsites/esg/esg-report-issue-2_tobacco.pdf.

¹⁴¹ That is to say, the company as an economic organization is influenced by social institutions, and corporate behavior is shaped by institutional contexts. In other words, instrumental and business case rationale is not adequate in justifying all social engagement by companies.

¹⁴² See, e.g., Doreen McBarnet, *Corporate Social Responsibility Beyond Law, Thorough Law and For Law*, University of Edinburgh School of Law Working Paper No. 2009/03, 19 (2009), <http://ssrn.com/abstract=1369305P30>.

¹⁴³ William C. Frederick, *From CSR1 to CSR2: The Maturing of Business-and-Society Thought*, 33 BUS. & SOC'Y 150, 154 (1994).

¹⁴⁴ See, e.g., *Pret A Manger to Label Products After Allergy Death*, BBC (Oct. 3, 2018), <https://www.bbc.co.uk/news/business-45731201>.

¹⁴⁵ Frederick, *supra* note 143, at 158–59.

Implicit CSR could also take the “moral heat” off and avoid the difficult question of whether corporations should assume social responsibility or respond to social pressures, and shift focus to the question of how to respond in fruitful, humane, and practical ways. Doing CSR can then be viewed as some form of rationalization for corporations to maintain the appearance of compliance or legitimacy in their institutional environments by responding to the governmental/regulatory force.

Although both governmental/regulatory force and market/societal force for CSR are increasing in China, the current momentum along with comparatively weak market/societal force determine the governmental/regulatory force will remain as the dominant drive for CSR and a more mandatory CSR framework with clear legal obligations can be expected in the future. Put differently, mandatory rules and regulations have played a large role in shaping CSR in China, and they will continue to play a vital role in advancing CSR. It is then reasonable to foresee, first of all, more regulations and rules defining the minimum standards of corporate behavior. For example, a more comprehensive and stricter environmental protection law, anti-corruption law and the like can be expected. Secondly, it is also possible for the Chinese government to go further and follow section 135 of the Indian *Companies Act 2013*¹⁴⁶ to require large corporations to mandatorily contribute a fraction of corporate profits to a range of recognized CSR activities. Non-compliance without a justifiable explanation will lead to fines or imprisonment for corporations and/or responsible corporate officers. Last, but not least, a more indirect touch from the government would be to mandate CSR disclosure that covers corporations’ CSR policies, and how the corporations translate their CSR policies into actions. In order to overcome the so-called “green-washing” problem,¹⁴⁷ sufficiently detailed, precise and comprehensive information can be requested to avoid the selective reporting under such a disclosure scheme.¹⁴⁸

¹⁴⁶ Companies Act 2013, No. 18, Acts of Parliament, 2013 (India), § 135.

¹⁴⁷ Firms may mislead the public and their potential customers about how their products are more environmentally sound via advertising or marketing. Lucia Gatti et al., *Grey Zone In – Greenwash Out. A Review of Greenwashing Research and Implications for the Voluntary-Mandatory Transition of CSR*, 4 INT’L. J. CORP. SOC. RESP. 6 (2019).

¹⁴⁸ For example, the mandatory CSR reporting stipulated by article 116 of *Nouvelles Régulations Economiques 2001* requests the following to be disclosed: information regarding human resources, community involvement and environment. These include, for example, recruiting processes; use of subcontracting/outsourcing; rationales for recruitment, layoffs/redundancies; length of workday/work hours and their rationales; amount of overtime; efforts to

Regulations and laws nevertheless have limits; they are not always as effective in regulating businesses as one may hope. Take tax avoidance for example. While one can evade taxes by illegal methods such as not disclosing assets, there are lawful ways to avoid taxes or gain tax advantages by using artificial transactions. These methods may go against the spirit of the law but do not necessarily break the letter of the law. For instance, global firms such as Starbucks, Google and Amazon were doing legal things when they paid little or even no corporate tax to the U.K. Treasury while their turnovers exceed hundreds of million pounds.¹⁴⁹ Furthermore, construction of an institutional and regulatory environment normally lags behind social development, including both rapidly developing technology and evolving social norms.¹⁵⁰ Mandatory rules are fundamentally reactive and will only be adopted to “regulate behavior that has offended changing societal expectations to such an extent that political forces mobilize to enact new legally binding standards.”¹⁵¹

Thus, although it is vital to provide more obligations in order to set a minimum standard and level the playing field for a fair competitive environment in the Chinese context, the importance of discretion should not be overlooked. In other words, the market/societal force should also be effectively exploited to fill the gap left by governmental/regulatory force in driving CSR. In fact, governmental/regulatory force does not restrict the role of governments in mandating CSR, i.e., stipulating minimum standards for corporate behavior within the legal framework. According to Fox, Ward and Howard, apart from mandate, other key roles of governments in advancing CSR include facilitation, partnership and

mitigate effects of corporate restructuring; history of pay rates; health and safety conditions; social benefits; integration into the local community; contacts with NGOs, consumer groups, educational institutions and impacted populations; consumption of water, energy, raw materials/natural resources; use of land; use of renewable energy; initiatives for energy efficiency; emissions of wastes into air, water, and land, emissions of odor and noise; environmental management and alike. Dominique Wolff et al., *France’s Mandatory “Triple Bottom Line” Reporting*, 5 INT’L J. ENVTL. CULTURAL ECON. & SOC. SUSTAINABILITY 27, 34–36 (2009).

¹⁴⁹ See, e.g., Vanessa Barford & Gerry Holt, *Google, Amazon, Starbucks: The Rise of “Tax Shaming”*, BBC NEWS MAGAZINE (May 21, 2013), <http://www.bbc.co.uk/news/magazine-20560359>.

¹⁵⁰ David Vogel, *Private Global Business Regulation*, 11 ANN. REV. POL. SCI. 261, 266 (2008).

¹⁵¹ JOHN KLINE, *ETHICS FOR INTERNATIONAL BUSINESS: DECISION MAKING IN A GLOBAL POLITICAL ECONOMY* 13 (Routledge 2010).

endorsement.¹⁵² Specifically, governments could incentivize corporations to engage with a CSR agenda or drive social and environmental improvements by facilitation, such as by providing funding for research, leading campaigns, information collation and dissemination, training, and awareness raising. Governments could also act as participants, conveners, or facilitators and bring complementary skills and inputs from both public and private sectors through strategic partnerships. The lightest touch is the so-called endorsement. Governments could render political support and public sector endorsement of the concept of CSR and CSR-related initiatives through various methods such as authoritative guidance, training schemes, and awards.¹⁵³

Governments' facilitation, partnership, endorsement other than mandate would definitely leave more rooms for individual corporations to exercise their discretion in doing CSR. Discretionary activities beyond governmental regulatory requirements, but endorsed and encouraged by governments, will potentially lead to a hybrid of explicit and implicit CSR activities. Thus, even though implicit CSR and explicit CSR are two traditionally incompatible systems, the unique situation in China would provide an environment for the co-existence of implicit and explicit CSR. And it is possible for corporations to engage in explicit voluntary CSR activities while simultaneously meeting governmental/regulatory requirements.

VII. CONCLUSION

For the government in China, the determined political will to fully engage in social and economic activities including continually shaping CSR by regulations and policies mean implicit CSR activities will remain the norm. But when the government is increasingly looking to businesses for help in addressing policy shortcomings,¹⁵⁴ it can employ CSR to encourage corporations to contribute to the national economic, social, and environmental agendas. In doing so, the government should play some roles other than mandating in promoting CSR in China, and thereby leave more rooms for corporations' discretionary CSR activities. CSR, in the form of non-mandatory regulation, can have "a role to play in complementing law, by providing wider ethical standards and forces of social accountability, and by not only making demands on

¹⁵² TOM FOX ET AL., PUBLIC SECTOR ROLES IN STRENGTHENING CORPORATE SOCIAL RESPONSIBILITY (World Bank 2002).

¹⁵³ *Id.*; see also Kurucz et al., *supra* note 130.

¹⁵⁴ Tan-Mullins & Hofman, *supra* note 86, at 5.

business beyond those of formal law, but making formal law itself more effective.”¹⁵⁵ At the very least, playing a non-mandating role would not contradict the implicit mandatory system because mandatory rules can always be used as last resort when encouragement or recommendations on voluntary CSR does not succeed.

For businesses, the rising market/societal force in China as analyzed above certainly provides good opportunities or rationales for corporations to claim more explicit CSR activities either passively or proactively. When corporations go beyond legal requirements and endeavor to meet society’s expectations of conventional corporate behavior and improve the wellbeing of relevant stakeholders through discretionary business practices, they will inevitably engage with their stakeholders. In terms of the stakeholder engagement in China, government is thought by businesses as the most important stakeholder, who sits at the top of the CSR pyramid.¹⁵⁶ Therefore, even when corporations engage in explicit CSR activities, the governmental factor remains a priority. On the other side, if businesses in China want to take more initiatives and ward off further, and potentially tighter, government regulation of CSR, the only possibility is to engage in explicit CSR activities to meet their social responsibilities voluntarily and convince the government that there is no need to use governmental/regulatory force to drive CSR any further. Although it is very difficult, if not unrealistic, due to the compliance-oriented culture and the inadequacy of the business case in China, this is perhaps their only chance to engage in CSR more strategically rather than through mere compliance in the future.

¹⁵⁵ Doreen McBarnet, *Introduction*, in *THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW 2* (Doreen McBarnet et al. eds., Cambridge University Press 2007).

¹⁵⁶ Christopher Marquis & Cuili Qian, *Corporate Social Responsibility Reporting in China: Symbol or Substance?*, 25 *ORG. SCI.* 127, 130 (2014). Just as one officer from the Shanghai Stock Exchange summarized, most directors understood the principles of good corporate governance as well as its significance, but more than a few continued to think that their relationship with the government was more important than that with minority shareholders in the transition from a centrally planned to market-oriented market. See Neil Andrews & Roman Tomasic, *Directing China’s Top 100 Listed Companies: Corporate Governance in an Emerging Market Economy*, 2 *CORP. GOVERNANCE L. REV.* 245, 308–309 (2006).