

INTERPRETING THE PRC COMPANY LAW THROUGH THE LENS OF CHINESE POLITICAL AND CORPORATE CULTURE

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I INTRODUCTION

The latest amendment to the Company Law of the People's Republic of China ('Company Law'),¹ which became effective on 1 January 2006, appears to bring the Chinese company legislation more or less into line with corporate legislation in other international jurisdictions. While not identical to any foreign model, the Company Law now sets out the typical shareholders' rights and remedies, directors' duties, and offences that were absent from or not enforceable in the previous 1999 amendment.² It also adds clearer provisions on capital requirements for establishing companies, and on issuing and transferring shares and issuing debentures; includes more detailed financial reporting provisions; clarifies provisions relating to mergers, divisions and liquidation; and for the first time permits one-member companies to be registered, amongst other changes.³

While scholars have criticised the ambiguity of some of these new provisions, which will require clarification by judicial interpretation, such provisions do at least resemble their counterparts in company law statutes from other jurisdictions.⁴ Nevertheless, there are four articles in the first chapter of the Company Law that bear very little relation to anything in the Australian company legislation, or for that matter, possibly any non-Chinese jurisdiction. At first sight, these articles lack any corresponding penalty provisions, and therefore appear to be merely hortatory in function. But as I will argue in this paper, both

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1 Company Law of the People's Republic of China, adopted at the Fifth Session of the Standing Committee of the Eighth National People's Congress on 29 December 1993, effective at 1 July 1994. Revised on 25 December 1999, 28 August 2004 and 27 October 2005. The most recent revision came into effect on 1 January 2006.

2 For discussion of some of the changes in the 2006 amendment to the Company Law, see Jean-Marc Deschandol and Charles Desmeules, 'One Hesitant Step Forward: New *Company Law* Brings Mixed Feelings' (December 2005) *China Law and Practice* 13-15; and Baoshu Wang and Hui Huang, 'China's New Company Law and Securities Law: An overview and assessment' (2006) 19(2) *Australian Journal of Corporate Law* 229, 229-236. For an annotated translation of the Company Law, see Jane Fu and Jie Yuan, *PRC Company & Securities Laws: A Practical Guide* (2006).

3 Wang and Huang, above n 2, 232-4.

4 Ibid 234.

the Chinese Government and company managers themselves have expended a great deal of effort to ensure that companies are seen to be complying with these articles. In other words, when we view the Company Law through the lens of Chinese political and corporate culture, what appear to be vague or unenforceable policy statements within the statute actually turn out to have a major influence on the governance structures and operational management of companies. Although it is still too early to tell, they may also have an impact on the way that courts in China interpret the more ‘familiar-looking’ directors’ duties and shareholder remedy provisions in the rest of the Company Law.

It is especially important that foreign investors who are planning to establish a business venture in China become aware of the central importance of these articles, as all registered foreign-invested enterprises are now subject to the Company Law unless it directly contradicts the foreign investment laws.⁵ They must therefore be prepared for the extra budgetary expenditures, and perhaps more seriously, the reduced autonomy that complying with the Company Law will entail.

II FOUR UNIQUE ARTICLES IN THE COMPANY LAW

Article 1 of the Company Law states:

This Law is formulated for the purposes of regulating the organisation and operation of companies, protecting the legitimate rights and interests of companies, shareholders and creditors, maintaining social and economic order, and promoting the development of the socialist market economy.⁶

This kind of introduction is common to many PRC statutes, giving a broad statement of the purpose of the law and its supposed relationship to socialist principles. But in the same chapter, we find three other articles that add more weight and specificity to the ‘motherhood’ statement of article 1. For example, article 5 states:

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- 5 The application of the Company Law to foreign-invested enterprises is indicated in art 218, and has been clarified by regulations issued in April 2006. For translations and analysis of these regulations, see Peter A Neumann, ‘China’s Foreign-invested Companies: A Standardization of Practices’ (July 2006) *China Law and Practice* 30-34, available at <<http://www.chinalawandpractice.com/>> at 19 October 2007; see also, ‘Implementing Opinions on Several Issues Concerning the Application of the Law in the Administration of the Examination, Approval and Registration of Foreign-invested Companies’ issued on 24 April 2006 (July 2006) *China Law and Practice* 85-96, available at <<http://www.chinalawandpractice.com/>> at 19 October 2007.
 - 6 Company Law, art 1. For an English translation, see *Company Law of the People’s Republic of China* (2005) State Administration for Industry and Commerce <http://gsyj.saic.gov.cn/wcm/WCMData/pub/saic/english/Laws%20and%20Regulations/t20060228_14652.htm> at 14 October 2007. For a Chinese version, see *Company Law of the People’s Republic of China* (2003) China Securities Regulatory Commission <<http://www.csrc.gov.cn/n575458/n575727/index.html>> at 14 October 2007. I have modified the English translations of this and subsequent Company Law articles so that they conform more closely to the Chinese original.

When undertaking business operations, a company shall comply with all laws and administrative regulations, and respect social morality and business morality. It shall act in good faith, accept the supervision of the government and the general public, and bear social responsibilities...⁷

The requirement to ‘bear social responsibilities’ is new to the 2006 amendment of the Company Law.⁸ I will discuss what this term means in more detail in Part IV below. Here I simply note that it is mentioned in the same breath as accepting the ‘supervision of the government and the general public’. In other words, companies are not completely autonomous from either the government or the surrounding community, and this is the reason why they must act in a socially responsible manner. While the same article goes on to state that ‘the legitimate rights and interests of a company shall be protected by laws and may not be infringed’, it is clear that companies cannot avoid certain kinds of political interference with their ‘interests’ if those interests conflict with the government’s own idea of socially responsible behaviour. Indeed, government-affiliated organisations have a strong presence within the vast majority of companies in China – something that is justified by articles 18 and 19:⁹

Article 18:

The employees of a company shall organise a labour union according to the Trade Union Law of the People's Republic of China [‘Trade Union Law’], which shall carry out union activities and safeguard the lawful rights and interests of the employees. The company shall provide necessary conditions for the labour union to carry out its activities. ...

To make a decision on restructuring or any other important issue related to business operations or when formulating any important regulation, a company shall solicit the opinions of its labour union, and shall solicit the opinions and proposals of the employees through meetings of employee representatives or other similar procedures.

Article 19:

Organisations of the Chinese Communist Party shall be established in the company based on the provisions of the Constitution of the Chinese Communist Party [‘Party Constitution’], to carry out activities of the Party. The company should provide all necessary conditions to assist the activities of the Party organisations.

The Chinese Communist Party (‘CCP’) is obviously the party that controls the Chinese Government, but the labour union will also be affiliated with and guided by the CCP through its umbrella organisation, the All-China Federation of Trade Unions (‘ACFTU’); hence it is effectively a government organisation too, as explained below.

These various articles raise a number of issues that cannot be understood without some discussion of the Chinese political context, or political culture, within which companies in China must operate. In Parts III and IV, I will analyse

7 Company Law, art 5.

8 The nearest equivalent in the previous 1999 amendment of the Company Law was art 14, which stated: ‘In conducting its business activities, a company shall abide by the law and by business ethics, strengthen the construction of socialist spiritual civilisation and accept the supervision of the government and the public’.

9 Company Law, arts 18-19.

the articles in more detail, showing how they have been interpreted by the Chinese Government and implemented by Chinese companies.

III THE COMPANY LAW THROUGH THE LENS OF CHINESE POLITICAL CULTURE

To understand the impact of these articles, particularly articles 18 and 19, we must first refer to two other pieces of legislation that they cite. The Trade Union Law includes the following provisions:¹⁰

Article 3:

All manual and mental workers in enterprises, institutions and government departments within the territory of China who rely on wages or salaries as their main source of income, irrespective of their nationality, race, sex, occupation, religious belief or educational background, have the right to organise or join trade unions according to law. No organisations or individuals shall obstruct or restrict them.

Article 10:

A basic-level trade union committee shall be set up in an enterprise, an institution or a government department with a membership of twenty-five or more; where the membership is less than twenty-five, a basic-level trade union committee may be separately set up, or a basic-level trade union committee may be set up jointly by the members in two or more work units, or an organiser may be elected, to organise the members in various activities... Industrial trade unions may be formed, when needed, at national or local levels for a single industry or several industries of a similar nature. The All-China Federation of Trade Unions shall be established as the unified national organisation.

In other words, companies registered under the Company Law must allow their employees to establish a union if they so wish, but the union that those employees join must be under the umbrella of the ACFTU, and this union is closely affiliated with the CCP.¹¹

Besides permitting employees to organise unions, the Company Law also mandates a direct CCP presence within companies. Article 19 declares that companies must support the activities of any CCP branches established within the firm, in accordance with the Constitution of the Communist Party of China ('Party Constitution'). The Party Constitution sets out a basic rule that where there are at least three full Party members within an enterprise, a 'primary Party

10 Trade Union Law of the People's Republic of China, adopted at the 24th Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China, promulgated 27 October 2001. For an English translation, see *Trade Union Law of the People's Republic of China* (2006) Chinese Government's Official Web Portal <http://english.gov.cn/laws/2005-10/11/content_75948.htm> at 14 October 2007. For the Chinese original, see *Trade Union Law of the People's Republic of China* (2003) China Internet <<http://www.china.org.cn/chinese/LP/75992.htm>> at 14 October 2007.

11 This is clear from the Party Constitution, which states in the Preamble, '[t]he Party must strengthen its leadership over the trade unions, the Communist Youth League organisations, the women's federations and other mass organisations, and give full scope to their roles.' For an English translation, see *Full Text of Constitution of the Communist Party of China* (2002) Sixteenth National Congress of the Communist Party of China <<http://www.china.org.cn/english/features/49109.htm>> at 14 October 2007. For the Chinese original, see *Full Text of Constitution of the Communist Party of China* (2002) China Internet <<http://www.china.com.cn/chinese/2002/Nov/234227.htm>> at 14 October 2007.

organisation' should be set up there, and depending on the number of members, various Party branches may be established under this Party organisation.¹²

So, with the current membership of the CCP running at an all-time high of over 70 million members, it is highly likely that all but the smallest registered companies will include three Party members and will therefore be obliged to allow the CCP to establish one or more branches within the firm. Along with the ACFTU, these CCP branches allow the government to extend its tentacles into every significant business organisation in China.¹³

During the 1980s and 1990s, there were complaints from older generation Chinese Marxists that the CEOs of many business enterprises – especially the new privately-managed and foreign-invested enterprises – were either ignoring the requirement to host labour unions and CCP organisations completely, or they were permitting these groups to exist within their companies but refusing to consult with them about company operations and their treatment of employees.¹⁴ However, since President Hu Jintao and Premier Wen Jiabao came to power in 2003, the Chinese Government has called for a strengthening of the role of all such government-affiliated organisations within companies. In March 2006, these efforts were intensified after President Hu Jintao issued instructions to expand the numbers of CCP organisations and trade unions in companies, especially foreign companies.¹⁵ As a result, some 60 per cent of China's more than 100,000 foreign-invested enterprises became unionised by the end of 2006, with a target set by the ACFTU of 80 per cent to be unionised by the end of 2007. The presence of the CCP within privately-managed and foreign-invested corporations has also been strengthened. For example, according to figures from the CCP's Central Organisation Department, by the end of 2005, over 85 per cent of privately-managed corporations with three or more Party members had established primary Party organisations.¹⁶ The CCP has particularly targeted high profile foreign corporations in China, such as Wal-Mart, setting up Party organisations within them.¹⁷ While no figures are available for foreign-invested enterprises as a whole, one official Chinese report states that a 'high proportion' of foreign enterprises in China have already established primary Party organisations, and gives the example of Suzhou City in Jiangsu Province, where

12 Constitution of the Communist Party of China, art 29.

13 Most companies will also host branches of other CCP-endorsed 'mass organisations' such as the Communist Youth League, which gives support and ideological education to younger employees, and the All-China Women's Federation, which focuses on gender and family issues within work units.

14 Bruce J Dickson, *Red Capitalists in China: The Party, Private Entrepreneurs, and Prospects for Political Change* (2003) 38-42.

15 See David Lague, 'Unions Triumphant at Wal-Mart in China', *International Herald Tribune*, 13 October 2007 <<http://www.ihrt.com/articles/2006/10/12/business/unions.php#>> at 16 October 2007.

16 Jiang Min, Wu Zheng and Zhang Jianhua, *Zhonggong shouci zai woerma fendian jianli dang zuzhi* [CCP sets up Party organisations within Wal-Mart for the first time], *Xinhua News Agency*, 26 August 2006 <http://www.ln.xinhuanet.com/ztn/2007-08/26/content_11295101.htm> at 18 October 2007.

17 Associated Press (Beijing), 'Communist Party branch set up at Wal-Mart's China headquarters', *International Herald Tribune*, 17 December 2006 <http://www.ihrt.com/articles/ap/2006/12/18/asia/AS_FIN_China_Wal_Mart.php> at 14 October 2007. Wal-Mart has also allowed trade union branches to be set up in all 62 of its stores in China, something that it has resisted elsewhere in the world. See Lague, above n 15.

among 6545 foreign-invested enterprises, some 1049, or approximately 16 per cent, had set up Party organisations with a total of 14,041 Party members signed up so far.¹⁸ The numbers will doubtless continue to grow as the CCP increases pressure on foreign companies to toe the line.

What functions do these Party organisations and Party-approved labour unions have within companies in China? The Company Law does not give much indication of this, except in the case of unions, which are supposed to ‘conclude collective contracts with the company on behalf of the employees with respect to remuneration, working hours, welfare, insurance, operational safety, sanitation, and other matters’.¹⁹ But the Party Constitution sets out a number of functions of Party organisations within enterprises, some of which are business-related and others which appear to have no connection to business whatsoever. Article 32 of the Party Constitution states:²⁰

In a state-owned or collective enterprise, the primary Party organisation acts as the political nucleus and works for the operation of the enterprise. The primary Party organisation guarantees and supervises the implementation of the principles and policies of the Party and the state in its own enterprise and backs the meeting of shareholders, board of directors, board of supervisors and manager (or factory director) in the exercise of their functions and powers according to law. It relies wholeheartedly on the workers and office staff, supports the work of the congresses of representatives of workers and office staff and participates in making final decisions on major questions in the enterprise. It works to improve its own organisation, provides leadership over trade unions, the Communist Youth League and other mass organisations, and carries out ideological and political work, and cultural and ethical improvement programs.

In a non-public economic institution [ie a privately-managed corporation], the primary Party organisation carries out the Party's principles and policies, provides guidance to and supervises the enterprise in observing the laws and regulations of the state, exercises leadership over the trade union, the Communist Youth League organisation and other mass organisations, rallies the workers and office staff around it, safeguards the legitimate rights and interests of all stakeholders, and stimulates the healthy development of the enterprise.

Even though this article seems to indicate that the CCP organisations are more closely involved in the management of State-controlled corporations as compared with privately-managed corporations, the basic tasks of the CCP are similar whatever the ownership structure. It must promote the Party's policies, guide the activities of the trade union and other mass organisations within the firm, such as the Communist Youth League, ensure that the corporation complies with the law, and support the management in its work to develop the enterprise.

Therefore, on the one hand, this highly influential Party document appears to advocate the usual kind of Party propaganda work that has been a feature of Chinese State-owned Enterprises (‘SOEs’) for decades, and to extend this to privately-managed and foreign-invested enterprises. This may be quite disturbing to foreign investors in China. Yet, on the other hand, it strongly emphasises that

18 Jiang Min et al, above n 16, citing a researcher from the CCP's Central Organisation Department.

19 Company Law, art 18. The Trade Union Law also gives more detail on the union's role in companies.

20 Constitution of the Communist Party of China, art 32. Translation modified slightly based on the Chinese original.

even in the case of privately-owned enterprises, the role of the CCP is to assist in developing the business, not to stand in antagonistic opposition to the capitalist owner classes. This business-friendly role of the CCP is brought out even more clearly in a Chinese report on the establishment of CCP branches within Wal-Mart China. A Party member in the toy department of one of Wal-Mart's Shenyang stores is quoted as saying: '[o]ur Branch Party Secretary told me that one of the criteria for evaluating Party members' progress is *whether we have helped to increase sales* at the Wal-Mart stores where we work.'²¹ Likewise with the labour unions, another report on the recent unionisation campaign notes that the ACFTU has been accused of siding with management rather than acting as a champion of workers' rights. At best, the official union may attempt to mediate in disputes between the two sides.²²

We can therefore discern that the Chinese Government is attempting to create a new role for the CCP and its affiliated organisations within business corporations in China, including privately-managed corporations and foreign-invested enterprises. Even though government ministries no longer directly manage firms based on a central plan (as they did prior to the 1980s), the CCP is still closely involved in companies' management decisions and in monitoring the behaviour of employees. Indeed, in recent years the CCP appears to be consolidating its presence in the non-State-owned sector of the economy. This means that Chinese company CEOs must be prepared to deal with the CCP on a daily basis and loudly trumpet their company's support of Chinese government policies – whether or not this distracts them from running their business. The situation is roughly equivalent to the kind of political lobbying and campaign contributions that large national and international corporations feel obliged to engage in elsewhere in the world. But the difference in China is that the party in power has its branches right inside the company and is directly involved in corporate decision-making.

Nevertheless, as indicated above, the CCP of today contrasts greatly with the revolutionary, hard-line Party of the same name controlled by Chairman Mao until 1976. For example, one main difference is that since the early 1980s, hundreds of thousands of successful business entrepreneurs have been invited to join the CCP. This was controversial at first, but was ultimately approved at the highest levels with the adoption of Jiang Zemin's 'Three Representatives' policy in 2001.²³ Besides joining the CCP, CEOs of the most prominent companies, including privately-managed corporations, have even been appointed to the provincial or National People's Congress, and in some cases to the CCP's Central Committee, thereby serving concurrently as politicians and business leaders. This trend of including entrepreneurs on the CCP's highest governing

21 Jiang Min et al, above n 16. Emphasis added.

22 Lague, above n 15.

23 Dickson, above n 14, 103-4.

bodies is likely to continue at the Seventeenth Party Congress in October 2007.²⁴ From this development, and from the wording of the Party Constitution discussed above, it is very clear that the CCP has changed its attitude towards business entrepreneurs from an antagonistic to a supportive one. Thus, rather than viewing the ubiquitous presence of the CCP and its affiliated organisations within companies simplistically as a sinister sign of continuing totalitarian government control over business, we should instead realise that a complex symbiosis is occurring involving the inner transformation of both corporations and the CCP into new kinds of organisations. On this point, a final quotation from the Party Constitution shows how the CCP's priorities have changed over the past decade:

The Communist Party of China must persist in taking economic development as the central task, making all other work subordinated to and serving this central task. We must lose no time in speeding up economic development ... We must take advantage of the advancement of science and technology to improve the quality of workers and work hard to push forward the economy with good results and high quality and at high speed.²⁵

IV SOCIAL RESPONSIBILITY, THE CCP AND COMPANY CULTURE

Along with its prescriptions for trade union and CCP involvement in companies, a third noteworthy feature of the Company Law is its requirement that all firms act in a 'socially responsible' manner.²⁶ As far as I am aware, China is currently the only country whose company legislation makes social responsibility mandatory. The United Kingdom *Companies Act 2006* (UK) and some US jurisdictions permit directors to take the interests of broader stakeholders into account when making management decisions, but there is no legal obligation on them to do so.²⁷ Other countries, like Australia, do not even go as far as this, preferring instead to retain the traditional fiduciary duty to act in

24 Ibid 100. For some statistics on entrepreneurs appointed to the Central Committee at the Sixteenth Party Congress in 2002, see also Li Cheng and Lynn White, 'The Sixteenth Central Committee of the Chinese Communist Party: Hu Gets What?' (July-August 2003) 43(4) *Asian Survey* 553, 583-4. For more recent developments, see also Pradeep Taneja, 'Rethinking Government-Business Relations in China,' (Paper presented at Chinese Studies Association of Australia 10th Biennial Conference, Griffith University, 27-29 June 2007).

25 From the Preamble to the Constitution of the Communist Party of China. Translation slightly modified.

26 Company Law, art 5.

27 For a detailed review of different Western countries' approaches to corporate social responsibility, see Corporations and Markets Advisory Committee ('CAMAC'), Parliament of Australia, *The Social Responsibility of Corporations* (2006) 18-34, 39-40; available online at: <<http://www.camac.gov.au/CAMAC/camac.nsf/0/3DD84175EFBAD69CCA256B6C007FD4E8?opendocument>> at 14 October 2007.

the best interests of the company, which is usually interpreted as the best interests of the shareholders as a whole, or in some situations, the company's creditors.²⁸

The inclusion of a mandatory social responsibility requirement clearly reflects the Chinese Government's wish to guide and closely monitor corporate behaviour. This is further indicated by the wording of article 5 of the Company Law, where social responsibility is not a stand-alone category, but is listed alongside 'respecting social morality and business morality,' and 'accepting the supervision of the government and the general public.'²⁹ Other official policy documents make it clear that being socially responsible is one of several interlinked functions of Chinese corporations, and a necessary part of their 'corporate culture.' For example, the 'Guiding Opinion on Strengthening the Building of Corporate Culture in Centrally-Controlled Corporations', issued by the State-owned Assets Supervision and Administration Commission ('SASAC') on 16 March 2005 ('SASAC Guiding Opinion'), states:

[Companies] must seek both to increase their economic return and at the same time pay attention to improving their social return. [This means] helping to bring about political harmony and stability, economic sustainability and growth, and continuous cultural development; [it also means] properly protecting the legal rights and interests of employees, and promoting a balance between economic returns, social returns and employee interests.³⁰

Thus, the social responsibility of companies in China, or what the SASAC Guiding Opinion refers to as the 'social return' that companies create alongside their 'economic return,' cannot be viewed in isolation, but is just one way in which they prove that they have created a positive 'corporate culture.'

Elsewhere, I have shown that unlike in jurisdictions such as the United States and Australia, where companies are free to develop or modify their 'cultures' as they see fit, in China the government has co-opted this foreign concept of 'corporate culture' and enthusiastically promoted it within Chinese companies.³¹ Numerous policy documents have been issued to guide companies on how to 'improve' their cultures – the most influential being the aforementioned SASAC Guiding Opinion, which is binding on all major State-controlled corporations in

28 Two Australian government commissions opposed including even a permissive provision stating that directors *may* take non-shareholder interests into account, arguing controversially that the current directors' duties allow directors this leeway already. See CAMAC, above n 27, 111-113. See also, Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Corporate Responsibility: Managing Risk and Creating Value* (2006) ch 4, available at <http://www.apf.gov.au/Senate/committee/corporations_ctte/corporate_responsibility/report/index.htm> at 14 October 2007.

29 Company Law, art 5.

30 *Guanyu jiaqiang zhongyang qiye qiye wenhua jianshe de zhidao yijian*, art 10 (issued by SASAC's Propaganda Department). Available in Chinese only on SASAC website at <<http://www.sasac.gov.cn/gzjg/xcgz/200504190137.htm>> at 14 October 2007. SASAC is the State-owned Assets Supervision and Administration Commission of the State Council, a government body that is responsible for administering 155 of China's largest State-controlled corporate groups, and for issuing regulations to guide State-controlled corporations in China generally. For a concise English description of SASAC's role, see the Commission's website at <<http://www.sasac.gov.cn/eng/zrzc.htm>> at 14 October 2007.

31 See Colin Hawes, 'Representing Corporate Culture in China: Official, Academic and Corporate Perspectives' (2007) (unpublished, copy on file with author).

China and is clearly intended to provide a model for privately-managed corporations as well.³² According to the official Chinese view, a 'positive' corporate culture includes improving management quality, strengthening the 'internal cohesion' and 'core competitiveness' of companies, helping people 'develop to their full potential', improving the morale of employees and management, increasing innovation, developing a clear set of corporate values, and creating a sense of belonging to the firm, all of which would fit nicely into any American text on corporate culture.³³

Yet juxtaposed with these benefits are some uniquely Chinese ideas that relate 'progressive corporate culture' to maintaining the 'dominant position' of the Communist Party, strengthening socialism, and building a 'harmonious society'.³⁴ Furthermore, corporations are required to provide

healthy and beneficial cultural products to raise the cultural level of employees and expand the effectiveness of corporate culture promotion. They must focus on guiding and strengthening extracurricular group cultural activities such as photography, calligraphy, art, literature and sports, and they must organise a wide variety of healthy and distinctive extracurricular cultural activities in which everyone can participate ... in order to satisfy employees' spiritual and cultural thirst for knowledge, beauty and pleasure.³⁵

And who should be responsible for building and promoting this broad vision of corporate culture within Chinese firms? Again the SASAC Guiding Opinion makes it very clear that there must be a close interaction between company managers and the CCP organisations within the firm:

Building a progressive corporate culture is a shared responsibility of corporations' management and Party leaders. ... The leadership system for building corporate culture should fit into the modern corporate system and legal person governance structure, and firms' Party Committees, Boards of Directors, and top managers should all be fully involved in the corporate culture strategic development process. ... In the process of building corporate culture, firms must pay attention to fully utilising the grass-roots Party organisations and mass organisations. The broad mass of Party members must play a leading role in this effort, guiding the whole workforce to devote their full efforts to building corporate culture.³⁶

V READING THE COMPANY LAW: A NEW ROLE FOR THE CCP AND A NEW CHINESE DEFINITION OF THE CORPORATION?

I have shown that the PRC Company Law can only be understood within an interpretive framework that pays heed to broader concepts of political culture and corporate culture. A superficial reading of the legislation might overlook the general provisions in chapter 1 that we analysed above, assuming that they are only hortatory in character. Such a reading might focus instead on the

32 Ibid.

33 SASAC Guiding Opinion, arts 1, 4. Cf Hawes, above n 31, for a comparison to American corporate culture texts.

34 SASAC Guiding Opinion, art 1.

35 SASAC Guiding Opinion, art 8.

36 SASAC Guiding Opinion, art 16.

‘substantive’ provisions relating to shareholders’ rights and remedies, directors’ duties, and offences for breach, all of which appear at least roughly similar to provisions in the company laws of other jurisdictions. Yet I have argued that articles 1, 5, 18 and 19 provide the legislative justification for the continuing and expanding presence of the CCP and its affiliated organisations within virtually all companies in China, including privately-managed and foreign-invested companies that were previously able to avoid direct government involvement in their businesses. As a result, far from creating a company law system that is converging with Western models, whether Anglo-American or Continental – in other words, one in which most companies are autonomous entities free from government interference – the recently amended PRC Company Law actually reinforces the Chinese Government’s latest policy drive to regain control over the private and foreign-funded sectors of the Chinese economy. It doubtless reflects the government’s concern that, with the rapid expansion of these sectors, it may soon be faced with a rich and powerful new capitalist class that could challenge its political supremacy.

But I have also argued that in the light of broader Party constitutional and policy documents, which set out the priorities of the CCP itself and its prescriptions for ‘corporate culture’, the CCP has transformed its role within companies from a purely political and profit-antagonistic worker support function to a more pragmatic function that attempts to assist the management in realising primary economic goals while not losing sight of the interests of employees and the social obligations of companies to give back some of their wealth to society. Making itself more relevant to company managers and their employees may be the only way that the CCP can retain the support of the ‘broad masses’ of the Chinese working population and just as importantly, the new rich entrepreneurs who employ so many of them.

The result of this transformative process appears to be a uniquely Chinese definition of the business corporation as a hybrid economic-political-sociocultural institution. Foreign investors who wish to set up enterprises in China should take note of this and be prepared to interact closely with the CCP and other government-affiliated organisations, and to prove their willingness to comply with the official interpretation of corporate social responsibility.