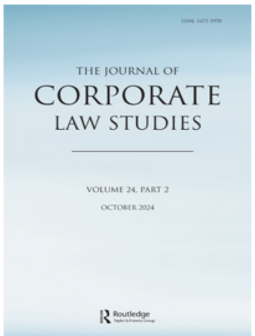

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Operationalising stakeholder governance: some lessons from China's new Company Law

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ABSTRACT

The shareholder primacy model has come under increasing scrutiny in recent decades, particularly in light of climate change and other pressing global crises, with companies now expected to address the interests of a wider range of stakeholders. Stakeholder governance has thus emerged as a promising alternative model. While many jurisdictions are exploring pathways to advance more stakeholder-oriented governance models, the recent amendments to China's Company Law presents a particularly noteworthy example. This paper critically examines its newly introduced stakeholder-oriented provisions, including the mandated consideration of stakeholder interests, enhanced employee engagement requirements such as the implementation of workforce directors and adjustments to shareholders' rights and directors' duties. The paper analyses whether, and to what extent, these reforms represent a shift away from the shareholder primacy model as it was traditionally dominant in China. The paper makes two further contributions: first, it explores potential pathways for future reform to strengthen stakeholder-oriented governance in China; and second, it highlights lessons that can be learned to operationalise stakeholder governance for other jurisdictions.

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KEYWORDS Corporate governance; employee engagement; shareholder primacy; stakeholder governance; stakeholderism; workforce director

1. Introduction

Growing concerns about the externalities that companies may impose on stakeholders have placed the mainstream shareholder primacy model[1] under

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[1]Agency theory, which has evolved from contractarianism and conceptualises the company as a nexus of contracts, has been a driving force behind the shareholder primacy model for the past half-century. See e.g. Michael Jensen and William Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3 Journal of Financial Economics 305; Armen Alchian and Harold Demsetz,

intense scrutiny. Stakeholderism or stakeholder governance, as an alternative approach that requires companies to take wider responsibilities and not narrowly focus on shareholder interests, is increasingly accepted as a way to pursue the success of the company. For example, the British Academy's *Report on the Future of the Corporation* in 2018,[2] the US Business Roundtable's *Statement on the Purpose of a Corporation* in 2019,[3] and the World Economic Forum's *Davos Manifesto 2020*[4] all highlighted that a company does not only serve its shareholders, but all its stakeholders – employees, customers, suppliers, local communities and society at large. Policymakers and legislators around the world are also working to ensure companies can create values for all its stakeholders. The French 'Loi Pacte' of 2019, for example, amended article 1833 of the French Civil Code and mandates all French companies to be managed 'in the corporate interest, taking into account the social and environmental concerns linked to its activity'.[5] The *Restatement of the Law of Corporate Governance* by the American Law Institute restates the objective of the company with a strong emphasis on stakeholder interests.[6] Accordingly, viewpoints suggesting

Production, 'Information Cost, and Economic Organization' (1972) 62 American Economic Review 777. Legal rules and strategies are accordingly developed with a strong focus on managerial accountability to contain agency costs and ensure that managers act in the shareholders' best interests. See e.g. Reinier Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd edn, OUP 2017) 31. The wave of hostile takeovers in the 1980s further compelled directors and executives to prioritise shareholders' financial interests, as shareholder loyalty can no longer be taken for granted. This shift was largely due to the high turnover rate of top executives following hostile takeovers, which increased the pressure on management to meet shareholders' financial expectations. See e.g. Andrew Johnston, Blanche Segrestin and Armand Hatchuel, 'From Balanced Enterprise to Hostile Takeover: How the Law Forgot about Management' (2019) 39 Legal Studies 75, 97; Leo Strine, 'Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit' (2012) 47 Wake Forest Law Review 135, 136.

[2]The British Academy, *Reforming Business for the 21st Century: A Framework for the Future of the Corporation* (2018) <https://www.thebritishacademy.ac.uk/publications/reforming-business-21st-century-framework-future-corporation> accessed 12 March 2025. The *Future of the Corporation* programme is the British Academy's review of the role of business in society, which is launched in 2017 and concludes its main phase of activity in 2021.

[3]The Business Roundtable, representing the CEOs of America's leading companies, issued a *Statement on the Purpose of a Corporation* (August 2019) <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> accessed 12 March 2025. This Business Roundtable's statement on corporate purpose acknowledges the importance of stakeholders and commits to deliver value to customers, employees, suppliers, communities in addition to shareholders. This changes their long-standing view that 'the principal objective of a business enterprise is to generate economic returns to its owners', as we can see in the Business Roundtable's *Statement on Corporate Governance* (September 1997) <http://www.ralphgomory.com/wp-content/uploads/2018/05/Business-Roundtable-1997.pdf> accessed 12 March 2025.

[4]Klaus Schwab, 'Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution' (December 2019) <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/> accessed 12 March 2025.

[5]Klaus Hopt, 'Corporate Purpose and Stakeholder Value—Historical, Economic and Comparative Law Remarks on the Current Debate, Legislative Options and Enforcement Problems' (2023) ECGI Law Working Paper No. 690/2023, 22 <https://doi.org/10.2139/ssrn.4390119> accessed 12 March 2025.

[6]The American Law Institute (ALI) is an association of American lawyers, academics, and practitioners that, among other activities, adopts codes and restatements of the law that are highly influential with US legislators and judges. In May 2022, the ALI membership approved the following § 2.01 as black letter law:

that company law needs to intervene to safeguard the interests of stakeholders is gaining momentum. A good example here is Oxford Professor Colin Mayer, who emphatically argues that 'legislation would require companies to adopt purposes that aim to benefit people and planet as well as shareholders, and report on their success in so doing.'[7]

As the world's second-largest economy and a rising global superpower,[8] China's corporate governance naturally warrants significant attention. From 2018 to 2023,[9] China has led in the number of firms listed on the *Fortune Global 500*,[10] underscoring the importance of understanding China's corporate governance – not only for insights into its governance structures, but also for its broader impact on global governance standards. Rooted in its unique historical legacy, during the wave of corporatisation reforms from the late 1980s and with the enactment of the first modern Company Law in 1993, shareholder empowerment had been deemed essential for corporate development and market economy reform.[11] To overcome the weak protection of private property rights and encourage investment, shareholders were placed in a primary

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§ 2.01. The Objective of a Corporation

(a) The objective of a corporation is to enhance the economic value of the corporation, within the boundaries of the law;

(1) in common-law jurisdictions: for the benefit of the corporation's shareholders. In doing so, a corporation may consider:

(a) the interests of the corporation's employees;

(b) the desirability of fostering the corporation's business relationships with suppliers, customers, and others;

(c) the impact of the corporation's operations on the community and the environment; and

(d) ethical considerations related to the responsible conduct of business;

(2) in stakeholder jurisdictions: for the benefit of the corporation's shareholders and/or, to the extent permitted by state law, for the benefit of employees, suppliers, customers, communities, or any other constituencies.

(b) A corporation, in the conduct of its business, may devote a reasonable amount of resources to public-welfare, humanitarian, educational, and philanthropic purposes, whether or not doing so enhances the economic value of the corporation.

[7]The British Academy Report, Colin Mayer chaired as a follow-up to his book, claimed that section 172 of the UK Companies Act 2006 can be changed to 'require companies to state their purpose in their articles of association'. The British Academy, *Policy & Practice for Purposeful Business: The Final Report* (September 2021) 22. However, this issue is highly contentious, with Professor Paul Davies presenting a detailed and comprehensive critique of the proposal. See Paul Davies, 'Shareholder Voice and Corporate Purpose: The Purposelessness of Mandatory Corporate Purpose Statements' in Luca Enriques and Giovanni Strampelli (eds), *Board-Shareholder Dialogue: Policy Debate, Legal Constraints and Best Practices* (CUP 2024). Nevertheless, it is worth noting that the UK Corporate Governance Code introduced a new principle in 2018, stating that 'the board should establish the company's purpose, values, and strategy, and satisfy itself that these and its culture are aligned.' Such objectives may still have an impact on the fiduciary duties of directors. See (n 18) below.

[8]World Bank, 'The World Bank in China: Overview' <www.worldbank.org/en/country/china/overview> accessed 12 March 2025.

[9]In 2024, the Fortune Global 500 includes 139 firms from the United States, while China is represented by 133 companies, a decrease from 142 in 2023.

[10]The 'Fortune Global 500' list is a ranking of the world's largest companies by total revenue, published annually by Fortune magazine. Fortune, 'Fortune Global 500' <https://fortune.com/ranking/global500/> accessed 12 March 2025.

[11]Baoshu Wang and Qingzhi Cui, *The Principle of Chinese Company Law* (*zhong guo gong si fa yuan li)* (Social Science Documents Press 1998) 25–26.

position and granted extensive power.[12] Accordingly, while German influences, such as the dual board structure, have shaped some aspects of China's corporate governance, the Anglo-American shareholder primacy approach is well reflected by China's overall corporate governance framework.[13]

The recent amendments to China's company law legislation, which incorporate stakeholder-oriented principles, can be seen as a practical application of scholarly proposals on stakeholderism. For instance, the newly amended Company Law (hereafter 'new Company Law') introduces a new provision that explicitly requires companies to *fully* consider stakeholder interests when conducting business operations, including the interests of company's employees, consumers, environment and other public interests.[14] The new Company Law also strengthens employee engagement by including mandatory consultation with labour unions and solicitation of employees' opinions before making decisions on restructuring, dissolution, bankruptcy and other important matters.[15] Additionally, employee representatives are required on the board of directors, where they are directly involved in the decision-making process.[16] There is also a recalibration of power between directors, managers and shareholders. As a result, a critical analysis of China's stakeholder governance approach can offer a comprehensive understanding of its current framework while providing valuable insights for the ongoing stakeholder governance debates.[17]

This paper therefore examines these stakeholder provisions introduced in China's new Company Law, evaluating whether and how they may help to overcome traditional shareholder primacy. It also explores potential pathways for future reforms to further strengthen stakeholder governance in China. The findings of this research may also offer valuable insights for jurisdictions, such as the UK, which aim to enhance corporate governance standards for long-term sustainable success through measures like defining corporate purpose and incorporating workforce directors.[18]

[12]Ibid; Min Yan, 'Evolution of the Corporation and the Shareholders' Role in China' (2015) 26 International Company and Commercial Law Review 355, 361.

[13]On Kit Tam, 'Ethical Issues in the Evolution of Corporate Governance in China' (2002) 37 Journal of Business Ethics 303, 303.

[14]Chinese Company Law 2023, art 20. For more details about the new Company Law, see (n 19) below.

[15]ibid art 17.

[16]In this paper, employee representation at the board level primarily refers to the inclusion of workforce directors, namely directors appointed from workforce. See Chinese Company Law 2023, art 68.

[17]With the rise of social enterprises, such as Benefit Corporations in the US or Community Interest Companies in the UK, questions may arises regarding whether these models could provide a new solution for those wishing to establish more socially responsible business structures. However, it is important to distinguish between socially responsible profit-driven companies and social enterprises, as they differ significantly in both rationale and practice. For example, social enterprises adopt a broader understanding of the social aspect, encompassing, but not limited to, the protection and promotion of the interests of vulnerable groups within the community (such as women, youth, individuals with disabilities, ex-convicts, the destitute, and those facing challenges such as illiteracy, malnutrition, and inadequate healthcare). See e.g. Ernest Lim, *Social Enterprises in Asia: A New Legal Form* (CUP 2024) 166–167. This paper focuses on stakeholder governance in the context of profit-driven companies.

[18]The UK Corporate Governance Code 2018, Principle 1, Provisions 2 and 5. They remain largely unchanged in the UK Corporate Governance Code 2024.

The remainder of the paper is organised as follows. Section 2 identifies and examines the main stakeholder-oriented provisions introduced in the new Company Law, categorising these mechanisms into general and specific requirements. Section 3 then situates the evolution of governance within the broader power dynamics of the company, examining changes in shareholder power and adjustments to the duties of directors and managers. Given the prominent role of government in shaping corporate governance in China, Section 4 explores its direct and indirect influence on corporate practices and stakeholder relations, thereby providing a more comprehensive understanding of the evolving governance landscape with Chinese characteristics. Section 5 proposes pathways for further advancing stakeholder governance in China, such as reducing shareholders' overall power, adopting ESG-based remuneration, public enforcement of the statutory duties, employing law and regulations other than company law and increasing transparency. Building on the discussions in the preceding sections, Section 6 briefly outlines lessons that may be of relevance to other jurisdictions seeking to advance stakeholder-oriented governance. Section 7 concludes.

2. Stakeholder provisions in the new Company Law

China's new Company Law was approved on 29 December 2023 and came into force on 1 July 2024. This amendment represents the most extensive revision since the enactment of the first modern Company Law in China.[19] It intended to continue the reform of state-owned enterprises (SOEs), optimise the business environment, strengthen the protection of property rights, and promote the healthy development of the capital market.[20] Out of 266 articles in total, the new Company Law added and modified 228 articles, with 112 of these involving substantive modifications. The new Company Law contains over ten provisions directly addressing stakeholder governance,[21] which can be classified into general requirements and specific requirements. The former category employs principles to articulate regulatory objectives, typically through high-level and general statements, allowing regulatees flexibility in determining how to adhere to these

[19]Since the enactment of the first modern Company Law in China on 29 December 1993, it has been subsequently amended in December 1999, August 2004, October 2005, December 2013 and October 2018. See Min Yan, 'Weighted Voting Rights under the New Chinese Company Law' [2024] 7 Journal of Business Law 559, 559.

[20]The necessity of amending the Company Law is explained by Ruihe Wang, the Deputy Director of the Legislative Affairs Commission of the Standing Committee of the National People's Congress, at the 32nd Meeting of the Standing Committee of the 13th National People's Congress on 20 December 2021. See China's National People's Congress (NPC), *Gazette of the Standing Committee* (No. 1 of 2024) 33 <http://www.npc.gov.cn/wxzlhgb/> accessed 12 March 2025.

[21]It includes arts 16, 17, 19, 20, 68, 69, 76, 120, 121, and 130. There is also enhanced protection for creditors, such as those provided under art 54.

principles[22] In contrast, the latter category utilises specific provisions to establish clear criteria that regulatees must meet.[23]

2.1. General requirements

While Chinese Company Law was generally shareholder oriented,[24] a shift towards broader corporate responsibility was already evident prior to the recent amendment. For example, the maximisation of shareholders' interests as the primary goal of corporate practice as explicitly prescribed in the 1993 Company Law[25] was removed in 2005.[26] Further, art 5 of the 2005 Company Law inserted that a company 'shall … assume social responsibilities'.[27]

The new Company Law takes this a step further by expanding this provision into two separate articles: art 19 reiterates existing stipulations while emphasising the importance of business ethics; art 20 explicitly mandates that companies, arguably their directors and managers, *fully* consider stakeholder interests on top of assuming corporate social responsibility (CSR). Specifically, it states that the interests of employees, consumers, and the environment, together with other stakeholder interests and other public interests, 'must be fully considered' when operating businesses.[28]

Article 20 thus represents a significant advancement beyond the traditional CSR duty, offering a more holistic approach compared to the so-called enlightened shareholder value (ESV) approach outlined in the UK Companies Act 2006.[29] While English Company Law allows directors to

[22]Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (2nd edn, OUP 2011) 302; also see Julia Black, 'Forms and Paradoxes of Principles-based Regulation' (2008) 3 Capital Markets Law Journal 425, 430.

[23]The aim of this categorisation is not to provide an authoritative taxonomy but simply to offer a heuristic framework for thinking about different approaches and also for the purposes of comparison later in this paper.

[24]See e.g. Min Yan, *Beyond Shareholder Wealth Maximisation: Towards A More Suitable Corporate Objective for Chinese Companies* (Routledge 2018) 132–137.

[25]Chinese Company Law 1993, arts 4 and 5 stated that the company operates with the objectives of enhancing economic efficiency and achieving asset value appreciation. Meanwhile, shareholders as capital contributors are entitled to ownership rights over the company's assets, as well as key rights such as participation in major decision-making and the selection of management.

[26]The provision on 'the objectives of enhancing economic efficiency and achieving asset value appreciation' was deleted in Chinese Company Law 2005.

[27]This provision remained the same in the following amendments in 2013 and 2018. e.g. Chinese Company Law 2018, art 5 stated: '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 general public, and bear social responsibilities.'

[28]Chinese Company Law 2023, art 20 para 2 states 'When conducting business operations, a company shall fully consider the interests of the company's employees, consumers, and other stakeholders and ecological and environmental protection and other public interests, and assume social responsibility'.

[29]The UK Companies Act 2006, s 172(1) lists a number of stakeholders that need to be regarded when a director of a company acts in the best interests of the company for the collective benefit of shareholders.

consider other stakeholder interests in their pursuit of the success of the company, such consideration is qualified by the requirement to act 'for the benefit of its members as a whole'.[30] By contrast, Chinese law does not impose such limitations, meaning that directors and managers are not prevented from prioritising other stakeholder interests, even at the potential expense of shareholder interests. This requirement also represents an even more robust commitment than the provision of France's 2019 *Loi Pacte*, which mandates that companies operate 'in the corporate interest' while merely requiring a *consideration* of 'the social and environmental concerns linked to its activity'.[31]

However, this obligation to consider stakeholder interests is located in the first Chapter of the new Company Law entitled *General Provisions*, rather than being integrated into the duties of the board of directors and managers. Such position may suggest that managerial fiduciary duties remain primarily shareholder-oriented, as was previously the case. Nevertheless, it is important to recognise that these general provisions can exert considerable influence on corporate governance and management practices within the context of China's political and corporate culture.[32] Although rarely, judges did cite the CSR provision in article 5 in the past to support their judgments in several Chinese cases. A 2019 empirical study found that the CSR provision has been cited in at least 45 cases to support the judgment.[33] This is further reinforced by the comprehensive and far-reaching Chinese Civil Code, which explicitly confirms that companies have duties to adhere to business ethics and fulfil social responsibilities.[34] Consequently, the duty to fully consider stakeholder interests is not merely exhortatory or educational in nature.

In relation to the interests of employees, art 16 of the new Company Law further specifies that companies shall (1) 'protect the lawful rights and interests of its employees, sign employment contracts with its employees, buy social insurances, and strengthen labour protection so as to ensure

[30]The proposal of omitting such reference to the shareholders, an attempt to avoid the success of the company to be solely defined in terms of the interests of the shareholders, was explicitly rejected. Company Law Review Steering Group, *Modern Company Law for A Competitive Economy: Developing the Framework* (Department of Trade and Industry, 2000) para 3.52. This suggests that considering stakeholder interests under the ESV approach ultimately serves the shareholder value.

[31]Above (n 5) and accompanying text.

[32]Colin Hawes, 'Interpreting the PRC Company Law through the Lens of Chinese Political and Corporate Culture' (2007) 30 University of New South Wales Law Journal 813, 820.

[33]Xiaofeng Xu and Min Yan, 'The Case of Judicialization of Corporate Social Responsibility in China' (2020) 41 Business Law Review 22, 24. For instance, a Chinese court stated that 'article 5 of Chinese Company Law, as a principle-based rule, requires a company to assist the government in lowering the unemployment rate, preserving social and economic order, paying taxes, protecting employees' rights (including ensuring social insurance for them), and protecting the environment, among other duties, when pursuing profits.' ibid 27.

[34]Chinese Civil Code 2020, art 86. Further, it specifically requires civil and commercial entities to contribute to the conservation of resources and protection of environment in the conduct of their activities. ibid art 9.

work safety' and (2) 'in various forms, intensify the professional education and in-service training of its employees so as to improve their personal quality.'[35] Additionally, the new Company Law slightly amends the previous provision on labour unions and their role in safeguarding employee interests.[36] Notably, art 17, which builds upon art 18 of the 2018 Company Law, introduces a requirement for the establishment of an assembly of employee representatives for the first time. It mandates that companies solicit opinions from labour unions and employees through this assembly prior to making decisions on critical matters such as restructuring, dissolution, or applications for bankruptcy.[37] Accordingly, employee engagement matters, and it would be further manifested through the more specific requirements as discussed next.

2.2. Specific requirement: employee representation

The more specific requirements in the new Company Law primarily pertain to employee voice and board representation. Based on the German dual-board structure, employee representatives are long required to sit on the supervisory board in China.[38] The ratio of employee representatives cannot be lower than one third and individual companies can set a higher ratio in their company's constitution.[39] The new Company Law unsurprisingly maintains this requirement,[40] and it further introduces a mandate for employee representation on the board of directors in addition to the supervisory

[35]The wording is not materially different from Chinese Company Law 2018, art 17.

[36]For instance, the labour union shall, on behalf of the employees, sign collective contracts with the company with respect to the remuneration, working hours, rest and leave, work safety and sanitation, insurance and welfare, and other matters. ibid.

[37]Chinese Company Law 2023, art 17 states:

> The employees of a company shall, according to the Labour Union Law of the People's Republic of China, organise a labour union, which shall carry out union activities and safeguard the lawful rights and interests of the employees. The company shall provide necessary conditions for its labour union to carry out activities. The labour union shall, on behalf of the employees, sign collective contracts with the company with respect to the remuneration, working hours, rest and leave, work safety and sanitation, insurance and welfare, and other matters.
> In accordance with the Constitution and other relevant laws, a company shall establish and improve a democratic management system in the form of an assembly of the representatives of the employees, and adopt democratic management in such form or any other ways.
> To make a decision on restructuring, dissolution, application for bankruptcy, or any important issue relating to business operations, or to formulate any important articles of association, a company shall solicit the opinions of its labour union, and shall solicit the opinions and proposals of the employees through the assembly of the representatives of the employees or in any other way.

[38]See e.g. Chinese Company Law 2005, arts 52, 118; Chinese Company Law 2018, arts 51, 117. Small-sized companies or those with a limited number of shareholders may be exempted from the requirement to establish a supervisory board.

[39]ibid.

[40]Chinese Company Law 2023, arts 76 and 130.

board.[41] Article 68 states that the board of directors of a limited liability company[42] with 300 or more employees shall include representatives of the employees of the company unless employee representatives are already duly appointed to the supervisory board in accordance with this law.[43]

When considered alongside the newly introduced provisions of arts 69 and 121, which allow for the establishment of an audit committee composed of board directors to replace the requirement of a supervisory board,[44] it becomes evident that the new Company Law offers companies an alternative governance structure. This marks a departure from its original standpoint since the 1993 Company Law, allowing for the adoption of a unitary board structure. As an important component to optimise the structure of corporate organisational setup,[45] companies can thus choose to not establish or maintain a supervisory board.

While it may be noted that the appointment of workforce directors is not a novel concept in China, as the previous Company Law has already required wholly state-owned companies to have workforce directors, the new Company Law undoubtedly broadens the scope of companies required to appoint workforce directors, irrespective of ownership structures.[46] Thus, the revised provision on employee representation could still be seen as a significant step forward, fulfilling a long-cherished wish of many

[41]ibid arts 68 and 120.

[42]For an overview of two types of corporate form under Chinese Company Law: namely, limited liability company (LLC) and joint stock limited company (JSLC), see Yan (n 24) 125. Simply speaking, the liability of a shareholder in a LLC is limited to the extent of their capital contributions, while the liability of a shareholder in a JSLC is limited to the extent of the shares subscribed by them. Accordingly, the JSLC would be more appropriate for large companies.

[43]Chinese Company Law 2023, art 120 states the provisions of art 68 shall also apply to JSLC. Accordingly, the new provision requiring workforce directors would apply to both types of companies.

[44]Chinese Company Law 2023, art 69 states: 'A limited liability company may establish an audit committee composed of directors of the board of directors in accordance with the company's articles of association which exercises the functions of the board of supervisors specified in this Law, and then it is not required to have a board of supervisors or supervisors. Employee representatives who are members of the company's board of directors may serve as members of the audit committee.' Similarly, art 121 states: 'A joint stock limited company may establish an audit committee composed of members of the board of directors in accordance with the company's articles of association which exercises the functions of the board of supervisors specified in this Law, and then it is not required to have a board of supervisors or supervisors'.

[45]Above (n 20). More specifically, as shown in the *Report of the Constitution and Law Committee of the National People's Congress on the Amendments to the Draft Company Law of the People's Republic of China* at the 5th Meeting of the Standing Committee of the 14th National People's Congress on 28 August 2023, allowing companies to operate with only a board of directors, without the requirement for a supervisory board, is regarded as an example of providing a broader range of institutional options to facilitate the continuous improvement of the business environment. China's NPC (n 20) 40.

[46]During the consultation rounds leading to the amendment of the new Company Law, suggestions from experts, scholars, and the general public reflected a consensus that the interests of employees, as important stakeholders in companies, should be better safeguarded and that so-called democratic corporate management should be strengthened. Mandating employee representatives on the board for companies with more than 300 employees is viewed as a means to achieve this goal. ibid 41.

stakeholder governance proponents.[47] As known, even those who firmly believe the company shall enhance the quality of life in its local communities, the environmental protection, the safety and security of its employees and workers in its supply chains, and the health of its customers beyond increasing its share prices, do not dare to suggest stakeholder participation at the board level.[48] Although workforce directors are proposed as a soft-law requirement in some common law countries, such as the UK,[49] the reluctance and scepticism are prevalent. For instance, an empirical study shows that only five of FTSE 350 companies[50] appointed workforce directors by 2020, which suggests over 98% of those largest companies have not.[51] As a result, arts 68 and 120, which essentially mandate the inclusion of workforce directors on the board for large companies, pose a direct challenge to the traditional shareholder governance model. This arrangement enables employees to influence major corporate decisions and brings non-shareholder concerns to the attention of other board members.[52]

Compared with the representation on the supervisory board, the requirement for representation on the board of directors, namely the managerial board, can undoubtedly help to overcome the criticisms regarding the supervisory board's inadequate power to effectively fulfil its functions.[53] It offers an effective approach to stakeholder governance in practice by providing a more direct channel for representing employee interests at the board level and enabling their representatives to directly participate in the decision-making process.[54]

[47]Certainly, it can also be seen that the new Company Law provides flexibility for companies to choose a unitary board structure, with directors appointed from the workforce, to replace the supervisory board with employee representation.

[48]See e.g. Colin Mayer, 'Shareholderism versus Stakeholderism—A Misconceived Contradiction: A Comment on "The Illusory Promise of Stakeholder Governance" by Lucian Bebchuk and Roberto Tallarita' (2020) ECGI Law Working Paper No. 522/2020 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3617847> accessed 12 March 2025.

[49]Moreover, the UK government proposed using one or a combination of (i) workforce director sitting on the board (ii) workforce advisory committee, and (iii) a non-executive director designated as a workforce liaison to enhance workforce engagement. The UK Department for Business, Energy and Industrial Strategy, *Corporate Governance Reform: The Government Response to the Green Paper Consultation* (London, 2017) 33. This is also reflected in the UK Corporate Governance Code 2018, Provision 5.

[50]Namely, the largest 350 companies by capitalisation listed on the London Stock Exchange.

[51]The UK Financial Review Council, *Workforce Engagement and the UK Corporate Governance Code: A Review of Company Reporting and Practice* (May 2020), 27 <https://media.frc.org.uk/documents/FRC_Workforce_Engagement_Report_May_2021.pdf> accessed 12 March 2025.

[52]This is precisely the aim of the legislative change (above (n 46)).

[53]For instance, unlike its German counterpart, the supervisory board in China cannot remove an incompetent director, and there is not much they can do if a wrongdoer refuses to rectify their behaviour except making a proposal to the shareholders' meeting. There is also difficulty for the supervisory board to obtain information and the managerial board does not report to them. Min Yan, 'Obstacles in China's Corporate Governance' (2011) 32 Company Lawyer 311, 315–316.

[54]It is too early to empirically assess the effectiveness of employee representation on the board. However, in the absence of such data, an analysis of the rights afforded to members of the managerial board compared to the supervisory board suggests that enabling workforce directors to participate

3. Power dynamics within the company

This section contextualises the evolution of the governance landscape within the broader power dynamics within the company, in order to evaluate whether the Chinese Company Law is indeed transitioning from shareholderism to stakeholderism. It focuses on the overall shifts in shareholders' control rights and the duties of directors and managers,[55] examining how these changes influence the internal power dynamics within companies.

3.1. Shareholder power

When shareholders purchase shares in a company, they normally receive management control rights such as rights of appointment and dismissal of directors, control over the company constitution, approval rights for fundamental corporate changes and the ability to propose resolutions at general meetings, among others, to ensure that the proceeds of their equity investments are managed in their interests.[56]

Despite the shareholder primacy provision in the 1993 Company Law having been removed in 2005,[57] shareholders continued to be the ultimate decision makers in China. For example, in the General Provisions of the Chinese Company Law, shareholders are provided the right to participate in making important decisions and choose directors among others.[58] More specifically, the shareholders' meeting is described as the 'company's organ of power' under Chinese law.[59] That is to say, all the powers in the company derive from the shareholders' meeting, which implies that the managerial power of directors and managers is conferred by the shareholders.[60]

Under the previous Company Laws prior to 2023, the board of directors is more like an executive arm of the shareholders' meeting, primarily responsible for implementing shareholders' resolutions, as virtually all critical managerial matters are dependent either on shareholder decision-making or approval. In particular, since the enactment of China's first modern Company Law in 1993, important and strategic decisions such as the

directly in the decision-making process is likely to create greater opportunities for employee-related concerns to be taken more seriously.

[55]Although the duties discussed in Section 3.2 also apply to members of the supervisory board or supervisors, for simplicity and consistency, the duties of directors, supervisors and senior managers are simplified into directors' and managers' duties.

[56]Kraakman (n 1) 50–1 and 172–4.

[57]Above (nn 25–26).

[58]Chinese Company Law 2023, art 4 states: 'The shareholders of a company shall be entitled to enjoy the capital proceeds, participate in making important decisions, choose managers and other rights in the company.'

[59]Chinese Company Law 2023, arts 58 and 111. The wording remains unchanged from the provisions in the previous Company Laws.

[60]This is best reflected in the newly added art 67(10) of the 2023 Company Law, which states that the board of directors shall perform any other functions that are 'conferred by the shareholders' meeting' in addition to those specified in the company's articles. c.f. (n 91) below and accompanying text.

operational policy and the investment plan can only be decided by shareholders,[61] and shareholders are further entitled to examine and approve the annual financial budget plan and final accounts plan of the company.[62] However, the new Company Law takes these managerial powers away from shareholders,[63] which means the board of directors shall be responsible for both operational and investment decisions as well as how to allocate corporate funds. This certainly marks a further significant shift away from traditional shareholder governance.

Now, art 59 of the new Company Law lists the remaining rights of shareholders as a whole, including (i) election and removal of member of both managerial and supervisory boards and determination of their pay;[64] (ii) approving reports from both managerial and supervisory boards;[65] (iii) approving company profit distribution plans and loss recovery plan;[66] (iv) increase or reduction of the company's registered capital;[67] (v) issuance of corporate bonds;[68] (vi) merger, division, change of company form, dissolution, liquidation of the company;[69] (vii) amendment of the articles of association;[70] and (viii) other rights as specified in the articles of association.[71]

A closer examination reveals that the revised rights do not materially diverge from the shareholder powers found within the Anglo-American corporate governance framework. Take the company law in both England and Delaware for example, where shareholders are entitled to the ultimate control over directors' appointments as well as an entrenched right to dismiss any director by an ordinary resolution.[72] Shareholders are able to intervene in corporate management by voting to approve or disapprove fundamental corporate changes including changing the constitutional rules that

[61]Chinese Company Law 1993, art 38(1). While these more important and strategic decisions such as operational policy (*fang zheng*) and the investment plan (*ji hua*) can only be decided by shareholders, the board of directors is able to decide on the operational plans (*ji hua*) and investment programme (*fang an*) of the company. Chinese Company Law 1993, art 46(3). They remained the same in the following amendments until 2023, see e.g. Chinese Company Law 2018, arts 37(1) and 46(3).

[62]Chinese Company Law 1993, art 38(6). The board needs to formulate the company's annual financial budget plan and final accounts plan according to art 46(4) of the 1993 Company Law. They also remained the same in the following amendments until 2023, see e.g. Chinese Company Law 2018, arts 37(5) and 46(4).

[63]Chinese Company Law 2023, art 59.

[64]ibid art 59(1).

[65]ibid art 59(2) and (3).

[66]ibid art 59(4).

[67]ibid art 59(5).

[68]Ibid art 59(6).

[69]ibid art 59(7).

[70]ibid art 59(8).

[71]ibid art 59(9). While art 59 is designed for the LLC, shareholder rights in the JSLC are the same, as specified in art 112.

[72]See e.g. *Barron v Potter* [1914] 1 Ch. 895; *Foster v Foster* [1916] 1 Ch. 632; the UK Companies Act 2006, s 168; Delaware General Corporation Law, s 212.

govern the running of the company[73] or matters that are most likely to cause conflicts of interests between the company and its directors.[74] Further, only shareholders can hold directors accountable by suing non-complying directors in their own name or on the company's behalf.[75]

Overall speaking, the power conferred to shareholders still reflects the prime position of the shareholders in corporate governance. Although most shareholders may not regularly exercise their voting rights, their collective ability to exert control over the company, including the exclusive right to sue directors, would clearly indicate shareholder governance. Against this general background, it is argued that company law in its current form is not well equipped to address negative externalities or social harms.[76] While we cannot ascertain whether company law is contributing to or addressing the climate crisis and other challenges we face, it is evident that shareholders in China continue to hold substantial control rights, as is the case in the UK and the US.[77]

However, recent reforms in reducing shareholder power over management decisions marks a meaningful step in advancing a more inclusive governance model within China's evolving corporate framework. Together with the reforms of directors' duties as explored below, this signals a clear shift away from the shareholder primacy model, and towards more stakeholder-oriented governance.

3.2. Directors' and managers' duties

Both the duty of loyalty (*zhong shi yi wu*) and the duty of diligence (*qin mian yi wu*) were introduced by the 2005 Company Law.[78] They were similar to

[73]Shareholders can amend the company's constitution through a special resolution, see the UK Companies Act 2006, s 21. Shareholders in the US can also vote on bylaws and charter amendments, see Delaware General Corporation Law, ss 109 and 242.

[74]For example, certain transactions, such as directors' long-term service contracts, substantial property transactions, loans, quasi-loans and credit transactions, and payments for loss of office etc. need shareholder approval, see UK Companies Act 2006, ss 188–231. Besides, the power to allot new shares is also ultimately controlled by shareholders, see the UK Companies Act 2006, ss 549 and 551. In Delaware, shareholders also need to vote on major decisions like the sale of all or substantially all the assets, mergers or dissolution, see Delaware General Corporation Law, ss 271, 251 and 275.

[75]The UK Companies Act 2006, ss 260–264; Delaware General Corporation Law, s 327. e.g. when directors unlawfully reduce the share capital through repayments of capital to shareholders, creditors cannot bring any claims against directors until in the liquidation proceedings, see *Re Horsley & Weight Ltd* [1982] Ch 442, 454. Similarly, in China, only shareholders are permitted to take derivative action, see e.g. Chinese Company Law 2023, art 189.

[76]Benedict Sheehy, 'Sustainability, Justice and Corporate Law: Redistributing Corporate Rights and Duties to Meet the Challenge of Sustainability' (2022) 23 European Business Organization Law Review 273, 307.

[77]Take the English Company Law for instance, shareholders have exclusive intervention rights and collective control over corporate voting and are the ultimate beneficiaries of directors' fiduciary duties. See Min Yan, 'The Limits of Company Law in Saving Our Planet: Rethinking the Future of the Corporate Purpose Movement' (2026) 36 European Business Law Review (forthcoming). The comparison above also demonstrates that Chinese Company Law grants shareholders more extensive executive powers.

[78]Chinese Company Law 2005, art 148.

directors' fiduciary duties and duty of care and diligence in common law jurisdictions, and hence fundamental duties.[79] The new Company Law for the first time specifies the details of the directors' duty of loyalty and their duty of diligence owed to the company. To begin, the first paragraph of art 180 of the new Law states that directors and managers of the company owe 'a duty of loyalty to the company', and 'shall take measures to avoid conflicts between their own interests and the interests of the company and shall not use their powers to seek improper interests'. This can be summarised into a duty to avoid conflicts of interests and a broad duty to avoid pursuing any personal interests while being in the fiduciary position. Secondly, art 181 prohibits directors and managers from (i) embezzling company property or misappropriating company funds; (ii) accepting any bribe or other illegal gains by taking advantage of their position and (iii) disclosing the company's confidential information without permission.[80] Thirdly, regarding self-dealing transactions, if directors and managers, as well as their close relatives and affiliates, enter into a transaction with the company, they have to report to the board of directors or the shareholders' meeting on these matters and seek the appropriate approval.[81] Fourthly, regarding corporate opportunities, directors and managers are not allowed to take advantage of a business opportunity that belongs to the company unless it is permitted by the board, or the shareholders' meeting or law.[82] Fifthly, directors and managers are not allowed to conduct the same kind of business as the company unless permitted by the board, or the shareholders' meeting.[83] Then the second paragraph of art 180 states a duty of diligence is owed by members of both managerial and supervisory boards as well as senior executives to the company and they have to 'exercise reasonable care that managers shall normally exercise, in the best interests of the company in performing their duties'.

Another significant aspect of the new art 180 is its clarification of the purpose underlying directors' and managers' duties. By specifying the objectives these duties aim to serve, the provision offers clearer guidance that could potentially support a shift away from the traditional shareholder primacy model. Historically, since the duties of loyalty and diligence were first codified in 2005, they have been interpreted primarily as a mechanism

[79]See Rebecca Lee, 'Fiduciary Duty without Equity: 'Fiduciary Duties' of Directors under the Revised Company Law of the PRC' (2007) 47 Virginia Journal of International Law 897, 907. However, no details are provided regarding the specific content of these duties at the statutory level prior to the 2023 amendment.

[80]The prohibited activities also include depositing the company's funds into an account in their own name or in any other individual's name (art 181(2)) and taking commissions on the transactions between others and the company (art 181(4)). As can be seen, they are primarily targeted towards small companies.

[81]Chinese Company Law 2023, art 182.

[82]ibid art 183.

[83]ibid art 184.

to serve the interests of both the company and its shareholders. In particular, prior to the 2023 amendment, the board of directors was always required to be accountable to the shareholders' meeting as part of directors' duties.[84] This view has been reinforced by the China Securities Regulatory Commission (CSRC), the national watchdog of securities exchanges,[85] and even more strongly by the Stock Exchanges, which have explicitly specified that directors must be loyal to the interests of both the company and its shareholders.[86] Whilst the 'interests of the company' are not infrequently conflated with the 'interests of the shareholders', even in more established legal systems,[87] acting in the 'interests of the company' is not exactly the same as acting in the 'interests of the shareholders'.[88] These two concepts are distinct. As explained by Professor Ireland, the 'interests of the company' encompass the long-term productive use and stability of its industrial capital assets, focused on sustainable growth and security, whereas the 'interests of the shareholder' are primarily centred on short-term profit maximisation and returns on investment.[89] Economically, these interests could diverge significantly, with corporate long-term value sometimes at odds with short-term shareholder gains.[90]

Thus, the new art 180, together with the subsequent articles, not only elaborates on the content of the duty of loyalty and duty of diligence but also reinforces the notion that directors and managers must act in the best interests of the company as a separate legal person, distinct from its shareholders. Moreover, the requirement for the board of directors to be accountable to the shareholders' meeting is intentionally omitted in the new Company Law.[91] These changes could encourage directors to consider a broader set of

[84]e.g. Chinese Company Law 1993, art 46; Chinese Company Law 2005, art 47; or Chinese Company Law 2018, art 48.

[85]OECD, *Corporate Governance of Listed Companies in China* (OECD Publishing 2011) 77.

[86]e.g. Shenzhen Stock Exchange, *Guidelines on Conduct of Corporate Directors of SME Board Listed Companies* (2005), art 4(1).

[87]As Lord Reed noted in a UK supreme court case that 'although the duty is owed to the company, the shareholders are the intended beneficiaries of that duty. To that extent, the common law approach of shareholder primacy is carried forward into the 2006 Act'. *BTI 2014 LLC* v *Sequana* [2022] UKSC 25, para 65. Also see *Re BSB Holdings Ltd* (No. 2) [1996] 1 BCLC 155, 251 (Eng.).

[88]For instance, see Justice Owen of the Supreme Court of Western Australia in *The Bell Group Ltd v Westpac Banking Corporation* [2008] WASC 239, paras 4394–5.

[89]It is argued that the interest of company is 'an interest in the productive utilization of industrial capital' oriented towards '[long-term] prosperity and security of a block of industrial capital assets', whilst the interests of shareholders are 'a money capital interest in the revenue generated by … industrial capital' aimed at 'short-term maximisation of the return on a money capital investment'. Paddy Ireland, 'Corporate Governance, Stakeholding, and the Company: Toward a Less Degenerate Capitalism' (1996) 23 Journal of Law and Society 287, 304 and 308.

[90]Shareholders may diversify their idiosyncratic risk by adopting diversified portfolios while the company cannot. This means when acting in the interests of shareholders, directors only have to take systematic risk into account, which may not be in the best interests of the company. John Armour and Jeffrey Gordon, 'Systematic Harms and Shareholder Value' (2014) 6 Journal of Legal Analysis 35, 36.

[91]Chinese Company Law 2023, art 67 removes such wordings when defining the function and duties of the board.

interests in their decision-making, aligning more closely with stakeholder governance.

We can also find that directors' general duties do not exhibit any substantial differences from those in common law jurisdictions. For instance, the English Company Law's duty to avoid conflicts of interests[92] is mirrored in the first paragraph of art 180 and art 181(1)(2)(4) of the new Company Law, the duty not to accept benefits from third parties[93] is reflected in art 181(3), and the duty to declare interest in proposed transactions or arrangements[94] corresponds to art 182.[95] Additionally, the duty to exercise reasonable care, skill and diligence[96] aligns with the second paragraph of art 180, and the overarching duty to promote the success of the company[97] resonates with ' … in the best interests of the company … ' under art 180.

However, the shift towards the increasing autonomy of the board and the explicit articulation that directors' duties are owed to the company itself rather than its shareholders, alongside the reduction of shareholder power over management decisions, will undoubtedly place directors in a stronger position to advance stakeholder interests than under previous Chinese Company Laws. These evolving dynamics become particularly evident when combined with the newly introduced requirement for directors to give due consideration to stakeholder interests in their decision-making, on the one hand, and the removal of the statutory provision that explicitly mandated the board's accountability to the shareholders' meeting, on the other.[98]

4. Government's visible and invisible hands

Although China adopted the shareholder primacy approach when the modern corporate system was restored in socialist China,[99] the Chinese government has been playing a pivotal role in corporate governance throughout the majority of Chinese business history since the late Qing Dynasty (1895–1911).[100] Firstly, as a sole or controlling shareholder in many firms, the government exerts direct influence over corporate decision-making.[101] Secondly, it shapes corporate

[92] The UK Companies Act 2006, s 175.
[93] ibid s 176.
[94] ibid s 177.
[95] Of course, art 182 needs shareholder approval while the English Company Law only requires a disclosure.
[96] The UK Companies Act 2006, s 174.
[97] ibid s 172.
[98] Above (nn 28 and 91).
[99] Above (nn 11–13).
[100] For a brief historical survey, see Yan (n 12). The government has historically played a vital role in balancing shareholder-oriented governance when corporate structures predominantly prioritised shareholder interests. As the balance shifts towards stakeholder-oriented models, the government's role is likely to become even more instrumental in advancing and institutionalising stakeholder governance.
[101] When Chinese capital markets were first established, all listed companies were SOEs. Even today, SOEs maintain substantial influence, accounting for approximately 70% of the total market value of listed

behaviour through regulatory frameworks and policy directives, setting clear boundaries and expectations for companies, which not only define operational bottom lines but also often encourage alignment with broader socio-economic objectives. This dual influence continues to profoundly impact the direction and structure of corporate governance in China. This section primarily focuses on the government's regulatory role and examines how regulatory efforts can contribute to a more stakeholder-oriented governance.

4.1. Regulatory measures as the visible hand

Environmental protection has undoubtedly been a key regulatory focus of the Chinese government in recent decades, addressed by various government bodies. For instance, the then State Environmental Protection Administration (now the Ministry of Ecology and Environment) issued the *Measures of Environmental Information Disclosures*, providing detailed requirements on both mandatory and voluntary environmental information disclosure for different types of firms.[102] For listed companies, there are additional disclosure requirements. Take the Shanghai Stock Exchange for example, it issued further guidelines, mandating companies in environmentally impactful industries (e.g. thermal power generation, steel, cement, electrolytic aluminium, and mineral development) to disclose detailed information on their environmental protection policies, annual targets and achievements, resource consumption, environmental investments, pollutant emissions, waste treatment, recycling efforts, and any voluntary agreements with environmental authorities.[103] These disclosure requirements are not insignificant. Empirical studies have confirmed a positive relationship between mandated disclosure of environment-related information and a significant decrease in subsequent pollution, particularly in industrial wastewater and SO_2 emission levels, by the affected companies.[104]

The revised Environmental Protection Law[105] further mandates companies to implement measures aimed at preventing and reducing environmental pollution and ecological harm, with strict penalties for

firms in 2021. See Fuxiu Jiang and Kenneth Kim, 'Understanding Corporate Governance in China' (2024) 56 British Accounting Review 101459.

[102]State Environmental Protection Administration, *Measures of Environmental Information Disclosure* (No. 35 of 2007) <https://www.gov.cn/flfg/2007-04/20/content_589673.htm> accessed 12 March 2025.

[103]Shanghai Stock Exchange, *The Environmental Information Disclosure Guidelines for Listed Companies* (2008), art 3. The Guidelines also stated that listed companies in other industries may voluntarily disclose this information.

[104]Yi-Chun 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, 186.

[105]From the perspective of regulatory governance, legislation can also be viewed as a subset of regulation. See Nir Kosti, David Levi-Faurb and Guy Mor, 'Legislation and Regulation: Three Analytical Distinctions' (2019) 7 Theory and Practice of Legislation 169, 175. Particularly in China, where the administrative and legislative bodies are not fully independent from each other, as both operating

violations.[106] Notably, it removes previous caps on fines for polluting factories and authorised environmental enforcement agencies to take direct actions, such as shutting down non-compliant firms.[107] This development further reflects China's commitment to robust environmental regulation, embedding environmental accountability within its broader regulatory framework through its visible hand. Criminal law can also play a critical role here in deterring and punishing severe environmental and ecological damage. There is a specific offense for environmental pollution, where offenders can be sentenced to a fixed-term imprisonment of no less than seven years and fined for causing serious environmental pollution through the discharge, dumping, or disposal of toxic substances or other harmful materials.[108] Additionally, those who assist in covering up such severe environmental pollution can also face criminal penalties. A recent judicial interpretation jointly issued by China's Supreme Court and Supreme Procuratorate further clarifies and intensifies sentencing standards for actions 'causing serious environmental pollution' under art 338 of the Chinese Criminal Law.[109] Individuals involved in conducting environmental impact assessments, greenhouse gas emissions testing, reporting and alike may face criminal liability if they provide false certification documents.[110] This underscores China's stringent approach to environmental protection through its regulatory frameworks.

In essence, government can employ its regulatory tools to establish and/or elevate bottom lines that discourage undesirable corporate behaviours, including those maximising shareholder interests by externalising costs and risks. The adverse consequences as well as the reputational sanctions serve as a powerful deterrent, encouraging companies to consider the wider impact of their actions.

4.2. Party influence as the invisible hand

An invisible yet profound influence exerted by the government is the integration of Chinese Communist Party (CCP)'s leadership into corporate governance structures. Particularly in SOEs, significant corporate matters such as strategic decisions, the appointment and removal of key personnel, the planning of major projects, and the allocation of substantial funds must first be approved by the Party organisation (i.e. Party committees or

under the leadership of the Communist Party, the distinction between legislative and administrative rulemaking is even less pronounced.

[106] Chinese Environmental Protection Law 2014, arts 59–62.

[107] ibid.

[108] Chinese Criminal Law 2023, art 338.

[109] China's Supreme People's Court and Supreme People's Procuratorate, *Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Environmental Pollution* (No. 7 of 2023), arts 1–5.

[110] ibid art 11.

branches within the company) before they can be discussed by the board of directors.[111] The establishment of a Party organisation in companies in order to carry out activities of the CCP is also enshrined in the Chinese Company Law.[112] Further, companies must provide necessary conditions for the Party organisation's activities.[113] Recent data published by the CCP's Organisation Department reveals that, as of the end of 2023, more than 1.6 million companies have established Party organisations.[114] There are also increasingly more Chinese listed companies incorporating Party organisations to strengthen and clarify the leadership of the Party by amending their articles of association.[115] In addition to participating in corporate governance,[116] Party organisations are also required to report important issues to the Communist Party.[117] This clearly reflects the CCP's extensive influence in corporate governance and the potential to align business practices with policy objectives.

As is often the case, the chairman of the board, or sometimes the general manager, acting as the key person would also be the secretary of the Party organisation of the company, especially where the state has a large stake.[118] The directors and managers, if they are also CCP members, could potentially be required by the CCP's Constitution to follow the Party's and Government's policies and guidelines.[119] Unsurprisingly, Party organisation

[111]See Regulations on the Work of Primary-level Organisations of the CCP in SOEs (2019), arts 15 and 16. The role of Party organisations in companies is certainly controversial, but empirical research indicates a positive impact of corporate Party organisations on innovation, legitimacy, stabilising share price among others. See e.g. Nan Lin et al., 'The Governance Role of Corporate Party Organization on Innovation' (2023) 84 International Review of Economics and Finance 657, 668; Li Zhang et al., 'Party Leadership, Corporate Governance and Stock Price Crash Risk: Evidence from China' (2023) 88 International Review of Financial Analysis 102632. Furthermore, politically connected firms tend to have a higher offering price, lower under-pricing, and lower fixed costs during the going-public process. Bill Francis, Iftekhar Hasan and Xian Sun, 'Political Connections and the Process of Going Public: Evidence from China' (2009) 28 Journal of International Money and Finance 696, 704.

[112]While Communist Party's activities in companies were briefly mentioned in the 1993 Company Law (art 17), the 2005 Company Law (art 19) explicitly stated that, in accordance with the CCP's Constitution, the Party may establish branches within companies to carry out its activities. The companies are required to provide necessary conditions to facilitate these activities. This provision has been retained in subsequent amendments to the Company Law

[113]ibid.

[114]CCP, *The Statistical Bulletin on the CCP* (30 June 2024) <https://www.12371.cn/2024/06/30/ARTI1719715269079269.shtml> accessed 12 March 2025.

[115]Asian Corporate Governance Association, *Awakening Governance: The Evolution of Corporate Governance in China* (Hong Kong 2018) 41–43.

[116]A case study of China Energy Conservation and Environmental Protection Group, a Beijing-based SOE, demonstrates that important strategic decisions, appointments and dismissals of key personnel, major project arrangements, and large-scale capital operations must first be submitted to the Party organisation for approval before being discussed by the board of directors. See Kasper Ingeman Beck and Kjeld Erik Brødsgaard, 'Corporate Governance with Chinese Characteristics: Party Organization in State-owned Enterprises' (2022) 250 China Quarterly 486, 501.

[117]Regulations on the Work of Primary-level Organisations of the CCP in SOEs (2019), art 29.

[118]For SOEs, they are required to implement the policy of 'two-way membership and cross-office holding', which mandates that the chairman (who also serves as the secretary of the corporate party committee) must hold positions in both the party committee and the board of directors. ibid, art 14.

[119]Since the government is essentially controlled and led by the Party, as stipulated by the Chinese Constitution, Party policies are reflected in governmental policies. e.g. Chinese Constitution 2018, art 1

has increasingly become a direct channel for Chinese government to influence corporate behaviour. Given the CCP's focus on sustainable development and the enhanced protection of employees, environment and ecosystem,[120] shareholder primacy is certainly not aligned with the CCP's or Government's objectives.

It is unsurprising that the new Company Law preserves the provision on the establishment of a Party organisation and the supply of necessary conditions to facilitate its activities.[121] The new Law further clarifies the leading role of the Party organisation in state-funded companies, requiring Party organisations to fully participate in the decision-making of important business management matters of the companies.[122] All these trends indicate that the government, including the Party, will continue to be the most important stakeholder for companies in China, necessitating that governmental policies and requirements be incorporated into their decision-making processes. Empirical research also indicates that the involvement of Party organisations in corporate governance is significantly and positively associated with enhanced employment protection. It encompasses fostering the broader adoption of formal labour contracts between firms and employees, as well as improving job security by increasing the proportion of long-term employees.[123] This is consistent with previous research, which suggests that compliance with governmental policies and regulatory requirements is a primary consideration for companies engaging in CSR activities and reporting on these initiatives.[124] In other words, both direct and indirect influence

states 'The People's Republic of China is a socialist state … Leadership by the CCP is the defining feature of socialism with Chinese characteristics … '.

[120]Since the 18th CCP's National Congress, the construction of an ecological civilisation has become an important task for the CCP. Pollution control, green and low-carbon development, improvement of ecological environmental quality, and sustainable development have all become key governance objectives for the Party and government. The 20th Party Congress has reiterated this policy direction. See Jinlong Sun, 'Promoting Harmonious Coexistence between Humans and Nature' *People Daily* (Beijing, 10 January 2023) <http://cpc.people.com.cn/n1/2023/0110/c448544-32603263.html> accessed 12 March 2025.

[121]Chinese Company Law 2023, art 18.

[122]Chinese Company Law 2023, art 170 states 'The organisations of the Communist Party of China in state-funded companies shall play a leading role in accordance with the Constitution of the Communist Party of China, study and discuss material business management matters of the companies, and support the departments of the companies in exercising their functions in accordance with the law.' This provision essentially serves to codify existing practice, as evidenced in n 111 above.

[123]Youliang Yan and Xixiong Xu, 'The Role of Communist Party Branch in Employment Protection: Evidence from Chinese Private Firms' (2021) 29 Asia-Pacific Journal of Accounting & Economics 1518, 1535.

[124]Sepideh Parsa, Guliang Tang and Narisa Dia, *How do Chinese Businesses View Corporate Social Responsibility?* (ICAEW 2016). Another survey conducted by the World Bank and Peking University involving 1268 CEOs and business owners of industrial firms across China revealed unique dimensions of CSR in the country. These dimensions include promoting national and local economic development, emphasising technology and innovation, paying taxes, reemploying laid-off employees, providing jobs for individuals with disabilities, alleviating national employment pressure, and ensuring social stability, all of which reflect government policies or regulatory requirements. Shangkun Xu and Rudai Yang, 'Indigenous Characteristics of Chinese Corporate Social Responsibility Conceptual Paradigm' (2010) 93 Journal of Business Ethics 321, 330–331.

from the government and the CCP ensures that their policy objectives become unavoidable considerations for individual companies.

In accordance with the political will to strengthen the country's CSR framework,[125] it is unsurprising to see the new Company Law encouraging companies to participate in public welfare activities and publish social responsibility reports.[126] For the first time, such a requirement is codified at the statutory level. This not only allows companies to allocate corporate resources for the public good, even when it may not immediately enhance corporate financial performance but also encourages those running the companies to pay greater attention to their impact on the environment, society, and other stakeholders. The social and environmental reporting can also help communicate stakeholder-related commitments and activities. Such transparency, in turn, places greater pressure on directors and managers to take these issues more seriously and encourages them to integrate stakeholder considerations more effectively into corporate decision-making. Thus, it is optimistic to see a further shift towards stakeholder governance in the coming future.

5. The road ahead for China

As discussed in Section 3.1, current company law still focuses on the shareholder-director/manager relationship, positioning shareholders at the centre of corporate governance systems in China. A significant but often overlooked provision in the Chinese Company Law is the requirement that the board of directors must execute and implement resolutions passed at shareholders' meetings,[127] thereby reinforcing the role of shareholders in corporate governance. In comparison, English company law has long held that a board's managerial powers stem from the company's articles of association rather than statutory law, allowing shareholder resolutions to issue binding instructions to the board on managerial matters when supported by a supermajority.[128] China's approach has been consistent with the English principle since the 1993 Company Law.[129]

[125]It was clearly stated during the discussions at the National People's Congress debate period that a provision mandating the full consideration of the interests of stakeholders, such as employees, consumers, and public interests, as well as the assumption of social responsibility, should be added, in line with the decisions made at the Fourth Plenary Session of the 18th Central Committee of the CCP. See China's NPC (n 20) 37.

[126]Chinese Company Law 2023, art 20 para 2 provides: 'The state shall encourage companies to participate in public welfare activities and publish social responsibility reports.'

[127]e.g. Chinese Company Law 2023, art 67(2); Chinese Company Law 1993, art 46(2).

[128]Davies (n 7) 67; David Kershaw and Edmund Schuster, 'The Purposive Transformation of Corporate Law' (2021) 69 American Journal of Comparative Law 478, 507. This differs in the US, where Leo Strine concluded that the company law in the US 'clearly vests the power to manage the corporation in its directors, and not in the stockholders.' Leo Strine, 'One Fundamental Corporate Governance Question We Face: Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term?' (2010) 66 Business Lawyer 1, 4.

[129]Chinese Company Law 1993, art 37 recognised the shareholders' meeting as the highest decision-making authority, or the 'organ of power'.

Thus, although China has been gradually shifting from a traditional shareholder primacy model towards a more stakeholder-oriented approach, shareholders in Chinese companies still retain considerable influence. If the ultimate goal is to fully embed stakeholder governance, the following steps are recommended.

5.1. Reducing shareholder power

To advance stakeholder governance further, one potential direction for future reform would be to continue reducing shareholder power. A notable example under the new Company Law is the removal of shareholder power over decisions related to the company's operational policies, investment plans, annual financial budgets, and final accounts.[130] Such change either intentionally or unintentionally shifts the system further away from shareholder governance and creates space for stakeholder governance. Another initiative under the new Company Law to curtail shareholder influence is imposing joint liability on controlling shareholders, who act as shadow directors by instructing directors or managers to engage in activities detrimental to the company or other shareholders.[131] This provision serves as an additional safeguard against abuse of power by controlling shareholders, protecting interests of both minority shareholder and broader stakeholders.[132]

Following this line, one option could be to limit shareholder interference in management, thereby strengthening board autonomy – a move that may support the further shift away from shareholder governance. By specifying that directors must exercise independent judgment without undue influence from majority shareholders,[133] and by raising the threshold for implementing shareholder instructions to a special resolution,[134] the board's autonomy could be strengthened. Once directors are prescribed to exercise independent judgement and are recognised as owing their duties to the company itself,[135] with a clear mandate to fully consider stakeholder interests in decision-making,[136] they will have more discretion which they can use to advance stakeholder interests.

[130] Above (n 61–63).
[131] Chinese Company Law 2023, art 192.
[132] Alongside enhancing board autonomy, as discussed in Section 3.2, imposing checks on controlling shareholders further supports this autonomy, which in turn enables the board to better fulfil its stakeholder-oriented duties under arts 19 and 20 of the new Company Law.
[133] This is similar to the duty to exercise independent judgment under English Company Law, see the UK Companies Act 2006, s 173.
[134] While it may be unrealistic to alter the perception that the shareholders' meeting is the primary decision-making body in China in the near future, increasing the threshold for shareholders to issue binding instructions to the board via shareholder resolutions could be a significant step forward. By raising this threshold, the influence of minority shareholders can also be strengthened.
[135] Chinese Company Law 2023, art 180.
[136] ibid art 20.

Another area for consideration is the current mechanism for electing and removing workforce directors. Article 59(1) of the new Company Law grants shareholders the right to elect and remove directors. The wording 'directors' used here does not explicitly exclude workforce directors. To avoid any potential confusion regarding shareholders' ability to vote for the removal of workforce directors, which could undermine the spirit of involving employee representatives in the decision-making process, it may be beneficial to clarify that shareholders' appointment and removal rights apply specifically to shareholder-appointed directors, rather than all directors.[137] Such distinction could reinforce the independence of workforce directors and enhance employees' positions and power within the company.

While shareholder power is being curtailed, the protection of minority shareholders shall remain a key priority in China, partly due to their comparatively vulnerable position.[138] This approach is well reflected in the new Company Law. For example, minority shareholders are now granted the right to request the company to repurchase their shares at a reasonable price when their interests are prejudiced by the controlling shareholder, or when the interests of the company are harmed by the actions of the controlling shareholder.[139] This represents a positive development. In the current context of China, a viable approach to advancing stakeholder governance in company law involves recalibrating shareholder power to ensure broader accountability while simultaneously strengthening protections for minority shareholders. Therefore, instead of seeking to indiscriminately reduce shareholder power, this subsection advocates for limiting shareholder influence over company operations while safeguarding minority shareholder interests.

[137]Take Chinese Company Law 2018 for example, art 37(2) specified that shareholders were entitled to change the directors and supervisors held by non-representatives of the employees. A similar provision will be necessary in the future reform.

[138]Horace Yeung and Flora Huang, 'Shareholder Protection in China from a Numerical Comparative Law Perspective' (2019) 7 Chinese Journal of Comparative Law 124, 132. According to the World Bank's *Doing Business 2019*, China is ranked 6 for enforcing contracts and 28 for starting a business, but only 64 for protecting minority investors. World Bank, *Doing Business* (2019) 163 <https://archive.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf> accessed 12 March 2025. As shown above, improving the business environment is one of the key drivers behind this round of amendments to the new Company Law, as evidenced by the various consultation rounds. By making targeted amendments, particularly on minority shareholder protection, the new provisions aim to improve China's business environment and potentially enhance its ranking in global league tables.

It is, however, noteworthy that due to data irregularities in the *Doing Business* 2018 and 2020 reports, the World Bank discontinued the publication in September 2021. It has since been replaced by *Business Ready* (B-READY), a new data collection and analysis initiative by the World Bank Group aimed at assessing the global business and investment climate. The first B-READY report, covering the business climate in an initial group of 50 economies, was released in October 2024. However, China is currently not included in this report.

[139]Chinese Company Law 2023, art 89 para 3.

5.2. Adopting ESG-based remuneration

Directors of the board now hold responsibility for both operational and investment decisions,[140] among other duties, and, together with senior executives, will have greater discretion in corporate management. Accordingly, well-structured incentive schemes for them can also contribute to advancing stakeholder governance. Under the traditional agency cost theory, performance-based compensation is deemed as an important corporate governance tool for aligning the interests of directors and executives with those of the shareholders.[141] By the same token, executive remuneration can also be structured to align with their performance in environmental, social and governance (ESG) dimensions, or more broadly, stakeholder interests.[142] In fact, ESG-based remuneration, which is also encouraged by the UN Principles of Responsible Investment,[143] is gaining momentum as a strategy for improving corporate sustainability. A survey in 2022 showed that more than 80% of the FTSE 100 companies adopted ESG – based remuneration.[144]

The incentives provided to executives of publicly listed companies in China are markedly lower than those prevalent in common law jurisdictions. For instance, in 2022, the average CEO compensation for firms listed on the S&P 500 reached approximately 14.6 million US dollars.[145] In stark contrast, the average CEO remuneration in Chinese listed companies for the same year was around 1.71 million RMB,[146] which is equivalent to approximately 235,000 US dollars. This disparity highlights the significant potential for leveraging compensation as an incentive tool within the Chinese corporate context, fostering the alignment of the personal interests of directors and

[140]See the discussion in Section 3 above.

[141]Jensen and Meckling (n 1) 308; Robert Dean Ellis, 'Equity Derivatives, Executive Compensation, and Agency Costs' (1998) 35 Houston Law Review 399, 401.

[142]See e.g. Marco Dell'Erba and Suren Gomtsyan, 'Regulatory and Investor Demands to Use ESG Performance Metrics in Executive Compensation: Right Instrument, Wrong Method' (2024) 24 Journal of Corporate Law Studies 1.

[143]UN Principles of Responsible Investment, *ESG-linked Pay: Recommendations for Investors* (June 2021) <https://www.unpri.org/executive-pay/esg-linked-pay-recommendations-for-investors/7864.article> accessed 12 March 2025.

[144]PwC and London Business School, *Paying for Good for All* (April 2022) <https://www.pwc.com/gx/en/services/paying-for-good-for-all/Paying-for-good-for-all.pdf> accessed 12 March 2025.

[145]Dana Etra, Paul Hodgson and Matteo Tonello, 'CEO and Executive Compensation Practices in the Russell 3000 and S&P 500' (October 2024) Harvard Law School Forum on Corporate Governance <https:/corpgov.law.harvard.edu/2024/10/30/ceo-and-executive-compensation-practices-in-the-russell-3000-and-sp-500-2/#:~:text=According%20to%202024%20disclosure%20documents%2C%20median%20total%20CEO,and%20in%202022%2C%20and%20%2412.6%20million%20in%202021.> accessed 12 March 2025. Even the average CEO compensation among companies in the Russell 3000 reached 6.6 million USD in 2022. ibid.

[146]Jiaxin Ma, 'The List of Executive Salaries of Listed Companies is Released' *China Fund News* (Shenzhen, 29 May 2023) <https://www.chnfund.com/article/AR2023052914265742465419> accessed 12 March 2025.

managers with the pursuit of the company's short-term returns and long-term goals, as well as the interests of stakeholders.[147]

Encouraging the adoption of ESG-based remuneration could guide directors and managers toward a broader stakeholder-oriented approach, mitigating the tendency to prioritise narrow shareholder interests. Just as performance-based remuneration can be subject to manipulation,[148] ESG-based remuneration may similarly be used as a means of window-dressing or as a new opportunity for rent extraction.[149] However, with the establishment of more enhanced disclosure standards for ESG-based remuneration – encompassing detailed definitions of performance indicators, the specific stakeholder interests involved, the correlation between indicators and these interests, target and metric calibrations, assessment criteria, rationales for discretionary use, and *ex post* reporting on performance outcomes and actions undertaken to achieve them – many concerns can be substantially mitigated.[150]

In a nutshell, to incorporate top-ranking stakeholders and sustainability issues, such as employee engagement, customer satisfaction, carbon emissions reduction, usage of renewable energy, in directors' compensation schemes will definitely be a step to further drive directors and managers to balance their attention among multiple stakeholder interests instead of solely focusing on shareholder profits.

5.3. Public enforcement of statutory duties

An important functional aspect of stakeholder governance is enforcement. While workforce directors provide an effective channel for representing employee interests in the decision-making process, the interests of other stakeholders are not currently safeguarded in a similar manner. Despite the duty to fully consider stakeholder interests,[151] there is a lack of mechanisms to enforce this statutory obligation. As the saying goes, 'a right without a remedy is worthless'.[152] Obviously, shareholders may not be the best constituency for enforcing stakeholder-oriented provisions, as they may lack

[147]In other words, a well-structured financial remuneration package — substantial in size and explicitly linked to ESG-based performance indicators — can better incentivise directors and managers to act in the long-term interests of the company and its stakeholders, while helping them resist temptations such as pursuing unnecessary expansion for personal prestige or influence.

[148]Geoffrey Rehnert, 'The Executive Compensation Contract: Creating Incentives to Reduce Agency Costs' (1985) 37 Stanford Law Review 1147, 1155.

[149]Longjie Lu, 'ESG-based Remuneration in the Wave of Sustainability' (2023) 23 Journal of Corporate Law Studies 297, 300.

[150]ibid 335–336. A more critical review of ESG-based remuneration can be found in Lucian Bebchuk and Roberto Tallarita, 'The Perils and Questionable Promise of ESG-Based Compensation' (2022) 48 Journal of Corporation Law 38.

[151]Chinese Company Law 2033, art 20.

[152]Morey McDaniel, 'Bondholders and Stockholders' (1987) 13 Journal of Corporation Law 205, 309.

incentive or even have conflicting interests in doing so. It was suggested that stakeholders could be allowed to take derivative actions or bring actions on the grounds of unfair prejudice.[153] However, this could potentially lead to a significant increase in unmeritorious claims, which might be detrimental to the company, and necessitate substantial changes to current company law.[154]

Apart from relying on individual stakeholder groups to enforce the relevant statutory duties privately, a possible alternative is public enforcement. A good case is the Australian Securities and Investments Commission (ASIC), which is empowered to take action in respect of an alleged breach of directors' statutory duties.[155] The sanctions that ASIC can seek in civil penalty proceedings include pecuniary penalties, management disqualification orders that may be indefinite or for a specified duration, and compensation orders for losses incurred by the company.[156] In the UK, the law governing Community Interest Companies (CICs) also grants powers to the regulator, who is appointed by the UK Secretary of State, to appoint and remove directors, appoint managers, investigate the affairs of the company, and bring civil enforcement proceeding among others.[157]

In the Chinese context, the China Securities Investor Services Centre (ISC) was created to support public interest litigation.[158] Holding 100 shares in each company listed on three Chinese stock exchanges, the ISC can exercise shareholder rights, including convening extraordinary shareholders' meetings, conducting inspections, proposing resolutions, casting votes, and initiating legal proceedings.[159] However, this remains fundamentally a form of

[153]Janice Dean, *Directing Public Companies: Company Law and the Stakeholder Society* (Cavendish 2001) 176–177.

[154]Alexander Schall, Lilian Miles and Simon Goulding, 'Promoting an Inclusive Approach on the Part of Directors: The UK and German Positions' (2006) 6 Journal of Corporate Law Studies 299, 300.

[155]Jason Harris, Anil Hargovan and Janet Austin, 'Shareholder Primacy Revisited: Does the Public Interest Have Any Role in Statutory Duties?' (2008) 26 Company and Securities Law Journal 355; Andrew Keay and Michelle Welsh, 'Enforcing Breaches of Directors' Duties by a Public Body and Antipodean Experiences' (2015) 15 Journal of Corporate Law Studies 255.

[156]ibid. Empirical studies show that judicial proceedings brought by the Australian Securities and Investments Commission (ASIC), which is responsible for civil proceedings against breaches of directors' statutory duties and the Commonwealth Director of Public Prosecutions (CDPP), which is responsible for criminal proceedings against breaches of directors' statutory duties, play a significant role in the enforcement of these duties. During the ten-year period from 2005 to 2014, these proceedings accounted for approximately half of all public and private cases involving breaches of directors' duties. The CDPP and ASIC established liability in about 88% and 89% of matters, respectively. See Jasper Hedges et al., 'An Empirical Analysis of Public Enforcement of Directors' Duties in Australia: Preliminary Findings' (March 2016) CIFR Paper No. 105/2016 <https://doi.org/10.2139/ssrn.2766132> accessed 12 March 2025.

[157]The UK Companies (Audit, Investigations and Community Enterprise) Act 2004, ss 42, 45, 46, 47 and 50.

[158]The ISC was created in December 2014 to hold shares for the sole purpose of exercising shareholder rights on behalf of minority investors and to represent them in court. See International Monetary Fund, 'People's Republic of China: Financial Sector Assessment Program' (December 2017) IMF Country Report No. 17/404.

[159]As of April 2024, the ISC held shares in 5,361 listed companies and exercised shareholder rights on 5848 times. See Xiaolu Wu, 'Revises Rules to Enhance the Standardization of Shareholder Rights Exercise and Strengthen the Foundation of Investor Protection System' *Securities Daily* (Beijing, 17 May

private enforcement. Based on the Australian experience, there is potential for establishing a new state agency empowered to enforce directors' and managers' statutory duties under the new Company Law.[160] For example, if directors and managers fail to consider the interests of employees, consumers, the environment, and other stakeholders, as required by art 20, the proposed regulator can enforce this provision and initiate actions against non-compliant individuals and companies. Similarly, if a company fails to establish an assembly of employee representatives or neglects to consult labour unions and employees before making critical decisions such as restructuring, dissolution, or bankruptcy, as mandated by art 17, the proposed regulator can intervene.[161] Additionally, if companies do not appoint workforce directors as specified in arts 68 and 120, the proposed regulator can also take actions.

Such a new regulator could select matters for formal investigation and action based on its monitoring activities, as well as information received from other agencies, regulators, and stakeholder groups. Given resource limitations, it may prioritise cases that involve significant public interest or concern, or those where enforcement action would serve the public good.[162]

5.4. Elevating bottom lines

As modern company law and corporate governance policies inherently focus on the obligations and relations within the company instead of controlling negative externalities, it is unlikely that we will see fundamental changes to company law in the short term.[163] Consequently, it may be necessary to look beyond the company law framework and draw on other areas of law to establish bottom lines for corporate behaviour, which could serve as further qualification for shareholder primacy.

Following the discussion on regulatory efforts in Section 4, it is not difficult to see that such efforts can significantly shape corporate behaviour. Compliance with legal requirements – such as modifying waste disposal practices or preparing annual reports – often necessitates changes to a company's

2024) <http://www.zqrb.cn/toufu/toubaodongtai/2024-05-17/A1715950075054.html> accessed 12 March 2025.

[160] One option is to extend such power to the ISC, which itself is a limited liability company established by the CSRC.

[161] This would also serve as an effective way to strengthen the impact of the general requirement discussed in Section 2.1.

[162] See e.g. ASIC, *ASIC's Approach to Enforcement* <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-s-approach-to-enforcement/> accessed 12 March 2025. A detailed discussion of the institutional design of such a regulator is, however, outside the scope of this paper.

[163] Although it is possible to expand directors' fiduciary duties to include stakeholder interests, prioritising stakeholder interests would be unlikely. Further, it would be unlikely to provide other stakeholders with rights to initiate derivative actions when stakeholder interests are not properly considered or harmed.

established business conduct and the company may incur additional costs or reduce anticipated profits. The potential for sanctions serve as a compelling justification for compliance, even if compliance results in financial loss.[164] Thus, even from a strictly economic cost–benefit perspective, companies have incentives to comply with the law to avoid adverse legal repercussions.[165] For individual directors and managers, failure to comply constitutes a breach of their statutory duties, resulting in disqualification, fines, and other adverse legal consequences.[166]

Despite the existence of regulatory gaps, such as the under-specification of regulatory terms and the under-enforcement of regulations,[167] proposals to utilise regulatory measures remain a viable solution to ensure that directors and managers consider broader interests when making corporate decisions. Regulatory regimes, such as consumer protection laws, employment laws, environment protection law, and anti-discrimination laws, can be employed to mandate companies to refrain from harmful behaviours and externalising costs to other stakeholders. Since directors and managers are no longer required to be accountable to the shareholders' meeting but are instead obligated to act in the best interests of the company, it means they must not only consider stakeholder factors but also respond to them as they would to other business risks in their decision-making processes. Two aspects are involved. First, the elevated and more stringent bottom lines imposed by these regulatory regimes can help directors and managers to clarify the scope and content of stakeholder interests they are obligated to consider under the new arts 19 and 20. Second, specific requirements imposed by these laws can indeed redefine stakeholder interests as relevant risks that directors must address. For instance, 'environmental interests' can be viewed as environmental risks if environmental protection legislation imposes stricter regulations on emissions and pollution, with serious consequences for non-compliance. Failing to address such risks could then lead them to breach their general duty of care and diligence,[168] thereby

[164]Laws and regulations predominantly rely on punitive mechanisms to ensure adherence, compelling firms to adjust their practices to align with legally prescribed duties. Companies may face formal sanctions, including fines or other penalties, if they engage in prohibited activities (e.g. illegal waste disposal) or neglect required actions (e.g. failure to file accounts). In essence, the penalties associated with legal violations, such as fines or imprisonment, generally outweigh the costs associated with altering company behaviour. Policymakers retain the ability to calibrate penalties to ensure their appropriateness and effectiveness.

[165]When companies incur penalties for misconducts, shareholders are compelled to internalise these costs, which in turn incentivises directors and managers to comply with laws. John Armour, Jeffrey Gordon and Geeyoung Min, 'Taking Compliance Seriously' (2020) 37 Yale Journal on Regulation 1, 12.

[166]Apart from the general requirement to comply with laws and regulations, as outlined in art 19 of the 2023 Company Law, art 188 takes one step further by stipulating that if directors violate any law or administrative regulation in the performance of their duties, they shall be held liable for any losses incurred by the company, which could certainly include penalties imposed on the company.

[167]Armour and Gordon (n 90) 48.

[168]More importantly, personal liability can now be attached to directors and managers if they do not comply with regulatory measures. Above (n 166).

internalising these external laws into corporate governance and transforming their decision-making methodologies.

On the other hand, laws outside the corporate law framework may offer more detailed and targeted solutions. For instance, with regard to employee interests, labour protection law can provide more comprehensive and specific protections. Currently, the proposed Basic Labour Standards Law, alongside the proposal to amend the existing Labour Contract Law of 2012, has been placed on the legislative agenda.[169] These regulations are expected to offer more direct protections for vulnerable worker groups (e.g. disabled workers, elderly workers, student workers, etc.), as well as establish standards for rest and leave, occupational safety and health, and the safeguarding of workers' dignity.[170] Furthermore, they are likely to strengthen implementation mechanisms, such as labour inspection enforcement and labour dispute resolution procedures.

In short, combining these regulatory efforts to increase bottom lines with company law could potentially accelerate the shift away from the shareholder primacy and advance a more stakeholder-oriented model. This combination may also streamline decision-making by addressing the complexities of balancing shareholder interests with stakeholder interests as defined by the elevated bottom lines.[171] At the very least, even within the pure shareholder primacy model, directors and managers are never obligated to pursue shareholder interests in contravention of the law.[172]

5.5. Increasing transparency

Transparency provides an avenue of public accountability for companies in their stakeholder relations.[173] Disclosure could indirectly influence directors and managers to make more conscientious decisions and operate their companies more responsibly. By enhancing the transparency and scope of non-financial information, such as ESG data, directors and managers are more likely to carefully assess their company's impact on the environment,

[169] Although it is categorised into legislative projects where the conditions for enactment are not yet fully developed and further research and deliberation are required. See China's NPC, *Gazette of the Standing Committee* (No. 6 of 2023) 734.

[170] Zhu Xiao, 'Promoting Basic Labour Standards Legislation to Strengthen the Protection of Workers' Fundamental Rights and Interests' *Workers' Daily* (Beijing, 14 November 2023) <http://www.legaldaily.com.cn/xjpfzsx/content/content_8839352.html> accessed 12 March 2025.

[171] In other words, 'those charged with governing a corporation find their decision tree considerably trimmed and their discretion decidedly diminished by mandatory legal rules enacted in the name of protecting stakeholders.' Adam Winkler, 'Corporate Law or the Law of Business?: Stakeholders and Corporate Governance at the End of History' (2004) 67 Law and Contemporary Problem 109, 111.

[172] Even when Milton Friedman famously argued that the social responsibility of business is to increase profits, he still acknowledged a crucial limitation — i.e. the need to 'conform to the basic rules of society', which inherently includes adherence to law. Milton Friedman, 'The Social Responsibility of Business Is to Increase Its Profits' *Times* (New York, 13 September 1930) 33.

[173] Iris Chiu, 'Operationalising a Stakeholder Conception in Company Law' (2016) 10 Law and Financial Markets Review 173, 177.

society, and other stakeholders when fulfilling their duties.[174] For instance, if environmental information related to climate change risks is mandated for disclosure, increased public access to this data, coupled with market forces, could exert pressure on companies to align their practices with broader societal expectations, thereby constraining the exclusive focus on shareholder value.[175] Thus, enhancing the requirement for disclosure of stakeholder-related information has the potential to further advance stakeholder governance by encouraging directors and managers to consider a wider range of stakeholder interests and potential impacts of their decisions.

Beyond enabling broader public accountability through improved company reporting, disclosure requirements can also be leveraged alongside other areas of law to strengthen enforcement. This integration can create a more robust framework for ensuring that companies act responsibly and transparently in their impact on various stakeholders. For instance, the previously mentioned enactment of mandatory regulations can signal to investors and the public that companies are accountable for addressing stakeholder issues, thereby intensifying public pressure. Such pressure can be truly effective when supported by enhanced disclosure duties that ensure transparency and comprehensiveness in reporting. Put differently, the regulatory interventions discussed in Section 5.4 could rely on robust disclosure requirements to facilitate enforcement.

In particular, regarding the newly introduced provision of voluntary social responsibility reports, it may be possible to mandate such reporting for certain companies based on criteria such as their capitalisation,[176] number of employees,[177] or environmental footprint.[178] Further guidance would

[174]Furthermore, in response to growing societal pressure, enhanced disclosure can help manage stakeholder scrutiny, serve as an accountability mechanism, and signal superior social performance. See Christine Mallin, Giovanna Michelon and Davide Raggi, 'Monitoring Intensity and Stakeholders' Orientation: How Does Governance Affect Social and Environmental Disclosure?' (2013) 114 Journal of Business Ethics 29, 41.

[175]For instance, Larry Fink wrote to CEOs, stating that 'companies and countries that do not respond to stakeholders and address sustainability risks will encounter growing scepticism from the markets, and in turn, a higher cost of capital. Companies and countries that champion transparency and demonstrate their responsiveness to stakeholders, by contrast, will attract investment more effectively, including higher-quality, more patient capital.' Larry Fink, 'A Fundamental Reshaping of Finance' (2020) <https://www.blackrock.com/corporate/investor-relations/2020-larry-fink-ceo-letter> accessed 12 March 2025. Empirical studies have identified a significant positive correlation between the extent of ESG disclosure and improved ESG performance. See e.g. Yanqi Sun, 'The Real Effect of Innovation in Environmental, Social, and Governance (ESG) Disclosures on ESG Performance: An Integrated Reporting Perspective' (2024) 460 Journal of Cleaner Production 142592.

[176]This would ensure that small companies are exempt from this reporting duty, subject to the environmental footprint discussed below.

[177]For example, similar to art 68 of the new Company Law, which requires companies with 300 or more employees to appoint employee representatives on the board, a comparable provision could require companies employing over a certain number of people to publish these reports.

[178]Like Shanghai Stock Exchange's approach on environmental information disclosure, companies in environmentally impactful industries, such as thermal power generation, steel, cement, electrolytic aluminium, and mineral development, could be subject to more stringent reporting requirements. Shanghai Stock Exchange (n 103).

also be necessary to establish a well-defined mandatory reporting framework, ensuring that companies provide comprehensive and accurate information rather than selectively highlighting only the positive aspects. This framework should include detailed information on stakeholder-related policies, standards for stakeholder engagement, the implementation of these policies and standards, as well as reviews or feedback from relevant stakeholder groups, to enable stakeholders to assess the true impact of corporate activities on broader societal and environmental issues.[179]

6. Some lessons

Although stakeholder governance in China represents an atypical case due to the country's unique national context, it nonetheless provides some valuable references for potential reforms in other jurisdictions, demonstrating that a shift from a shareholder primacy model to a more stakeholder-oriented governance model is indeed possible.[180] For common law countries, particularly the US and the UK, which have placed shareholders at the centre of the corporate governance system,[181] substantial reforms such as redefining directors' duties and reallocating corporate power may be necessary to adapt their company law to more effectively address stakeholder interests.

A starting point could be the introduction of a general duty to *fully* consider stakeholder interests, similar to the provision found in art 20 of

[179]France is a good example. Article 116 of the *Nouvelles Régulations Économiques* 2001, by updating the French corporate law, mandates the disclosure of sufficiently detailed, precise, and comprehensive information on human resources, community involvement, and environmental impact. For instance, information such as recruiting processes; use of subcontracting/outsourcing; rationales for recruitment; layoffs/redundancies; length of workday/work hours and their rationales; amount of overtime; efforts to 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 odour and noise; and environmental management. Mary Lou Egan et al., 'France's Mandatory 'Triple Bottom Line' Reporting: Promoting Sustainable Development through Informational Regulation' (2009) 5 International Journal of Environmental, Cultural, Economic, and Social Sustainability 27, 34. Accordingly, it would be difficult for companies to do selective reporting under such a disclosure regime.

[180]While this section primarily focuses on lessons from China's efforts to operationalise stakeholder governance, it is equally important to acknowledge the potential insights offered by the experiences of other jurisdictions, including those in Asia, for refining China's corporate governance framework. For example, Japan's recent corporate governance reforms emphasise diversity in corporate management and a heightened focus on sustainability among others may also serve as valuable reference points. By examining these approaches, China could identify and implement tailored practices to further develop its governance mechanisms, especially as it strives to align its stakeholder governance objectives with its unique socio-economic and political context. Such comparative analysis highlights the importance of regional experiences in shaping robust and effective governance reforms.

[181]The current focus of modern corporate law is primarily concerned with the internal obligations and relationships within the company, with shareholders remaining its central concern, rather than on the company's broader interaction with society. Sheehy (n 76) 291.

China's new Company Law. Such provision would be more powerful and direct than proposals like placing a purpose-adopting duty on the board to encourage consideration of a broader range of interests,[182] or reforming company law to mandate that companies articulate their purposes in ways that align with societal and environmental concerns.[183]

In addition to principle-based approaches, more specific requirements are needed to move away from shareholder primacy. A notable example provided by China's new Company Law is the mandate for employee representation on the board, as specified in art 68, which involves employees directly in the decision-making process. Similar rule-based requirements to appoint workforce directors may inform board-level employee representation or workforce engagement policies in jurisdictions like the UK,[184] thereby reinforcing the position and influence of employees within corporate governance structures. Though workforce director or employee representatives at the board level is not necessarily a panacea, it can guarantee the minimum level of direct employee engagement in decision-making,[185] which can in turn help redress the power imbalance within companies and contribute to a fairer distribution of resources in the long term. Another lesson is the employee assembly, which ensures employees can have a voice through more established channels on critical matters such as restructuring and dissolution.[186] By the same token, it may be possible to empower other stakeholders, such as creditors, customers, or long-term suppliers, to have their views heard before critical decisions are made, particularly those that could directly affect their interests.[187] For instance, companies could invite

[182]The UK Corporate Governance Code 2018 introduced a new principle that 'the board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned.' The UK Financial Reporting Council, *The UK Corporate Governance Code* (London 2018) <https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2018.pdf> accessed 12 March 2025.

[183]Colin Mayer, 'The Future of the Corporation and the Economics of Purpose' (2021) 53 Journal of Management Studies 887, 889; Colin Mayer*, Prosperity, Better Business Makes the Greater Good* (OUP 2018) 11 and 22–23. Furthermore, the UK Companies Act 2006, s 39 provides that the validity of a company's actions cannot be questioned on the basis of lack of capacity due to any provision in the company's constitution, which effectively abolishes the *ultra vires* doctrine and renders object clauses irrelevant in company law for serving specific strategic interests. Meanwhile, the object clause is part of the company's constitution and can be amended in the same way as altering any provisions of the articles of association. Consequently, they are ultimately controlled and determined by shareholders.

[184]For instance, a recent empirical study finds that the current soft law based Corporate Governance code in the UK falls short of achieving meaningful worker voice at board level, see Chris Rees and Patrick Briône, 'Employee Voice at Board Level: Responses to the Revised UK Corporate Governance Code and the Prospects for Workplace Democracy' (2024) 45 Economic and Industrial Democracy 816, 827.

[185]Ibid.

[186]Above n 37. Alternatively, the current labour union could be reformed to achieve a similar outcome.

[187]While it may not be necessary to go as far as empowering stakeholders, as Ernest Lim suggested in his new book where beneficiaries in social enterprises could be granted governance rights to directly appoint directors by allocating a special class of shares to them (especially when the beneficiaries are concentrated, active, and well-informed), providing formal opportunities for stakeholders to express their concerns about decisions that directly affect their interests would be a more modest and practical step. Lim (n 17) 113–114.

stakeholder representatives to join an advisory panel or attend board meetings as observers, enabling them to raise concerns or highlight potential risks that might otherwise be overlooked by directors.[188]

A further notable aspect is the restraint of shareholder power and the enhancement of board autonomy to rebalance power within companies.[189] Accordingly, for any country considering to shift towards a more stakeholder-oriented model, one option is to adjust the distribution of corporate power between shareholders and the board.[190] With regulatory interventions aimed elevating bottom lines, there also exists potential to integrate these minimum standards with directors' general duty of care, thereby reinforcing corporate accountability and better aligning corporate actions with stakeholder interests.

7. Conclusion

Using the recent amendments to China's Company Law as a case study, this paper has examined the transition from the traditional shareholder primacy model to stakeholder governance.[191] By introducing provisions that mandate full consideration of stakeholder interests, enhance employee engagement, involve workforce directors in the decision-making process and recalibrate shareholders' control rights and duties of directors and managers, these reforms signify a significant movement towards a more inclusive corporate governance.

While China is clearly shifting towards a stakeholder-oriented approach, shareholders in Chinese companies continue to wield substantial influence. To contribute to the ongoing discourse on operationalising stakeholder governance, this paper has proposed the following: first, reducing shareholders' overall power to move further away from shareholder governance and create space for stakeholder governance; second, adopting ESG-based remuneration that incorporates key stakeholders and sustainability issues, encouraging directors and managers to balance attention across multiple stakeholder interests rather than focusing solely on shareholder profits; third, establishing a new state agency empowered to enforce directors' and managers' statutory duties, particularly stakeholder-oriented duties, under the new Company Law; fourth, leveraging legal and regulatory frameworks other than company law to

[188]Similar to the underlying rationale of art 17 of the new Company Law, this approach would help ensure that a wider range of perspectives is taken into account in key decision-making processes.

[189]As shown in Section 3.1, China's new Company Law removes shareholders' authority over operational and investment decisions, as well as over the allocation of corporate funds, instead empowering the board of directors to make such important and strategic decisions.

[190]In particular, in jurisdictions where shareholders are conferred extensive executive powers, as was the case in China prior to the 2023 amendment, the likelihood of companies embracing a more stakeholder-oriented governance model is significantly diminished.

[191]It should be noted that this transition remains an ongoing process rather than a concluded one, as outlined in Section 3.

elevate minimum standards for corporate behaviour, which would qualify shareholder primacy and help redefine the corporate decision-making matrix; and finally, promoting transparency to create a framework for public accountability regarding companies' relationships with their stakeholders.

Companies have frequently externalised costs and risks associated with their profit-driven activities, which not only marginalise other forms of productive capital but also have adverse impacts on both the environment and society. As China navigates these complexities, it offers some valuable lessons for other jurisdictions seeking to develop their own stakeholder governance frameworks. Although certain aspects of China's governance structure, such as the influence of Government and Party organisations, may not be directly transferable, practices including a general requirement of considering stakeholder interests in decision-making, mandatory employee engagement, the appointment of workforce directors, the restraint of shareholder power and the use of mandatory regulations beyond company law could provide good learning experiences for future reforms in other contexts. Certainly, the five recommendations outlined above may also contribute valuable considerations for other countries advancing stakeholder governance.

Future research on stakeholder governance could focus on integrating regulatory frameworks with company law and developing public enforcement mechanisms to ensure compliance with directors' statutory duties concerning stakeholder interests. Strengthening these areas would enable jurisdictions, including China, to advance stakeholder governance and address the growing demand for corporate accountability in a rapidly changing world. Additionally, empirical studies evaluating the practical impact of reduced shareholder power and stakeholder-oriented duties are crucial. In particular, research on the effectiveness of workforce directors would offer valuable insights that could inform the development of workforce engagement policies, both in China and in other jurisdictions.

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