

The Overlooked Reality of Shareholder Activism in China: Defying Western Expectations

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The authors would like to thank Curtis Milhaupt for providing valuable feedback which significantly improved this article. We would also like to thank the Asian Corporate Law Forum (ACLF) for providing a valuable opportunity to present and develop this research and the Singapore Management University Centre for Commercial Law in Asia for providing support and funding for the research [insert other organizations/funding]. We are also grateful for Nichelle Chua Jia Yu, Ruge Wang [insert names of research assistants] for their excellent research assistance. Any errors remain our own.

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Abstract

Despite shareholder activism being in the global spotlight, shareholder activism in China – the world’s second largest economy – remains largely a black box. Using unique hand collected data, we reveal the overlooked reality that shareholder activism in China is thriving – with 156 major shareholder activist campaigns, over two-thirds of which have occurred in the last five years. Contrary to Western conventional wisdom, we find that whether the target company is a private owned enterprise (POE) or state-owned enterprise (SOE), has no statistically significant effect on the success of activist campaigns. Private shareholders have undertaken, and in over half of the cases succeeded, in activist campaigns against so called “national champions” – the name bestowed on the largest, most politically powerful, SOEs in China. Conversely, over half of the activist campaigns launched by national champions failed when the target was a POE. Taken together, virtually all our empirical evidence, including our regression analyses in which we coded shareholder activists and target companies based on their level of political power, suggests that China has developed a rules-based market for shareholder activism – in which there is no evidence of systemic political interference (even when the state is the shareholder activist or target company). To further interrogate the role that politics may play in individual politically sensitive cases, we drilldown into our empirical evidence and analyze our unique collection of shareholder activist case studies. Despite our in-depth analysis to try to find evidence of political interference, our empirical and case study evidence of the heretofore unreported surge of shareholder activism in China suggests that it has been primarily driven by rules-based market forces.

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Abstract

Despite shareholder activism being in the global spotlight, shareholder activism in China – the world’s second largest economy – remains largely a black box. Using unique hand collected data, we reveal the overlooked reality that shareholder activism in China is thriving – with 156 major shareholder activist campaigns, over two-thirds of which have occurred in the last five years.

Contrary to Western conventional wisdom, we find that whether the target company is a private owned enterprise (POE) or state-owned enterprise (SOE), has no statistically significant effect on the success of activist campaigns. Private shareholders have undertaken, and in over half of the cases succeeded, in activist campaigns against so called “national champions” – the name bestowed on the largest, most politically powerful, SOEs in China. Conversely, over half of the activist campaigns launched by national champions failed when the target was a POE. Taken together, virtually all our empirical evidence, including our regression analyses in which we coded shareholder activists and target companies based on their level of political power, suggests that China has developed a rules-based market for shareholder activism – in which there is no evidence of systemic political interference (even when the state is the shareholder activist or target company).

To further interrogate the role that politics may play in individual politically sensitive cases, we drilldown into our empirical evidence and analyze our

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† The authors would like to thank Curtis Milhaupt, [insert names of others] for providing valuable feedback which significantly improved this article. We would also like to thank the Asian Corporate Law Forum (ACLF) for providing a valuable opportunity to present and develop this research and the Singapore Management University Centre for Commercial Law in Asia for providing support and funding for the research [insert other organizations/funding]. We are also grateful for Nichelle Chua Jia Yu, Ruge Wang [insert names of research assistants] for their excellent research assistance. Any errors remain our own.

unique collection of shareholder activist case studies. Despite our in-depth analysis to try to find evidence of political interference, our empirical and case study evidence of the heretofore unreported surge of shareholder activism in China suggests that it has been primarily driven by rules-based market forces.

I. Introduction

China is known in the West for many things. However, a rules-based market for shareholder activism is not one of them. President Xi Jinping is (in)famous in the West for demanding “that businesses conform to the aims of the Communist Party”.¹ The newly appointed boss of the China Securities Regulatory Commission (CSRC) – China’s equivalent to the US Securities and Exchange Commission (SEC) – has earned the sobriquet “Broker Butcher” for his alleged zealous crackdown on traders in the 2000s.² Western media regularly reports on “[b]illionaire tycoons, including Jack Ma, the founder of Alibaba, [being] driven underground or imprisoned after criticizing the government”.³ This is not exactly an environment in which one would expect to find a vibrant rules-based market for shareholder activism – especially with state owned enterprises as the target of such activism.

And yet, based on our hand collected data, shareholder activism in China is thriving. There were nine times as many publicly reported shareholder activist campaigns against listed companies in China in 2023 (27) as in 2008 (3) – with over two-thirds of all the shareholder activist campaigns since 2007 occurring in the last five years (see Table 1, below). More unexpectedly, our empirical analysis reveals that whether the target company is a private owned enterprise (POE) or state owned enterprise (SOE) has no statistically significant effect on the success of the activist campaign, no matter whether the activist is a state owned or privately owned investor.⁴ In fact, contrary to Western conventional wisdom, private shareholders undertake, and more often than not succeed, in activist campaigns against so called “national champions” – the name bestowed on the largest, most politically powerful, SOEs in China.⁵ Surprisingly, 78% of activist campaigns against national champions were brought by private activist shareholders (PAS) – 57% of which succeeded.⁶ One such activist campaign involved retail investors organizing on a social media platform called “snowball” [雪球] to publicly

¹ Daisuke Wakabayashi, Chang Che & Claire Fu, *In Xi’s China, The Business of Business is State-Controlled*, N.Y. TIMES (Oct. 17, 2022), <https://www.nytimes.com/2022/10/17/business/china-xi-jinping-business-economy.html>.

² Huileng Tan, *Xi just fired China’s top markets regulator. It shows his focus is still on control above all else.*, BUS. INSIDER (Feb. 8, 2024), <https://www.businessinsider.com/china-economy-markets-xi-jinping-fires-markets-regulator-control-reforms-2024-2>.

³ Daisuke Wakabayashi, Chang Che & Claire Fu, *supra* note 1.

⁴ See *infra* Table 6 and accompanying text.

⁵ Li-Wen Lin & Curtis J. Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 748 (2013).

⁶ See *infra* Table 6.

object to the dividend policy which forced the hand of the management of a powerful national champion to adopt a generous dividend payment policy after it had refused to pay dividends for over a decade – conjuring up images of WallStreetBets meets China.⁷

The other side of the rules-based market coin is evident in our empirical findings that there is no statistically significant difference in the success rate for state-controlled activist shareholders (SAS) and private activist shareholders (PAS), regardless of the political status of their targets.⁸ Again, contrary to Western conventional wisdom, over 50% of activist campaigns launched by an ostensibly powerful state-controlled activist investor – that is, a national, rather than local, SAS – failed when the target was a POE.⁹ Our in-depth review of shareholder activist cases even revealed a POE using aggressive and illegal tactics to defeat the campaign of a state-controlled activist shareholder (SAS) and the state following due process to challenge the sharp practices of the POE in court.¹⁰ This reinforces the picture revealed by our empirical findings that China has developed a rules-based market for shareholder activism.

Another interesting feature of shareholder activism in China that our empirical and case study analyses illuminate are cases involving activist campaigns where state-controlled entities are both the activist shareholder and target company.¹¹ The details of these cases suggest that shareholder activism in China may also serve as an important corporate governance mechanism among government entities to promote good corporate governance, improve efficiency, and weed out corruption.¹² We also uncovered cases in which SASs from different provinces compete as activists to influence target companies akin to what one would expect to find

⁷ Snowball (*xueqiu*) [雪球] is a financial platform in China established in 2010, which offers information publishing, brokerage services, and real-time transaction data on Chinese shares, HK/US equities, funds and bonds. Importantly in the context of this article, it also serves as an online chat platform on which retail investors exchanged information, which led to a successful activist campaign against a national champion, see the China COSCO Shipping Holding. Co case in Part IV. In the United States, retail investors (in)famously rose to prominence in the GameStop saga by organizing on a platform called “WallStreetBets”. For a thorough legal analysis of the GameStop Saga see, Jill E. Fisch, *GameStop and the Reemergence of the Retail Investor*, 102 B.U.L. REV. 1799 (2022).

⁸ *Supra* note 4.

⁹ *Supra* note 6.

¹⁰ See *infra* Part IV.

¹¹ See *infra* Table 3.

¹² One of us has argued elsewhere that state-owned institutional investors serve as a check on the power of state-owned controlling shareholders in SOEs, Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channeling in the Market Within the State*, 35 COLUM. J. ASIAN. L. 74, 84 (2023) [hereinafter Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*].

between private parties – providing further evidence of a rules-based market for shareholder activism in China.¹³

Taken together, our empirical evidence, including our regression analyses in which we coded shareholder activists and target companies based on their level of political power,¹⁴ suggests that shareholder activism in China is driven by rules-based market forces – the opposite of conventional wisdom about the rising influence of the Chinese Communist Party (CCP) in Chinese corporate governance in the President Xi era.¹⁵ This meteoric rise of shareholder activism in China since 2019 dovetails with regulatory changes in Chinese corporate governance that increased the incentives for shareholder activism – further suggesting the importance of rules-based market forces.¹⁶

This conclusion is bolstered by empirical evidence that other aspects of shareholder activism in China conform to what one would expect in a rules-based market for shareholder activism driven largely by financial incentives. Shareholder activists that hold a larger percentage of the target company's shares have a statistically significant higher chance of succeeding in an activist campaign.¹⁷ Moreover, an analysis of the success rate of shareholder activism campaigns reveals that targets of successful activist campaigns had a return on investment (ROA) over 50% lower on average than those in unsuccessful campaigns.¹⁸ Ironically, this wave of shareholder activism has occurred at the precise time when both popular media and leading academics suggest that China, under the tightening grip of President Xi, has been decidedly moving in the opposite direction – ostensibly enhancing the CCP's involvement in corporate governance and thwarting the rule of law.¹⁹

¹³ *Supra* note 10.

¹⁴ See *infra* Table 4 and accompanying text for our measurement of political influence.

¹⁵ *Xi Jinping's Grip on Chinese Enterprise Gets Uncomfortably Tight: Welcome to the Era of Party-State Capitalism*, *ECONOMIST* (Nov. 26, 2023), <https://www.economist.com/business/2023/11/26/xi-jinpings-grip-on-chinese-enterprise-gets-uncomfortably-tight> [hereinafter *Xi Jinping's Grip on Chinese Enterprise Gets Uncomfortably Tight*]; Eric Girardin & Zhenya Liu, *DEMISTIFYING CHINA'S STOCK MARKET: THE HIDDEN LOGIC BEHIND THE PUZZLES* (Springer Intl' Publ'g, 2019); Hudson Lockett & Cheng Leng, *How Xi Jinping is Taking Control of China's Stock Market*, *FIN. TIMES* (Sept. 22, 2023), <https://www.ft.com/content/f9c864c1-6cd4-405e-aa4b-d0b5e2ec6535>; See also, Tamar Groswald Ozery, *Corporate Governance under State Capitalism*, in *LAW AND POLITICAL ECONOMY IN CHINA: THE ROLE OF LAW IN CORPORATE GOVERNANCE AND MARKET GROWTH* 149-50 (Cambridge University Press, 2023) [hereinafter Tamar Groswald Ozery, *Corporate Governance under State Capitalism*].

¹⁶ See *infra* Part III.

¹⁷ See *infra* Table 8.

¹⁸ As seen in Table 7 below, however, this result was statistically insignificant.

¹⁹ For examples of popular media accounts, see, *Xi Jinping's Grip on Chinese Enterprise Gets Uncomfortably Tight*, *supra* note 15; Daisuke Wakabayashi, Chang Che & Claire Fu, *supra* note 3. For examples of academic

To interrogate the possibility that certain politically sensitive types of shareholder activism in China may be difficult to observe, we drilldown into our empirical evidence and analyze our unique collection of shareholder activist case studies.²⁰ There are four “known unknowns” that raise the suspicion that our observable empirical evidence may not tell the whole story. First, we did not find a single case in which a local state-controlled shareholder activist attempted to even launch a campaign against a national champion – suggesting that the political hierarchy between local state entities that are shareholders and national champions may serve to quell such campaigns.²¹ Second, it is noteworthy that only 5.77% of campaigns were launched against national champions and 18.59% against local SOEs.²² One explanation for this is that the political power wielded by SOEs, particularly national champions, deters activism against SOEs; however, a straightforward non-political explanation for this empirical finding is that there are far fewer national champions and local SOEs than there are private companies in China.²³ Third, based on our unique database of case studies, an examination of the nature of the campaigns in which SOEs – particularly national champions – are the targets suggests the possibility that certain types of activism cases may be permitted (or even promoted) by the government where they dovetail with a government policy to strengthen minority shareholder rights in China.²⁴ Fourth, in one activist campaign against a national champion, although the activist “succeeded” in winning the shareholder vote, the national champion essentially

articles, see, Joris Mueller, Jaya Wen & Cheryl Wu, *The Party and the Firm 2* (Harv. Bus. Sch., Working Paper, 2023); Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *The effect of political influence on corporate valuation: Evidence from party-building reform in China*, 73 INT'L REV. L. & ECON. 1, 3 (2023) [hereinafter Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *The effect of political influence on corporate valuation*]; Jianguo Wang, *The Political Logic of Corporate Governance in China's State-owned Enterprises*, 47 CORNELL INT'L L.J. 631, 651 (2014) [hereinafter Jianguo Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*]. (The political control of the SOEs by the Party-state suggests a departure from the rule of law.); Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, 103 GEO. L.J. 665, 691 (2015) [hereinafter Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*] (“The party's ultimate authority throughout the economic system undermines the rule of law.”).

²⁰ *Supra* note 10.

²¹ *Supra* note 11.

²² *Id.*

²³ Wei Fang & Sun Bo, *Guoyou Konggu Shanghi Gongsi Zhili Shijian Fenxi* (国有控股上市公司治理实践分析) [Analysis on Corporate Governance of State-controlled Listed Companies], 国资报告(State-Owned Assets Report), vol. 4, 2021, at 94. “In the end of 2020, there are 1165 State-controlled listed companies while the total amount to companies listed in A share market is 4140.”

²⁴ China COSCO Shipping Holding. Co case, wherein the individual shareholders challenged the dividend policy of the company and advocated for cash dividend, serves as an illustration. See the accompanying text in Part IV. Cash dividends are regarded as a crucial measure in safeguarding shareholder rights. The CSRC has adopted a “quasi-mandatory” dividend policy since 2008 and has intensified its advocacy for cash dividend more prominently recently. See Cheng Dan, 2021 nian A-gu Gongsi Xianjin Fenhong Yuan Zonghe Chao 1.5 Wanyi (2021 年 A 股公司现金分红预案总额超 1.5 万亿) [A-Share Company 2021 Total Cash Dividend Proposal Exceeds 1.5 Trillion], *Zhengquan Shibao* (证券时报) [Securities Times], June 1, 2022.

disregarded the result of the vote – suggesting in this one case that the political power of the national champion may have allowed it to avoid the consequences of an otherwise successful activist campaign.²⁵

The fact that much of what goes on in shareholder activism is unobservable is a universal characteristic that exists in markets globally and confounds empirical research on this topic.²⁶ It is possible that there are unobservable cases in China in which politics prevents shareholder activism from arising in the first place – but if this were the case it would still not explain away our observable empirical evidence of the recent wave of shareholder activism in China. It is also possible that a high-level empirical analysis may fail to detect idiosyncratic individual cases in which politics played a definitive role in a shareholder activist campaign. To shed light on this possibility, we undertook an in-depth case study analysis to find any evidence of political influence playing a significant role in individual cases of shareholder activism.²⁷ Although we uncovered a single case involving a national champion in which politics may provide an explanation for an unanticipated outcome, on the whole, our case study analyses further confirm our empirical findings that the recent wave of shareholder activism in China appears to be primarily driven by rules-based market forces.²⁸

The remainder of this article will proceed as follows. Part II provides an overview of the leading literature on shareholder activism to establish a context for understanding the emergence of shareholder activism in China – a significant corporate governance development that has been largely overlooked. It also reviews the leading literature on China’s unique system of corporate governance to explain how shareholder activism fits within this system. Part III outlines our methodology and presents our empirical findings suggesting that China largely has a rules-based, free market, for shareholder activism. Part IV analyzes selected cases of shareholder activism to provide further context for our empirical findings and to understand what the

²⁵ See *infra* Part IV, the FAW Case.

²⁶ In discussions about the impact of hedge fund activism in the U.S., for instance, one prominent unobservable is its alleged deterrent impact on those companies that experience no such activism. See John C. Coffee & Darius Palia, *The Wolf at the Door: The Impact of Hedge Fund Activism on Corporate Governance*, 41 J. CORP. L. 545, 553 (2016). See also, Stuart L. Gillan & Laura T. Starks, *Corporate Governance, Corporate Ownership, and the Role of Institutional Investors: A Global Perspective*, 13 J. APPLIED FIN. 4, 11 (2003) (In the context of the US, a problem with monitoring the effectiveness of activism arises as to how considerable "activism is conducted 'behind the scenes' through private negotiations where there is no external observation of the event".).

²⁷ *Supra* note 10..

²⁸ *Id.*

empirical evidence may fail to capture. Part V concludes by identifying avenues for further research and suggesting what the future may hold for shareholder activism in China.

II. The Dearth of Scholarship on Shareholder Activism in China: Illuminating the Black Box

In 2023, shareholder activism globally reached record heights.²⁹ This punctuated a decade in which shareholder activism captivated corporate governance scholars, lawyers, and legislators around the world.³⁰ Despite shareholder activism being in the spotlight, shareholder activism in China largely remains a black box.³¹ Given China's economic superpower status, the meteoric development of its equity markets, and the impact of Chinese companies globally, the dearth of scholarship on shareholder activism in China is surprising.³²

Traditionally, the conventional wisdom in the leading corporate law and governance literature suggested that shareholder activism was “effective only in firms with dispersed ownership structures”.³³ The rationale for this belief was that “[a]ctivists present no threat to controlled companies because they have no prospect of replacing incumbent corporate boards that are in the hands of controlling shareholders”.³⁴ This view helps makes sense of the focus in the

²⁹ Annual Review of Shareholder Activism 2023, LAZARD (Jan. 8, 2024), <https://www.lazard.com/research-insights/annual-review-of-shareholder-activism-2023>.

³⁰ Wolf-Georg Ringe, *Investor-led Sustainability in Corporate Governance 2* (European Corporate Governance Institute, Law Working Paper No. 615, 2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3958960; Brian Cheffins & John Armour, *The Past, Present and Future of Shareholder Activism by Hedge Funds*, 37 J. CORP. L. 52, 75 (2011); Brando Maria Cremona & Maria Lucia Passador, *Shareholder Activism Today Did Barbarians Storm the Gate?*, 20 UC DAVID BUS. L.J. (2020); Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes 1* (European Corporate Governance Institute, Law Working Paper No. 368, 2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3036357; Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*, in THE OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE 1, 1 (Jeffrey N. Gordon & Wolf-Georg Ringe eds., Oxford University Press, 2020) [hereinafter Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*]; Yu-Hsin Lin, *When Activists Meet Controlling Shareholders in the Shadow of the Law: A Case Study of Hong Kong*, 14 ASIAN J. COMP. L. 1, 3 (2019) (Asia).

³¹ For a few exceptions, see *infra* 51.

³² For an overview of facts demonstrating China's economic superpower status, the meteoric development of its equity markets, and the impact of Chinese companies globally see, Dan W. Puchniak, *No Need for Asia to be Woke: Contextualizing Anglo America's 'Discovery' of Corporate Purpose*, 4 RED, 14, 14-15 (2022); Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 77.

³³ Yu-Hsin Lin, *supra* note 30. See also, Brian R Cheffins & John Armour, *The Past, Present, And Future of Shareholder Activism by Hedge Funds*, *supra* note 30, at 68-69; Dionysia Katelouzou, *Worldwide Hedge Fund Activism: Dimensions and Legal Determinants*, 17 U. PA. J. BUS. L. 789, 799- 800 (2015); Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*, *supra* note 30, at 14.

³⁴ Yu-Hsin Lin, *supra* note 30, at 3.

literature on shareholder activism in the United States as it is a global outlier in terms of its extremely dispersed shareholder landscape and its high propensity of shareholder activism – particularly hedge fund activism of which 65% globally is in the United States.³⁵

The United Kingdom and Japan are also focal points of the academic literature on shareholder activism in Europe and Asia respectively.³⁶ This dovetails with the scholarly focus on countries defined by dispersed shareholders, as the United Kingdom and Japan are the only other countries, aside from the United States, where the vast majority of listed companies have dispersed shareholders and there has been relatively high levels of shareholder activism.³⁷ This traditional focus on shareholder activism in countries defined by dispersed shareholders may partly explain the dearth of scholarly attention on shareholder activism in China as most of its listed companies historically – and currently – are dominated by controlling shareholders.³⁸

However, it is increasingly recognized that most major economies have a mix of dispersed companies and controlled companies.³⁹ The difference is mainly in the ratio of such companies in each country – with the United States, United Kingdom, and Japan standing out for having a significantly higher percentage of dispersed companies than most other countries.⁴⁰ Even in this context, the rise in the United States of tech giants with controlling shareholders, such as Alphabet, Amazon, Meta, Microsoft, and Tesla, has focused increasing attention on the

³⁵ *Id.* See also, Marco Becht et al., *Returns to Hedge Fund Activism: An International Study*, 30 REV. FIN. STUD. 2933, 2941 (2017).

³⁶ Dionysia Katelouzou & Dan W. Puchniak, *Global Shareholder Stewardship: Complexities, Challenges and Possibilities*, in GLOBAL SHAREHOLDER STEWARDSHIP 3, 5 (Dionysia Katelouzou & Dan W. Puchniak eds., Cambridge University Press, 2022); Marco Becht, Julian Franks, Colin Mayer & Stefano Rossi, *Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes U.K. Focus Fund*, 23 THE REV. FIN. STUD. 3093, 3095 (2010); Hiroyuki Watnaabe, *Activist Paradise Japan?*, Revue Trimestrielle de Droit Financier (Corp. Fin. & Cap. Markets L. Rev., RTDF, N1, 2024), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4774825; Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 511, 511 (Jennifer G. Hill & Randall S. Thomas eds., Edward Elgar Publishing, 2015) [hereinafter Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia*].

³⁷ Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia*, *supra* note 36, at 523-525; Dan W. Puchniak, *The False Hope of Stewardship in the Context of Controlling Shareholders: Making Sense Out of the Global Transplant of a Legal Misfit*, 12 (European Corporate Governance Institute - Law Working Paper No. 589, 2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3858339 [hereinafter Dan W. Puchniak, *The False Hope of Stewardship*]; Yu-Hsin Lin, *supra* note 30, at 10.

³⁸ Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 118; Yu-Hsin Lin, *supra* note 30, at 3-4 (2019) (Contrast to the US, in most Asian jurisdictions, companies are controlled by families or the state, where there are fewer instances of shareholder activism.).

³⁹ ADRIANA DE LA CRUZ, et al., OWNERS OF THE WORLD'S LISTED COMPANIES (OECD, 2019); Dan W. Puchniak, *The False Hope of Stewardship*, *supra* note 37, at 13.

⁴⁰ Dan W. Puchniak, *The False Hope of Stewardship*, *supra* note 37, at 23; Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia*, *supra* note 36, at 530.

potential role of shareholder activism in controlled companies in the United States.⁴¹ Concurrently, the rise of shareholder activism in Asia and Continental Europe has shined a spotlight on shareholder activism in controlled companies.⁴² The increase of shareholder activism in Continental Europe and Asia has also highlighted the prospect of shareholder activism in companies with controlling minority shareholders or dispersed shareholders in countries where controlled companies predominate.⁴³

As such, it is now widely accepted that shareholder activism can improve corporate governance in countries where most companies have controlling shareholders. This is because it can serve to mitigate shareholder-manager agency costs in the minority of companies that are dispersed in such countries and reduce the minority-majority agency problem in controlled companies that predominate in such countries.⁴⁴ In controlled companies, shareholder activists can leverage the legal rights that are commonly provided to minority shareholders to advance campaigns that incentivize controlling shareholders to maximize shareholder value and to reduce the extraction of private benefits of control.⁴⁵ This suggests the potential importance of shareholder activism in countries with a predominance of controlled companies, which provide for strong minority shareholder protections in their company law.

China fits this description perfectly. It is well-known that most listed companies in China have a controlling shareholder and that a growing minority of companies have relatively dispersed shareholders.⁴⁶ What is less appreciated is the extent to which China has built a robust regulatory regime to advance minority shareholders' rights. The Chinese government often emphasizes the importance of building a high-quality and credible regulatory environment for

⁴¹ Kobi Kastiel, *Against All Odds: Hedge Fund Activism in Controlled Companies*, 1 COLUM. J. BUS. L. 60, 66 (2016).

⁴² Yu-Hsin Lin, *supra* note 30, at 6 (on Asia); Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*, *supra* note 30, at 4.

⁴³ Yu-Hsin Lin, *supra* note 30, at 3 (on Asia) ("That does not mean, however, that activism cannot work in firms with controlling shareholders, particularly when controlling shareholders do not own a majority of shares but control the firm through other means, such as pyramidal structures, cross-shareholding, or friendly outside investors. The existing literature has shown that activism can work even in firms with controlling shareholders."); Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*, *supra* note 30, at 7 (on Europe and globally); Dan W. Puchniak, *The False Hope of Stewardship*, *supra* note 37, at 41-42; See also, Dionysia Katelouzou, *supra* note 33, at 799-800.

⁴⁴ Dan W. Puchniak, *The False Hope of Stewardship*, *supra* note 37, at 43-44.

⁴⁵ Kobi Kastiel, *Against All Odds: Hedge Fund Activism in Controlled Companies*, COLUM. BUS. L. REV. 60, 93 (2016); Yu-Hsin Lin, *supra* note 30, at 31.

⁴⁶ Data from China Stock Market & Accounting Research Database (CSMAR) shows, the proportion of listed companies whose biggest shareholder holds less than 30% shares has risen to 51.16%, up from 46.02% in 2012.

protecting minority shareholders to advance its equity market.⁴⁷ Moreover, as one of us has explained elsewhere, over the past several decades, the Chinese government has built a regulatory architecture to facilitate the growth of institutional investors which “on a day-to-day basis, increasingly appear to work as an effective mechanism to improve corporate governance” – sometimes by engaging in shareholder activism.⁴⁸

In a similar vein, the Chinese company law provides significant power to minority shareholders through mechanisms such as cumulative voting, majority of minority approvals, derivative actions, and a 3% threshold (which in the recent revision to the Company’s Act was reduced to 1%) for advancing shareholder proposals with a robust regulatory regime that amplifies the power of such proposals for advancing shareholder activism.⁴⁹ China’s strong protections for minority shareholders have led experts to conclude that China has “one of the most robust shareholder-empowering corporate statutes in the world”.⁵⁰ Thus, China has all the elements of a country with a predominance of controlling shareholders that should attract scholarly attention due to the potential for shareholder activism to play a meaningful role in its system of corporate governance – and yet the burgeoning discourse on shareholder activism around the world largely fails to consider shareholder activism in China at all.⁵¹

⁴⁷ Chengcheng, *Xi highlights favourable legal environment for reform, development, stability*, XINHUANET (Feb. 25, 2019), http://www.xinhuanet.com/english/2019-02/25/c_137849867.htm.

⁴⁸ Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 134.

⁴⁹ Shangshi Gongsi Zhili Zhunze (上市公司治理准则) [Code of Corporate Governance for Listed Companies] [CCG] (promulgated by the PRC Securities Regulation Commission, revised Sep. 30, 2018, effective Sep. 30, 2018) (China). art.17 (cumulative voting), art. 74 (related-party transaction); <insert pinyin> (中华人民共和国公司法) [Company Law of the People's Republic of China] (promulgated by Standing Committee of the National People Congress, Oct. 26, 2018, effective Oct. 26, 2018)⁴² [Standing Committee of the National People Congress \(China\) \[hereinafter PRC Company Law 2018\]](#), art. 151 (derivative suit), art. 102 (3% proposal right). In the latest amendment of PRC Company Law, the threshold is further lowered to 1%, see < insert pinyin > (中华人民共和国公司法(2023 修订) [Company Law of the People's Republic of China (2023 Revision)] (promulgated by Standing Committee of the National People’s Congress, Dec. 29, 2023, effective July 1, 2024), art. 115 [hereinafter PRC Company Law 2023]. See *infra* Part III for a detailed discuss of the regulator regime that amplifies the power of shareholder proposals for advancing shareholder activism in China.

⁵⁰ Tamar Groswald Ozery, *Corporate Governance under State Capitalism*, *supra* note 15, at 134.

⁵¹ The only literature includes Pangyue Cheng, *Institutional Investors in China: Problems and Prospects*, 2022 COLUM. BUS. L. REV. 664, 668-670 (2022); Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12; Chao Xi, *Shareholder Voting and Engagement in China*, in THE CAMBRIDGE HANDBOOK OF SHAREHOLDER ENGAGEMENT AND VOTING 21, 37-43 (Harpreet Kaur, Chao Xi, Christoph Van der Elst & Anne Lafarre eds., Cambridge University Press, 2022). Chao Xi, *Institutional Shareholder Activism in China: Law and Practice (Part 1)*, 17 INT’L CO. & COMMERCIAL L. REV. 251 (2006); Chao Xi, *Institutional Shareholder Activism in China: Law and Practice (Part 2)*, 17 INT’L CO. & COMMERCIAL L. REV. 287 (2006); Chao Xi, *Shareholder Voting and Engagement in China*, in THE CAMBRIDGE HANDBOOK OF SHAREHOLDER ENGAGEMENT AND VOTING 21, 37-43 (Harpreet Kaur, Chao Xi, Christoph Van der Elst & Anne Lafarre eds., 2022); Lin Lin, *Shareholder Engagement*

A skeptic may suggest that China has not been included in the comparative discourse on shareholder activism because there has been no shareholder activism in China.⁵² However, our hand collected data in Part III suggests the opposite.⁵³ China has had a history of shareholder activism dating back almost two decades.⁵⁴ Moreover, in the last five years, the number of shareholder activism campaigns has skyrocketed, with these campaigns occurring in several of China's most prominent companies.⁵⁵ As explained in Part IV, there was even an insurgent campaign by retail investors against a powerful government controlled national champion, which is one of the world's largest shipping companies – a storyline perfectly suited for comparative shareholder activism scholarship.⁵⁶

Although it is impossible to know precisely why more attention has not been paid to shareholder activism in China, the idea of shareholder activism – especially activism by private investors against SOEs – does not fit within the common narrative that “political influence” defines China's corporate governance environment.⁵⁷ As our empirical evidence in Part III demonstrates, shareholder activism in China often appears to occur in the same way that shareholder activism occurs in rules-based market systems of corporate governance – regardless of whether the activist or the target is a private party or the state.

in East Asia (Luca Enriques and Giovanni Strampelli eds, *Board-Shareholder Dialogue: Best Practices, Legal Constraints and Policy Options*, Cambridge University Press) (forthcoming).

⁵² Researches show that institutional investors in China seldom take active actions in listed companies, see Fuxiu Jiang & Kenneth A. Kim, *Corporate Governance in China: A Modern Perspective*, 32 J. CORP. FIN. 190, 211 (2015).

⁵³ See *infra* Part III.

⁵⁴ Even before the split-share reform, activist campaigns like Guosen's acquisition of Vanke had already emerged in 1994.

⁵⁵ See *infra* Table 1 and the accompanying text.

⁵⁶ See *infra* Part IV section B.

⁵⁷ The popular media is replete with such claims. See for example, Emily Feng, *Xi Jinping Reminds China's State Companies of Who's the Boss*, N.Y. TIMES (Oct. 13, 2016), <https://www.nytimes.com/2016/10/14/world/asia/china-soe-state-owned-enterprises.html>. Even the more nuanced academic literature suggests that politics is often the defining force in Chinese corporate governance. For example, Ozery emphasized the politicization of Chinese corporate governance, suggesting that politics would provide a robust monitoring and enforcement infrastructure, serving as a viable alternative to formal rules. Tamar Groswald Ozery, *The Politicization of Corporate Governance: A Viable Alternative*, 70 AM. J. COMP. L. 43, 93 (2022) [hereinafter Tamar Groswald Ozery, *The Politicization of Corporate Governance*]. Wang Jiangyu delves into the political logic behind State-owned Enterprises, illustrating how the party-state manages the SOEs. Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-owned Enterprises*, 47 CORNELL INT'L L.J. 631, 651 (2014). Milhaupt, emphasizes that the CCP's control over both SOEs and POEs has blurred the lines of ownership, positing that political influence is more significant than shareholder ownership – and stating that “the party's ultimate authority throughout the economic system undermines the rule of law”. Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 19, at 691. See also, Fuxiu Jiang & Kenneth A. Kim, *supra* note 52, at 211; Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 119.

There is a tendency among Chinese corporate governance scholars to emphasize the role of the government's – or often the CCP's – political influence over Chinese corporate governance.⁵⁸ Two leading Chinese corporate governance scholars have recently examined the role of “China's Corporate Social Credit System” on the future of Chinese corporate governance, expounding on “The Dawn of Surveillance State Capitalism” by arguing that “the line between law and politics in China is blurred by the omnipresence of the CCP in all institutions and facets of society”.⁵⁹ Another group of leading Chinese corporate governance scholars has recently undertaken a detailed empirical analysis which attempts to develop a more accurate measure for the degree to which the CCP wields its political influence over Chinese corporate governance.⁶⁰ Other prominent Chinese corporate governance scholars explain how China's efforts to bring private sector standards into the governance of SOEs have “backfired” due to political power infecting corporate law doctrine applied to privately owned firms.⁶¹ There is even “an extreme case, [in which] some researchers argue that no Chinese firms, irrespective of their official ownership structure, can be considered truly autonomous and independent from the state”.⁶²

⁵⁸ Examples from this large body of literature include, Joris Mueller, Jaya Wen & Cheryl Wu, *supra* note 19, at 2; Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 3; Jiangyu Wang & Tan Cheng-Han, *Mixed Ownership Reform and Corporate Governance in China's State-Owned Enterprises*, 53 VAND. L. REV. 1055, 1060 (2021); Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance*, 50 J. LEGAL STUD. 187, 194 (2021) [hereinafter Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*]; John Zhuang Liu & Angela Huyue Zhang, *Ownership and Political Control: Evidence from Charter Amendments*, 60 INT'L REV. L. & ECON. 1, 2 (2019); Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*, *supra* note 19, at 637; Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 19, at 677 (“The Chinese state does exert significant political control over senior executives of large SOEs.”).

⁵⁹ Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *China's Corporate Social Credit System: The Dawn of Surveillance State Capitalism?*, 256 THE CHINA QUARTERLY 835, 837 (2023) [hereinafter Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *China's Corporate Social Credit System*].

⁶⁰ Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 2.

⁶¹ Donald Clarke, *Blowback: How China's Efforts to Bring Private-Sector Standards into the Public Sector Backfired*, in REGULATING THE VISIBLE HAND? THE INSTITUTIONAL IMPLICATIONS OF CHINESE STATE CAPITALISM 29, 29 (Benjamin L. Liebman & Curtis J. Milhaupt eds., Oxford University Press, 2015).

⁶² This is Christopher Chao-hung Chen, Re-Jin Guo, and Lauren Yu-Hsin Lin's recent characterization of the well cited 2015 research of Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 19, at 668; Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 4. It should be noted that although Chen et al. see Milhaupt and Zheng as outliers in their extreme view of the limited importance of the government's shareholding as a determinant of political influence, they generally support the conclusion that politics influences POEs – which is broadly congruent with Milhaupt and Zheng. However, they also provide strong empirical support for the importance of the government's level of shareholding as being a significant feature that determines the level of political influence in companies in China (i.e., that the classification of a company as an SOE and POE is a strong and important determinant of the level of political influence in China). As explained, in Part X below, this is overwhelmingly supported by recent leading literature on Chinese corporate governance.

Specifically in regard to minority shareholder protections, experts suggest that political power may be definitive in understanding the use and effectiveness of such rights in listed SOEs.⁶³ A prominent Chinese corporate governance scholar describes small and medium-sized shareholders in state-owned holding companies as “passive and politically disempowered”.⁶⁴ This leading scholar claims that even if shareholders exercise their legal rights, government officials may simply refuse to acknowledge them due to political considerations.⁶⁵ A recent analysis of institutional investors in China argues that private institutional investors as minority shareholders are likely to remain passive in state-owned enterprises due to political pressure and other reasons.⁶⁶ The clear suggestion is that political influence is significant, and may even be determinative, in the expression of minority shareholder rights in Chinese corporate governance.

Obviously, scholarship examining the influence of the CCP in Chinese corporate governance has significant value. However, just as one who only has a hammer will start seeing every problem as a nail, pundits who view Chinese corporate governance through a political lens risk seeing everything as political.⁶⁷ As illustrated above, even more nuanced academic analyses have tended to focus primarily on understanding the political influence in Chinese corporate governance,⁶⁸ which may blind researchers to the mundane corporate governance reality that has developed in the world’s second largest shareholder market: China’s over 200 million shareholders increasingly use their robust shareholder rights to challenge management when

⁶³ Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*, *supra* note 19, at 668.

⁶⁴ Nicolas C. Howson, Protecting the State from Itself? Regulatory Interventions in Corporate Governance and The Financing of China’s State Capitalism, in *REGULATING THE VISIBLE HAND? THE INSTITUTIONAL IMPLICATIONS OF CHINESE STATE CAPITALISM* 29, 53 (Benjamin L. Liebman and Curtis J. Milhaupt eds., Oxford University Press, 2015).

⁶⁵ Nicolas C. Howson, Corporate Law in the Shanghai People's Courts, 1992-2008: Judicial Autonomy in a Contemporary Authoritarian State, 5 *E. ASIA L. REV.* 303, 405-406 (2010).

⁶⁶ Pangyue Cheng, *supra* note 51, at 664. However, for an alternative view see, Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 114.

⁶⁷ Xi Jinping’s Grip on Chinese Enterprise Gets Uncomfortably Tight, *supra* note 15; Daisuke Wakabayashi, Chang Che & Claire Fu, *supra* note 3.

⁶⁸ Examples from this large body of literature include: Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 1; Jiangyu Wang & Tan Cheng-Han, *supra* note 58, at 1060; Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 189; John Zhuang Liu & Angela Huyue Zhang, *supra* note 58, at 3; Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*, *supra* note 19, at 635; Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 19, at 691; Tamar Groswald Ozery, *The Politicization of Corporate Governance*, *supra* note 57, at 43-44.

they believe that the company's management is not acting in their economic interests.⁶⁹ In other major shareholder markets, this is taken for granted – there is no need to even state that shareholder activism is based on “market forces” or is “rules-based” because this is simply assumed to be the case.

The intense focus in the Western media and academia on the influence of the CCP in Chinese corporate governance may explain why the recent wave of shareholders acting in their economic interest by using their shareholder power to demand more dividends, place representative directors on boards, or thwart wealth reducing RPTs (i.e., plain vanilla shareholder activism) has been hiding in plain sight. Perhaps, without the allure of obvious political interference in most of China's shareholder activist campaigns, there has been a proclivity to simply not observe at all.

In this context, our empirical evidence in Part III, which suggests that the success or failure of activist campaigns is largely unaffected by the relative political power of the activist or the target, does not fit within the conventional narrative about Chinese corporate governance.⁷⁰ Our evidence of a rules-based market for shareholder activism in China, however, illuminates the often overlooked reality that over the past several decades China has been moving towards a more rules-based legal system, where the black-letter law is enforced with greater rigor and afforded more political respect.⁷¹ This is congruent with the CCP's aforementioned focus on establishing a high-quality and credible equity market with robust protections for minority shareholders.⁷² It also dovetails with the rise of Chinese companies as global leaders in many important industries suggesting that empowering economically motivated minority shareholders to challenge management may be an overlooked driver of China's economic

⁶⁹ <insert pinyin> (“00 后”已入市！A 股投资者账户数超 2.1 亿户，近四成投资者纵身股海超 10 年） [Gen Z Entering the Stock Market, Investment Accounts in A-Share Market Exceeding 210 Million, Nearly 40% Investors Having Experience in Trading Stocks for Over a Decade], Jan. 2, 2023, <insert pinyin> (insert Chinese name) [Sina Finance], <https://finance.sina.cn/2023-01-02/detail-imxytfsv2335189.d.html>.

⁷⁰ Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*, *supra* note 19, at 634-635 (The conventional western narrative concerns shareholder-based control within a company and a separation of ownership and control. There is an emphasis on strong legal protection of shareholders and the independence of the board of directors. This approach typical for Anglo-American companies cannot be assumed to likewise apply to Chinese companies, particularly where SOEs are concerned.). Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 188-189 (There is a negative correlation between compliance with state policies and political independence. Insofar as SOEs are “expected to expressly give the party's leadership and party committees formal legal status inside the company”, SOEs might “sacrifice profits for the pursuit of political or policy goals”).

⁷¹ Taisu Zhang & Tom Ginsburg, *China's Turn Towards Law*, 59 VA. J. INT'L L. 279, 317 (2019); Fuxiu Jiang & Kenneth A. Kim, *supra* note 52, at 210.

⁷² Chengcheng, *supra* note 47.

success – rather than these companies perversely succeeding despite the “omnipresence of the CCP in all institutions and facets of society”.⁷³

To be clear, we are not claiming that political power plays absolutely no role in China’s market for shareholder activism. As one of us claims elsewhere, a more rules-based approach towards corporate governance itself can benefit the Chinese government politically.⁷⁴ Indeed, our empirical evidence in Part III suggests that the political hierarchy between local governments and the national government may explain the absence of activist campaigns by local SASs against national SOEs. In Part IV, we also illuminate a case in which even though a private activist shareholder “succeeded” in its campaign against a national champion, the national champion essentially disregarded the result.⁷⁵ The possibility that the political power of the national champion was the reason that it essentially was able to float the law in this case must be acknowledged. It also must be acknowledged, however, that such cases appear to be outliers and that political power seems to generally play a role in rare cases on the boundaries of the market for shareholder activism in China – normally when national champions are involved.⁷⁶ However, the overwhelming empirical evidence examining all of the cases of shareholder activism in China in Part III suggests that on the whole China has an increasingly vibrant rules-based market for shareholder activism, in which the political power of the activist shareholder or target company is largely irrelevant. It is to this empirical evidence that we now turn.

⁷³ Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *China’s Corporate Social Credit System*, *supra* note 59, at 837.

⁷⁴ Wei Zhang, *Learning from Your Rival? A Surprising Convergence of Chinese and American Corporate and Securities Laws*, 9 UC IRVINE J. INT’L TRANSNAT’L & COMP. L. 1, 2-3 (forthcoming), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4647024 [hereinafter Wei Zhang, *Learning from Your Rival?*].

⁷⁵ In the FAW Car Case, the shareholders rejected the management proposal to extend the fulfillment period of the controlling shareholder’s reorganization promise by three more years. Nevertheless, the reorganization was not completed within the original timeframe of three years.

⁷⁶ This is congruent with the research of Lin and Puchniak that institutional investors in China increasingly play an important role in improving corporate governance with political considerations on interfering in their activists in highly sensitive political case, creating “a market within the state”. Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 104-105.

III. Empirical Findings

A. Defining Shareholder Activism in China

In this article, we attempt to define shareholder activism in China as close as possible to the way it is defined elsewhere. Due to the difference in regulatory regimes between China and the United States, it is impossible to follow the United States practice of identifying activists from mandatory disclosure requirements like Schedule 13D filings. Consequently, in the case of China we must take a different approach for our identification strategy.

Based on the existing literature, in essence shareholder activism refers to the actions taken by “investors who, dissatisfied with some aspect of a company’s management or operation, try to bring about change within the company without a change in control”.⁷⁷ With this basic understanding in mind, we define shareholder activism as observable behavior of minority shareholders to use their power to oppose a significant decision of corporate management. Several key aspects of our definition are elaborated on below.

First, we include both financial investors and strategic investors. The main purpose of this research is to explore the potential impact of political power vis-à-vis legal rules on shareholder activism in China. In this respect, the difference between strategic activists and financial activists is insignificant. Moreover, it is standard practice for studies on institutional investors and shareholder activism in China to cover both types of investors.⁷⁸

Second, consistent with the prevailing literature, as a starting point, we require publicly available evidence that a minority shareholder objects to a significant management decision to be considered as an activist. In this context, with respect to “management”, we are referring to both the management team and those who can control the management team.⁷⁹ Unless an investor is at odds with the management, the investor does not need to be active. Investors who

⁷⁷ Stuart L. Gillan & Laura T. Starks, *The Evolution of Shareholder Activism in the United States*, 19 J. APPLIED CORP. FIN. 55, 55 (2007).

⁷⁸ E.g. Panyue Cheng, *supra* note 51, at 664.

⁷⁹ Gur Aminadav and Elias Papaioannou, *Corporate Control Around the World*, 75 J. FIN. 1191 (2020); Alexander Dyck and Luigi Zingales, *Private Benefits of Control: An International Comparison*, 59 THE J. FIN. 537 (2004).

free-ride on the policies advanced by management to enhance firm value are passive in nature and, therefore, are outside of the scope of this research.⁸⁰

Third, for an investor to fall within the scope of our definition of “shareholder activism” the activist must make efforts to change a management decision – not merely express a different opinion from management. Merely voicing a difference of opinion cost nothing and therefore is a behavior that may be casually engaged in by almost any shareholder. Therefore, a shareholder’s act of merely disagreeing with management is on its own insufficient to cause a shareholder to fall within our definition of “shareholder activism”.

Without this limitation, studying shareholder activism would devolve into an analysis of merely shareholders informally disagreeing with management. Since voting is an important channel for non-controlling shareholders to exert influence on corporate decisions, voting-related behavior is a focal point of our analysis. Such behavior includes: seeking a board seat with or without a formal proxy contest (or with a threat to launch a proxy contest); making shareholder proposals to demand a change in operational, transactional or governance issues or attempting to defeat a management proposal on any of these issues; and a “majority of minority approval” where a negative vote from the minority has significant consequences on the company. In all these cases, the behavior must be part of a publicly declared campaign by the activist to oppose management or else it will not meet our threshold for being “shareholder activism”.

Minority shareholders may also engage in activism by bringing a lawsuit as part of a publicly declared activist campaign to accomplish such goals as challenging directors’ decisions, gaining control of the company, replacing a director, or objecting to a major transaction.⁸¹ These shareholder lawsuits often manifest themselves in China as lawsuits seeking injunctive relief to invalidate corporate behavior. When such litigation is part of a publicly declared shareholder activism campaign, we consider it to be “shareholder activism”.

Finally, as with most studies on shareholder activism, we have no access to reliable information about shareholder engagement with management behind closed doors. As such, all our observations of “shareholder activism” are based on publicly observable cases in which a

⁸⁰ This is plainly in line with Cheffins & Armour, *supra* note 30, and is also presumed in almost all studies on activism.

⁸¹ This is also in line with studies on shareholder activism, see Randall S. Thomas, *The Evolving Role of Institutional Investors in Corporate Governance and Corporate Litigation*, 61 VAND. L. REV. 299, 305-309 (2019).

shareholder publicly declares their intention to challenge corporate management. The specific steps taken to construct our sample of “shareholder activism” in China are in the next section.

B. Sample Construction and Distribution of Shareholder Activism Over Time

We searched the public filings of Chinese listed companies from 2007 to 2023. We decided to start our sample from 2007 because in 2007 China accomplished a major reform in its stock market – commonly referred to as the “Split-share Reform” – by removing non-tradable shares from the market, which fundamentally reshaped the shareholder ownership structure and increased the liquidity of shares in listed companies in China.⁸² The Split-share Reform started in 2005 and was largely completed by the end of 2006. As shareholder activism relies on the free transferability of shares, one would only expect to find shareholder activism in the post-reform period.

Based on our definition of shareholder activism explained in Part II above, we only include in our sample shareholder actions against management that are observable from public records. We took a conservative approach in constructing our sample for how we identify cases of “shareholder activism”. We required evidence of minority shareholders exercising their power, with the clear and specific objective of challenging management with respect to a significant event in the corporation. Thus, to be included in our sample as a case of “shareholder activism” there must be an observable public declaration by a minority shareholder(s) that they are challenging management on a significant corporate issue and of the same minority shareholder(s) actually exercising their power to challenge management.⁸³

As mentioned above, China does not have a system like Schedule 13D filings in the United States, where all active shareholders that have beneficial ownership of more than 5% of shares must disclose the details of the purpose of their acquisition of shares – which in most cases makes it relatively easy to identify shareholder activist campaigns in the United States.⁸⁴

⁸² According to Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 108. See also, Michael Firth et al., *Friend or Foe? The Role of State and Mutual Fund Ownership in the Split Share Structure Reform in China*, 45 J. FIN. & QUANT. ANAL. 685, 689 (2010); Wei Huang & Tao Zhu, *Foreign Institutional Investors and Corporate Governance in Emerging Markets: Evidence of a Split-Share Structure Reform in China*, 32 J. CORP. FIN. 312, 313 (2015).

⁸³ Stated differently, to qualify as a case of “shareholder activism” in our sample, shareholders must normally do more than simply vote “no” in a shareholders meeting.

⁸⁴ See, Alon Brav, Wei Jiang, Frank Partnoy & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 J. FIN. 1729, 1736 (2008) [hereinafter Alon Brav, Wei Jiang, Frank Partnoy & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*]. An exception to this may be in shareholder activism involving “Wolf packs” which do not show up in 13D filings, which has promoted calls to

Although major shareholders in China, defined as those holding 5% or more of a listed company's shares, are required to disclose their shareholding positions to the CSRC and the stock exchanges where the company is listed, the requirements in China do not mandate the type of detailed disclosure of the purpose of the acquisition of shares like 13D filings – as such this disclosure cannot be used to easily identify shareholder activist campaigns in China.⁸⁵ In addition, different from in the United States, traditionally, according to the PRC Company Law all shareholders holding individually or jointly 3% of a company's shares have the right to make proposals at shareholders meetings (“3% Proposal Right”) and the 3% Proposal Right is often used by shareholder activists to challenge management in activist campaigns.⁸⁶ The 3% Proposal Right was recently decreased to 1% in China's new Company Law.⁸⁷ However, shareholders are not required to make filings in any system like a Schedule 13D when they exercise their 3% Proposal Right. Moreover, major databases containing corporate and securities information in China, such as CSMAR (China Stock Market & Accounting Research) do not specifically record active shareholders or activist campaigns. Finally, shareholder activism or shareholder activist campaigns are not yet widely discussed in China.

To overcome these significant challenges, we began by casting a wide net by identifying activists or campaigns through public information on the CNINFO – the CSRC's information disclosure online platform. We first searched for cases in which shareholders have exercised their 3% Proposal Right in all listed companies in China. In our sample period, from January 1, 2007 to December 31, 2023, to our surprise, we found a total of 9280 records of shareholders

amend 13D.; Yu-Hsin Lin, *supra* note 30, at 12 n.64 (“‘Wolf pack’ refers to a tactic that involves several hedge funds or other activist investors targeting one company, with one activist taking a leading role and the others following. Hedge fund activists have been adopting the ‘wolf pack’ tactic to promote and improve corporate governance at target firms, forcing incumbent panels to examine and improve current management structures.”). Thomas W. Briggs, *Corporate Governance and the New Hedge Fund Activism: An Empirical Analysis*, 32 J. CORP. L. 681, 737 (2007). *See also*, Anita Anand & Andrew Mihalik, *Coordination and Monitoring in Changes of Control: The Controversial Role of “WolfPacks” in Capital Markets*, 54 OSGOODE HALL L.J. 377, 385-390 (2017). Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*, *supra* note 30, at 20 (“Related strategies for activists include the possibility of convincing proxy advisors such as ISS to support their campaigns or to team up with other activists, building a “wolfpack.””). Alon Brav, Amil Dasgupta & Richmond D Mathews, *WolfPack Activism* 3 n.4 (Robert H Smith School Research Paper RHS 2529230, 2018), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2529230.

⁸⁵ The fundamental difference in Chinese and American law is that the former does not distinguish blockholders seeking active control of the company from passive blockholders. In other words, there is no two separate filing systems like Schedule 13D and Schedule 13G in the U.S.. Thus, the purpose of disclosure of holding 5% or more shares in China tends to be general. The most often seen disclosure states that the investor increases its shareholding in confidence of the success of the company.

⁸⁶ In China, qualified shareholders are entitled to propose to nominate and remove directors and supervisors, request strategic changes, significant charter changes or dividends, etc.. PRC company law considers shareholder meeting the center and final source of corporate authority. Shareholder proposals, once passed by the shareholder meeting, are not considered as recommendations but are binding on the target company.

⁸⁷ PRC Company Law 2023, *supra* note 49, art. 115.

exercising their 3% Proposal Right. However, upon reviewing this information, we discovered that the vast majority of these cases were instances in which controlling shareholders, or their affiliates were using the 3% Proposal Right. The reason for this behavior is likely that management wanted to add items to the shareholders meeting agenda after the board sent out the notice of the shareholders meeting – but it could not do so directly because the board is prohibited from adding items to the agenda after it sends the notice.⁸⁸

Given the overwhelming number of cases in which the 3% Proposal Right was used for procedural reasons, we resorted to undertaking searches of publicly available information to uncover cases of shareholder activism. To ensure that this was done systematically, we had a team of research assistants conduct searches based on a list of search terms (i.e., “shareholder opposition” [股东反对], “unsatisfied shareholders’ proposals” [不满股东提案], “unsatisfied shareholders’ action” [不满股东行动], “shareholder meeting resolution vetoed” [股东会议案被否决], “shareholder meeting resolution disapproved” [股东会议案未通过] and “shareholder proposal to remove director” [股东罢免董事] between November 1, 2023 and December 31, 2023, using the popular search engines “Baidu” [百度] and “Bing”. This was done to cast a wide net to identify all possible cases of shareholder activism before reviewing each case individually to ensure that they met our definition of shareholder activism described above.

In addition, during the same period, we searched on public forums like “Snowball” [雪球] and “EastMoney” [东方财富], which are dedicated to the discussion of issues involving stock market trading and corporate governance to uncover any additional cases of shareholder activism with the same keywords. After identifying over two hundred potential shareholder activism campaigns through searches on public websites and forums, we subsequently performed follow-up searches on the CHNFO to identify active shareholder campaigns according to our definition. We then filtered out all potential shareholder activism campaigns by eliminating all the campaigns that did not meet our definition either because there was insufficient publicly available information to establish a public declaration of a campaign by a minority shareholder to oppose management and /or there was no evidence of the minority

⁸⁸ PRC Company Law 2018, *supra* note 49, art. 102.

shareholder following up the declaration with a publicly observable exercise of their power to challenge management with respect to a significant issue in the corporation.⁸⁹

In total, we found and included in our China Shareholder Activist Database (CSAD) 156 activist campaigns in 123 distinct Chinese listed companies within our 17-year sample period from January 1, 2007 to December 31, 2023.⁹⁰ Table 1 shows the distribution of these campaigns across time. Figure 1 indicates the same distribution graphically. One prominent feature observable in Table 1 and Figure 1 is that the number of activist campaigns in China has soared since 2019. In fact, over two-thirds of the campaigns happened in the last five years of our sample period.

A possible explanation for the meteoric rise of shareholder activism in China starting in 2019 is a significant regulatory development that increased the incentives for shareholders to engage in activism. In 2018, after more than 15-years, the CSRC undertook the first major amendment to China's inaugural 2002 Code of Corporate Governance for Listed Companies (CCG). The 2018 CCG, which went into effect on September 30, 2018, explicitly elevates the status and importance of shareholders' rights in Chinese corporate governance. Chapter 2 of the 2018 CCG highlights the importance of shareholders' rights by making it clear that shareholders must "be kept informed", "participate in corporate decision-making", have a responsibility to "monitor" company activities, and to pursue litigation when their rights are restricted or removed.⁹¹ In a similar vein, Article 7 in the CCG protects the power of shareholders by stipulating that shareholders' rights cannot be restricted or removed by any resolutions passed

⁸⁹ Current regulatory framework in China only requests listed companies to record and disclose totally votes of insiders and major shareholders (more than 5%) in one group and minority shareholders in another group in deliberating minority-significant issues, e.g., significant related-party transactions. However, institutional investors are not required to record and disclose their voting activities. Thus, when we identify "majority of minority vote" cases, we only include cases with public information to identify at least one activist exercising veto power.

⁹⁰ Campaigns launched at different times against the same target are counted as separate campaigns. When multiple activists launch campaigns against the same target at the same time, they are counted as one campaign unless these activists cannot be treated as parties in concert. Also, we do not include any campaign initiated by China Securities Investor Service Center (hereinafter "CSISC") alone, as we regard CSISC as a quasi-public enforcement mechanism to enforce corporate governance. For a more elaborate study on CSISC see Chen Yunsen et al, *Jianguan Xing Xiaogudong Xingquan de Youxiaoxing Yanjiu* (监管型小股东行权的有效性研究: 基于投服中心的经验证据) [Effectiveness of Regulatory Minority Shareholders' Right Evidence: Evidence from China Securities Investor Service Center], *Gaunli Shijie* (管理世界) [Journal of Management World], No. 6, 2023, at 142-158 .

⁹¹ *Shangshi Gongsi Zhili Zhunze* (上市公司治理准则) [Code of Corporate Governance for Listed Companies] (promulgated by the China Securities Regulatory Commission, Sep. 30, 2018, effective Sep. 30, 2018) 29 China Securities Regulatory Commission (China), Chapter 2.

at shareholders meetings or board meetings.⁹² In addition, the 2018 CCG clarified the formalities governing shareholders meetings and the process for electing directors. Moreover, the updated 2018 CCG introduces a dedicated chapter on institutional investors, which encourages them to actively engage in corporate governance⁹³ – consistent with the global trend of shareholder stewardship becoming an important aspect of corporate governance around the world.⁹⁴

Table 1

| Activist campaign year | Number | Percent |
|------------------------|--------|---------|
| 2007 | 1 | 0.64% |
| 2008 | 3 | 2.56% |
| 2009 | 1 | 0.64% |
| 2010 | 1 | 0.64% |
| 2011 | 1 | 0.64% |
| 2012 | 6 | 3.85% |
| 2013 | 3 | 1.92% |
| 2014 | 10 | 6.41% |
| 2015 | 8 | 5.13% |
| 2016 | 7 | 4.49% |
| 2017 | 4 | 2.56% |
| 2018 | 6 | 3.85% |
| 2019 | 11 | 7.05% |
| 2020 | 20 | 12.82% |
| 2021 | 25 | 16.03% |
| 2022 | 22 | 14.10% |
| 2023 | 27 | 17.31% |
| Total | 156 | 100.00% |

Figure 1

⁹² *Id.*, art. 7-10.

⁹³ *Id.*, art. 78-80.

⁹⁴ Dionysia Katelouzou & Dan W. Puchniak, *Global Shareholder Stewardship: Complexities, Challenges, and Possibilities* 49 (European Corporate Governance Institute - Law Working Paper No. 595, 2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3872579; Dan W. Puchniak, *The False Hope of Stewardship*, *supra* note 37, at 42.

Time Distribution of Activist Campaigns in China

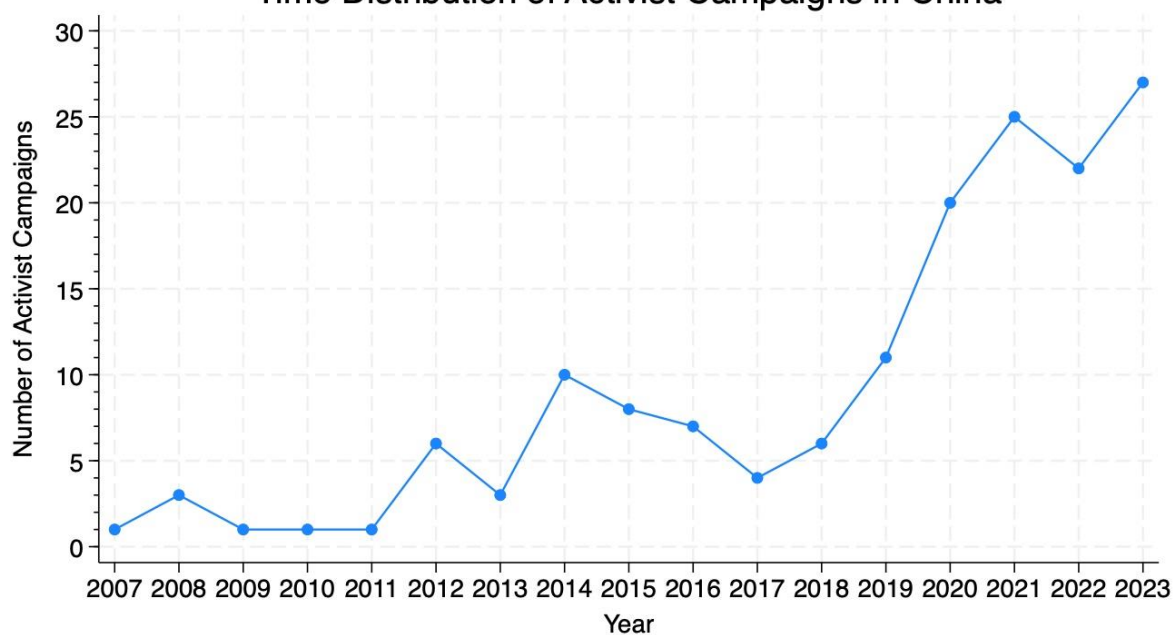


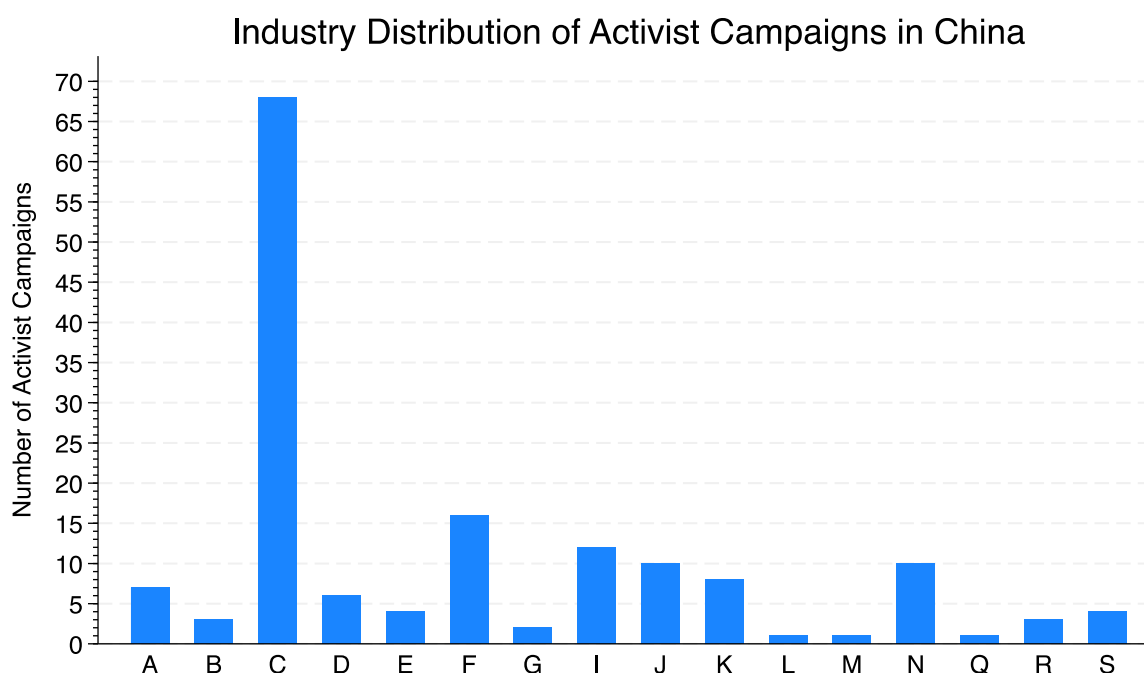
Table 2 and Figure 2 below show the distribution of target companies according to their industries. Half of the targets are in the manufacturing industry. Given the importance of manufacturing in the Chinese economy, this is unsurprising. Retail and wholesale businesses attracted the second largest number of activist campaigns – but they lag far behind manufacturing as they account for about 10% of all activist campaigns.

Table 2

| Industry | Number | Percent |
|------------------------------------------------------------------|--------|---------|
| A: Agriculture, forestry, animal husbandry and fishing | 7 | 4.49% |
| B: Mining | 3 | 1.92% |
| C: Manufacturing | 68 | 50.00% |
| D: Utility | 6 | 3.85% |
| E: Construction | 4 | 2.56% |
| F: Retail and wholesale | 16 | 10.26% |
| G: Transportation, Warehousing and Postal Services | 2 | 1.28% |
| I: Information transmission, software and information technology | 12 | 7.69% |
| J: Finance | 10 | 6.41% |
| K: Real estate | 8 | 5.13% |
| L: Lease and Business service | 1 | 0.64% |
| M: Science and technology service | 1 | 0.64% |
| N: Water conservation, environment and infrastructure management | 10 | 6.41% |
| Q: Public health and social work | 1 | 0.64% |
| R: Culture, sports, and entertainment | 3 | 1.92% |
| S: Miscellaneous | 4 | 2.56% |

| | | |
|-------|-----|------|
| Total | 156 | 100% |
|-------|-----|------|

Figure 2



C. Political Power as a Determinant of Shareholder Activism

The influence that the CCP has over Chinese corporate governance is commonly highlighted in the popular media and has become a focal point of leading corporate law and governance research.⁹⁵ There is a significant body of influential research that suggest that politics is a major determinant of a wide array of features in Chinese corporate governance.⁹⁶ More broadly, the

⁹⁵ Xi Jinping’s Grip on Chinese Enterprise Gets Uncomfortably Tight, *supra* note 15; Daisuke Wakabayashi, Chang Che & Claire Fu, *supra* note 3; See Christopher Chao-hung Chen, Re-Jin Guo and Lauren Yu-Hsin Lin’s recent characterization of the well cited 2015 research of Curtis J. Milhaupt & Wentong Zheng, Beyond Ownership: State Capitalism and the Chinese Firms, *supra* note 19, at 668. Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 4; Jiangyu Wang, The Political Logic of Corporate Governance in China’s State-Owned Enterprises, *supra* note 19, at 635.

⁹⁶ See for example, Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 213; Tamar Groswald Ozery, *The Politicization of Corporate Governance*, *supra* note 57, at 47; Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *The effect of political influence on corporate valuation*, *supra* note 19, at 2; Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *China’s Corporate Social Credit System*, *supra* note 59, at 845-847; Jiangyu Wang & Tan Cheng-Han, *supra* note 58, at 1097; Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 80.

ability of the Chinese government to influence corporate governance has become a major geopolitical issue, which is at the core of US-China's strained relations.⁹⁷

The most common measure in the leading literature of the level of political influence that the Chinese government has over companies is whether the government owns a percentage of the shares that provides it with effective control over the corporate governance of the company.⁹⁸ Companies in which the government is the controlling shareholder are commonly referred to as SOEs, in which the government is widely seen to have the greatest level of political influence.⁹⁹ This is in contrast to companies in which a private party is the controlling shareholder, which are commonly referred to as POEs, in which the government is widely seen to have a lower level (or even negligible level) of political influence.¹⁰⁰ Although some literature has highlighted ways in which the Chinese government can wield its political influence over private companies, most recent research suggests that there is a significant difference in the level of political influence in SOEs and POEs¹⁰¹ – with one recent study even suggesting that any political influence in POEs is merely superficial with no real impact on corporate governance.¹⁰² Based on this prior research, we investigated the political power of

⁹⁷ Elmar Hellendoorn, *China's capital markets in the shadow of the CCP*, ATLANTIC COUNCIL (Jan. 28, 2022), <https://www.atlanticcouncil.org/blogs/chinas-capital-markets-in-the-shadow-of-the-ccp/>; Anshu Siripurapu & Noah Berman, *The Contentious U.S.-China Trade Relationship*, Council on Foreign Relations (May 14, 2024), <https://www.cfr.org/background/contentious-us-china-trade-relationship>.

⁹⁸ Fuxiu Jiang & Kenneth A. Kim, *supra* note 52, at 205; See also Yun-Chien Chang & Lauren Yu-Hsin Lin, *Do State-Owned Enterprises Have Worse Corporate Governance? An Empirical Study of Corporate Practices in China*, 23 EUR. BUS. ORG. L. REV. 711, 713 (2022); Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 4 (POEs and SOEs are distinct in terms of the political influence that the government wields over them. Although POEs are not politically independent, empirical evidence suggest that they are subject to less political influence than SOEs. This renders it is more difficult for the State to pursue its objectives within them).

⁹⁹ Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 3; Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 188; Yun-chien Chang & Lauren Yu-Hsin Lin, *supra* note 98, at 713.

¹⁰⁰ Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 189 (“Compared with SOE adoptions, POE adoptions are largely symbolic.”); John Zhuang Liu & Angela Huyue Zhang, *supra* note 58, at 4; Yun-chien Chang & Lauren Yu-Hsin Lin, *supra* note 98, at 713.

¹⁰¹ Jiangyu Wang & Tan Cheng-Han, *supra* note 58, at 1059 (The authors stress the importance of share ownership as a determinant of political control and suggest that SOEs and POEs should be treated as distinct in analyzing Chinese corporate governance.); Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 2 (“In our setting, firms with strong political influence ..., while adhering to the state’s party-building initiatives reinforces state capture, there is limited incremental political or governance costs due to increased party control. ... these firms are already subject to state-dominated governance. In contrast, for a firm currently subject to less state influence, ... the costs of suboptimal governance that result from the party-building reform can be more substantial.”).

¹⁰² Joris Mueller, Jaya Wen & Cheryl Wu, *supra* note 19, at 11-12; Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 213 (While there might be voluntary compliance with mandatory party-building policies by POEs despite the policies not being directed at them, “POEs overwhelmingly adopted symbolic rather than substantively meaningful provisions.”).

target corporations depending on whether they are POEs or SOEs – with the former assumed to have a lower level of political power than the later.

To ascertain the nature of target companies and activist, we employ a control-based assessment methodology consistent with China’s regulatory framework.¹⁰³ Under this framework, disclosure of the ultimate controlling party needs to be traced to its ultimate end. Thus, target companies will be classified into three categories: those controlled by state-owned entities (which we identify as “SOEs”), those controlled by individual or collective natural persons (which we identify as “POEs”), and those lacking a discernible controlling entity. The third category, comprising companies lacking a controlling party (neither a controlling shareholder nor a de facto controller), represents only a small fraction of all listed companies in total.¹⁰⁴ We further scrutinize the ownership structure of the first largest shareholder of those companies. In shareholder campaigns targeting corporate boards and executive management, the focus also typically centers on engaging with the largest shareholder.¹⁰⁵ Consequently, in instances where companies lack a discernible controlling entity, if the predominant shareholders are under state control, we also categorize the target as an SOE.¹⁰⁶

It is commonly recognized that central level SOEs have a higher level of political power than provincial SOEs and municipal SOEs (the latter two of which we refer to as “Local SOEs”).¹⁰⁷

¹⁰³ Shangshi Gongsi Shougou Guanli Banfa (上市公司收购管理办法) [Administrative Measures on Takeover of Listed Companies] (promulgated by the PRC CSRC, effective Mar. 20, 2020), art 84 (China). The China Securities Regulatory Commission (CSRC) particularly emphasizes control testing. In 2020, when a company called Jiangsu Wangjin (with a local SOE holding more than 30% shares) applied for initial public offering (IPO), the company claimed that the SOE did not exercise control and was merely a financial investor. The Listing Committee doubted the veracity of this claim and rejected the company's listing application.

¹⁰⁴ In 2021, there are 217 companies without a controlling party, among 4697 listed companies. Tian Kunru et al, Shiji Kongzhiren Queshi yu Neiburen Jihuizhuyi Jianchi (实际控制人缺失与内部人机会主义减持) [Absence of Actual Controllers and Insider Opportunism-led Reduction of Shareholdings], 2024(2), Zhengquan Shichang Daobao (证券市场导报) [Securities Market Herald], at 22-32.

¹⁰⁵ In the *Baoneng v Vanke* seminar case, when Baoneng launched its bid to gain control of Vanke, the target company lacked an actual controller. The largest shareholder of Vanke was Huarun Resources, a "National Champion". The "National Champion" appointed three representative non-executive directors and at least one independent director to the eleven seats on the board. Thus, the largest shareholder's attitude towards the bidder became vital.

¹⁰⁶ It is noteworthy that China’s newly amended company law now includes wholly state-owned companies and state-controlled companies under the category of “state-invested companies”. This marks a significant change from the previous definition in the Enterprise State-owned Assets Law. It indicates China’s likely move to relax state-owned asset regulations on companies that are not fully controlled by the state. Consequently, for these companies, the state is likely to focus on exercising shareholder rights as outlined in the Company Law. This suggests that we may see an increase in campaigns from the SASs in the future, PRC Company Law, supra note 49, art. 168.

¹⁰⁷ Many Central SOEs are ministerial-level enterprises, but provincial SOEs are at most departmental-level enterprises. One of us has pointed out elsewhere the implication of political position of central financial enterprises in China's financial system. Katharina Pistor, Guo Li & Zhou Chun, *The Hybridization of China’s*

To capture this in our empirical research, we code SOEs based on whether they are “Central SOEs” or “Local SOEs”. It is also widely recognized that there is competition between provincial governments that may manifest itself as competition between SOEs/SASs from different provinces.¹⁰⁸ As such, for our Local SOEs we also code them based on the province in which they are incorporated.

Thus, in the CSAD we categorize companies as Central SOEs and Local SOEs based on their ultimate ownership structures with Central SOEs assumed to have a higher level of political power than Local SOEs. A Central SOE typically refers to a company directly or indirectly owned by the State Council or by bodies like SASAC or MOF delegated by the State Council. However, a considerable number of these central SOEs are not publicly listed; instead, often only their subsidiaries are listed. These subsidiaries remain subject to the supervision of the central government and, therefore, we define Central SOEs as encompassing both officially recognized central SOEs and any listed company directly or indirectly controlled by a central SOE. Local SOEs, on the other hand, are companies directly and indirectly owned by local governments, including province-level, city-level, and district-level target companies. Based on these definitions, during our sample period, the CSAD has: 106 (73%) activist campaigns targeting privately owned companies; 39 (27%) campaigns targeting SOEs (with 9 (6%) targeting SOEs owned by the central government; and 30 (21%) targeting SOEs owned by local governments).

It is noteworthy that in 2013 China undertook a comprehensive reform of its SOE regulatory regime. The aim of this reform was to shift the focus of regulation from managing assets to managing capital.¹⁰⁹ The reform essentially reallocated the corporate governance managerial monitoring function exercised through shareholder voting rights by SASAC to state-owned capital investment companies. This reform model was reportedly influenced by Singapore’s Temasek Holdings model – with the aim of creating an institutional architecture that removed

Financial System, in REGULATING THE VISIBLE HAND? THE INSTITUTIONAL IMPLICATIONS OF CHINESE STATE CAPITALISM 29-47 (Benjamin L. Liebman & Curtis J. Milhaupt eds., Oxford University Press, 2015).

¹⁰⁸ <insert pinyin> (范军利), *Haitong Zhengquan Huanke Ji* (海通证券换壳记) [Haitong Securities Changed its Target in Backdoor Listing], *Caixin* (Chinese name) [english translation], June 25, 2007, <https://magazine.caixin.com/2007-06-25/100077908.html>. Haitong Securities originally intended to go public through backdoor listing by merging with a listed company in Northeast China, but due to intervention by the Shanghai Municipal Government, the plan was temporarily changed to a backdoor listing through a locally listed company in Shanghai, as the former would change the company's registration state.

¹⁰⁹ Zhonggong Zhongyang Guanyu Quanmian Shenhua Gaige Ruogan Zhongda Wenti de Jueding (中共中央关于全面深化改革若干重大问题的决定) [The Decision on Major Issues Concerning Comprehensively Deepening Reforms] (passed by the 18th Central Committee of CCP, 3rd Plenary Session, Nov. 12, 2013).

direct political interference from boardroom level decision making in SOEs.¹¹⁰ Additionally, the mixed-ownership reforms have led to increased penetration of state ownership into the private sector, with state-owned capital operation companies and their affiliated equity funds and investment companies actively exercising shareholder rights in private enterprises.¹¹¹ Furthermore, there has always been a significant amount of mutual investment and cross-shareholdings among state-owned enterprises, which has been either driven by government policies or commercial in nature.¹¹² In addition, the Chinese government has a long history of encouraging the development of Chinese institutional investors to act as a mechanism to enhance shareholder monitoring in POEs and SOEs – something which has accelerated more recently.¹¹³ Also, since 2015, SASAC has encouraged strategic investors to invest in state-owned holding companies to enhance managerial monitoring by encouraging such investors to become actively engaged shareholders with a focus on wealth maximization.¹¹⁴ The net effect of these legal innovations and reforms has been a significant rise in “state-owned” financial or strategic shareholders. According to SASAC’s regulatory regime, such investors are required to exercise their voting rights to maximize the shareholder value of the companies in which they invest.¹¹⁵

Given the proliferation of state-owned shareholders it is no longer sufficient to merely focus on state-owned enterprises – which until recently has been almost exclusively the focus of comparative corporate governance scholars in their understanding of Chinese corporate

¹¹⁰ Guanyu Guli he Guifan Guoyou Qiye Touzi Xiangmu Yinru Feiguoyou Ziben de Zhidao Yijian (关于鼓励和规范国有企业投资项目引入非国有资本的指导意见) [Guiding Opinions on Encouraging and Regulating the Introduction of Non-State-owned Capital into Investment Projects of State-owned Enterprises] (promulgated by the PRC National Development and Reform Commission et al., May 21, 2017, effective Oct. 26, 2015); Guoqi Gaige Sannian Xingdong Tuidong Guozi Guoqi Lingyu Fasheng Shenke Biange (国企改革三年行动推动国资国企领域发生深刻变革) [Three-year SOE Reform Drives Deep Changes], *Xuexi Shibao* (学习时报) [Study Times] (Feb. 13, 2023). For an overview of Singapore’s Temasek Model, see Tan Cheng-Han, Dan W. Puchniak & Umakanth Varottil, *State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform*, 28 COLUM. J. ASIAN L. 61-97 (2015); Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265-333 (2017).

¹¹¹ Guowuyuan Guanyu Guoyou Qiye Fazhan Hunhe Suoyouzhi Jingji de Yijian (国务院关于国有企业发展混合所有制经济的意见) [Opinions of the State Council on Development of An Economy of Mixed-Ownership of State-Run Enterprises] (promulgated by the PRC State Council, Sep. 23, 2015, effective Sep. 24, 2015).

¹¹² Cross-holding among the firms has been discussed in financial studies, see Hongling Guo et al, *Cross-shareholding Network and Corporate Bond Financing Cost in China*, 57 THE N. AM. J. ECON. & FIN. (2021).

¹¹³ Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 134.

¹¹⁴ *Id.*

¹¹⁵ Guoyou Qiye Cangu Guanli Zanzheng Banfa (国有企业参股管理暂行办法) [Interim Measures for the Administration of Equity Participation by State-owned Enterprises] (promulgated by the PRC State-owned Assets Supervision and Administration Commission, June 23, 2023, effective Sep. 27, 2023), art 16 (China).

governance.¹¹⁶ It is now clear that a distinction must be made between state-controlled shareholders and private-controlled shareholders when analyzing Chinese corporate governance – particularly shareholder activism in China.¹¹⁷ As such, we coded our hand collected data in the CSAD to distinguish between private activist shareholders, local state activist shareholders, and central state activist shareholders. Based on our analysis of the activist campaigns during our sample period in the CSAD there are: 106 campaigns launched by Private Activist Shareholder (PAS) and 50 by State Activist Shareholders (SAS) (with 37 Local SAS and 13 Central SAS).¹¹⁸

As a sidenote, we include both financial and strategic investors in the CSAD. The purpose of our current research is to ascertain the potential impact of political power, legal rules, and market forces on shareholder activism in China. Although strategic activist shareholders may target companies to exploit business synergies, whereas financial activist shareholders may have purely financial motives for investment, this difference does not appear to have a bearing on our focus of interest. However, we coded the shareholder activists in the CSAD based on whether they were strategic investors or financial investors and found that 76% are financial investors, while only 24% of campaigns were launched by strategic investors.¹¹⁹

As we coded all the activist campaigns in our sample period based on three types of target companies (i.e., POEs, Local SOEs and Central SOEs) and three types of activist shareholders (i.e., PAS, Local SAS and Central SAS), in total our taxonomy of activist campaigns in China included nine different categories of campaigns based on the possible combinations of different types of activists and targets in the CSAD. Table 3 displays the distribution of campaigns across these nine categories. While over half of the activist campaigns are between privately-owned parties, it is notable that of the 38 campaigns against SOEs, the vast majority, over 60%, were launched by PAS. In addition, it is noteworthy that 7 out of 9 campaigns against central SOEs were by PAS. A striking observation from Table 3, however, is the complete absence of any Local SAS launching even a single campaign during the entire sample period against a Central

¹¹⁶ A noteworthy exception to this is, Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 125 (2022). In this article, we take a different approach from the Lin and Puchniak article by including foreign investors as private investors, as foreign-owned activists constitute only a very small fraction of the total.

¹¹⁷ *Id.*

¹¹⁸ When activists of different political status acted in concert in launching activist campaigns, we treat the campaigns as launched by the activist of the highest political status within the group acting in concert.

¹¹⁹ In three campaigns we cannot identify whether the activists were financial or strategic investors.

SOE – suggesting that the political hierarchy between local governments and the central government is powerful and entrenched enough to act as a deterrent against any such campaign.

Table 3

| Type | Meaning | Number of cases | Percent |
|------|----------------------------|-----------------|---------|
| 1 | PAS v. POE | 83 | 53.21% |
| 2 | PAS v. Local SOE | 16 | 10.26% |
| 3 | PAS v. Central SOE | 7 | 4.49% |
| 4 | Local SAS v. POE | 28 | 17.95% |
| 5 | Local SAS v. Local SOE | 9 | 5.77% |
| 6 | Local SAS v. Central SOE | 0 | 0% |
| 7 | Central SAS v. POE | 7 | 4.49% |
| 8 | Central SAS v. Local SOE | 4 | 2.56% |
| 9 | Central SAS v. Central SOE | 2 | 1.28% |

We also constructed a political influence score – iscore – to capture the relative political power between activists and their targets. The iscores for each campaign were coded as follows. First, we assign scores of 0, 1, and 2, respectively, to PASs/POEs, Local SASs/SOEs, and Central SASs/SOEs. Then, we calculated the difference between the activist’s and target’s scores as the iscore for each campaign. Thus, iscores vary between -2 and 2 – the higher the iscore the more politically influential the activist is compared to its target. As displayed in Table 4, each category of activist campaign was coded with an iscore.

Table 4

| Type | Meaning | iscore = activist score – target score |
|------|----------------------------|----------------------------------------|
| 1 | PAS v. POE | 0 – 0 = 0 |
| 2 | PAS v. Local SOE | 0 – 1 = -1 |
| 3 | PAS v. Central SOE | 0 – 2 = -2 |
| 4 | Local SAS v. POE | 1 – 0 = 1 |
| 5 | Local SAS v. Local SOE | 1 – 1 = 0 |
| 6 | Local SAS v. Central SOE | 1 – 2 = -1 |
| 7 | Central SAS v. POE | 2 – 0 = 2 |
| 8 | Central SAS v. Local SOE | 2 – 1 = 1 |
| 9 | Central SAS v. Central SOE | 2 – 2 = 0 |

The average iscore is 0.10 and the median is 0. This means that on average the activist in a campaign is slightly more influential politically than its target whereas a median campaign will be between two parties of equal political influence.

D. Activist Strategies

Next, we looked at the strategies adopted by activists. Table 5 reports the number of campaigns that adopted each strategy. As multiple strategies can be employed in one campaign,¹²⁰ the total

¹²⁰ On average, each activist campaign used 1.4 strategies.

number of strategies adopted exceeds the number of campaigns. The most often used activist strategy is to put forward shareholder proposals both for director nomination and other corporate affairs. This is unsurprising given the 3% threshold for shareholders to make proposals in China and the robust law giving such proposals potential bite: a shareholder is eligible to make a proposal if they hold 3% or more of the company's shares (what we define as the "3% Proposal Right"); the board of directors lacks the authority to reject shareholder proposals on any substantive basis;¹²¹ and Chinese courts have been unwilling to endorse any advance notice requirements for shareholder proposals.¹²²

The robustness of the Chinese law for using shareholder proposals as a tool for activism is further reinforced by the fact that under Chinese corporate law the board of directors has no discretion to exclude shareholder proposals and is obligated to enforce those that receive majority votes. Shareholders are eligible to submit temporary proposals to the board ten days before the shareholder meeting (i.e., ten days after receiving notice of an annual shareholder meeting or five days after receiving notice of a special shareholder meeting).¹²³ According to the PRC Company Law since amended in 2005, the shareholder meeting is the supreme authority of the company,¹²⁴ with the power to decide on fundamental operational matters, profit distribution, and amendments to the articles of association.¹²⁵ The board of directors, however, is responsible for executing the resolutions of the shareholder meeting and is accountable to it. When temporary proposals put forward by shareholders have clear themes and fall within the jurisdiction of the shareholders meeting, the board of directors must submit them to the shareholders meeting for deliberation. Moreover, as these proposals can be submitted to the shareholders meeting, the resolutions passed by the shareholders meeting are binding on the board of directors and management.

¹²¹ PRC Company law 2018, *supra* note 49, art. 102 (further reduced to 1% in the newly amended PRC Company Law of 2024).

¹²² CSISC v. Haili Biotech Inc., Shanghai Fengxian District Court (2018) (中证中小投资者服务中心诉海利生物技术股份有限公司), (2017)沪0120民初13112号].

¹²³ Any shareholder who holds or jointly holds 3% of voting shares in a listed company is entitled to submit temporary proposal within certain days after receiving the notice of shareholder meeting, PRC Company Law 2018, *supra* note 49, art. 102. In the newly amended company law, the threshold has been decreased to 1%, Company Act (2024), art. 115.

¹²⁴ < insert pinyin > (中華人民共和國公司法) [Company Law of the People's Republic of China] (promulgated by Standing Committee of the National People Congress, Sept. 27, 2005, effective Jan. 1, 2006) 42 Standing Committee of the National People Congress (China), art. 37 [hereinafter PRC Company law 2005].

¹²⁵ YONG KANG, LU SHI & ELIZABETH D. BROWN, CHINESE CORPORATE GOVERNANCE: HISTORY AND INSTITUTIONAL FRAMEWORK iii, ix-x (2008).

It is noteworthy that shareholder proposals in China are a considerably stronger tool for shareholder activism than shareholder proposals in the United States. In the United States, the board of directors has the discretion to exclude the proposals on a substantive bases.¹²⁶ A shareholder proposal may encounter three potential outcomes: being excluded before being voted on at the shareholders meeting; being presented at the shareholder meeting but ultimately failing; or receiving majority support at the shareholders meeting. However, even if a proposal receives majority support, the board is not obligated to implement it.¹²⁷ Proposals are advisory because the state corporation law grants the corporate power to govern the affairs of the corporation to the board.¹²⁸ The board of directors may still reject a shareholder proposal with a majority vote if they deem the proposal unsuitable for shareholder action.¹²⁹ Thus, in the United States, shareholder proposals are far less powerful as a mechanism for activist shareholders than in China.

In this article, we delineate director election-related proposals from others, as they serve as direct indicators of shareholder dissatisfaction with managerial practices, often signifying a contested election. Second, proposals aimed at contesting elections are regarded as a paramount mechanism for exercising shareholder franchise in China as they cannot be excluded by the incumbent management – unlike in the United States.¹³⁰ Third, in China, candidates nominated by proponents are typically included on the same ballot, subject to shareholder votes. With the prevalent adoption of cumulative voting, scenarios where both the proponent and the incumbent board present competitive slates offer opportunities for activists to gain traction.¹³¹

¹²⁶ SEC Shareholder Proposal Rule 14a-8(c).

¹²⁷ For example, the “say on pay” votes.

¹²⁸ Delaware General Corporation Law 141(a).

¹²⁹ <https://www.sec.gov/divisions/corpfin/rule-14a-8.pdf>.

¹³⁰ Rule 14a-8(c) in United States specifies that a company may exclude a proposal “If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election.”

¹³¹ E.g. *Individual Shareholders v. Shenzhen Konka*. In this case, OCT Group, a Central SOE, established in 1985, held a 21.75% stake in Shenzhen Konka by May 2015. In the 2014 annual general meeting, two groups of minority shareholders nominated director candidates, challenging OCT's dominance. Despite OCT's efforts, minority shareholders succeeded in electing four directors of seven seats via cumulative voting. This victory made Shenzhen Konka the first Chinese listed company where minority shareholders overthrew a central SOE-controlled board. However, internal disagreements among minority shareholders later allowed OCT Group to regain control. For an elaborate study on this case, see Zheng Guojian et al., *Shen Kangka Zhongxiao Gudong Weiquan* (深康佳中小股东维权：“庶民的胜利”抑或“百日维新”) [An Analytical Framework of Minority Shareholders Governance: The Case Study on Konka Group], *Gaunli Shijie* (J MGMT. WORLD) [管理世界], No. 12, 2016, at 145-158.

As shown in Table 5, nominating director candidates is the most often used strategy for Chinese activists.

Table 5

| Strategy | Definition of Success | Number of campaigns adopting each strategy |
|-------------------------------------------|--------------------------------------------------------------|--------------------------------------------|
| Shareholder proposal: director nomination | At least one nominee elected | 73 |
| Exercising veto power in MoM votes | Management proposal vetoed | 67 |
| Significant shareholder proposal: others | At least one proposal adopted | 39 |
| Expressing dissatisfaction publicly | Dissatisfied matter rectified | 16 |
| Litigation to invalidate corporate acts | Corporate acts voided by the court | 11 |
| Launching tender offers | Sufficient number of stocks tendered to shift target control | 3 |

The second most popular activist strategy is to vote against significant proposals by incumbent boards as part of a publicly declared shareholder activist campaign against incumbent management.¹³² Shareholder proposals and voting no to board proposals as part of a publicly declared shareholder activist campaign account for a vast majority of Chinese shareholder activist actions, which demonstrates that in China shareholder activism mostly occurs at shareholders meetings.

It is noteworthy that we were unable to locate even a single activist campaign in which shareholder activists as part of an activist campaign sued incumbent management for breaching their fiduciary duties.¹³³ The dearth of such lawsuits may suggest a lack of development of the jurisprudence surrounding fiduciary duties in China and China's more restrictive shareholder litigation regime (at least in comparison to the United States, but perhaps not in comparison to other countries).¹³⁴ In a similar vein, activists rarely pursue litigation to void corporate acts

¹³² As mentioned above, we took a conservative approach towards identifying activist campaigns. As such, we have not included in our sample those cases involving only "no votes", except in majority-of-minority approval situations. This means the actual number of situations where shareholders vote against board proposals could be considerably larger than our sample suggests. We have taken this conservative approach because a shareholder cannot necessarily be considered an activist merely because they simply vote against a proposal.

¹³³ Following Alon Brav, Wei Jiang, Frank Partnoy & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, *supra* note 84, we did attempt to include litigations over breach of fiduciary duties as activism in this research. However, we ended up finding no such litigations at all. Consequently, it is not reported in Table 5 as an activist strategy.

¹³⁴ Dan W. Puchniak, *The Derivative Action in Asia: A Complex Reality*, 9 BERKELEY BUS. L.J. 435, 437 (2012).

which result from procedural irregularities in a company's governance process.¹³⁵ Taken together, this empirical evidence suggests that the courts play a less significant role in shareholder activism in listed companies in China. In addition, there appears to be a low rate of shareholders exercising their inspection rights – which makes sense considering that shareholder litigation is rare in activist campaigns rendering inspection unnecessary to facilitate such litigation.¹³⁶

Proxy solicitation is almost unheard of in China, which is likely due to the absence of a regulatory regime governing proxy contests. Launching tender offers is especially costly in China where a substantial amount of funds must be deposited for an extended amount of time, which explains the scarcity of tender offers.¹³⁷

E. Measuring the Success and Failure of Activist Campaigns

Next, the CSAD includes the success or failure of each campaign based on the six possible strategies indicated in Table 5. The determination of whether a particular strategy used in an activist campaign succeeds is as follows. When a shareholder proposal is used to nominate director candidates to the board, it is deemed a “success” if at least one nominee is elected. When an activist puts forward a proposal for other matters, the proposal must be adopted at the shareholder meeting for it to be coded as a “success”. When a shareholder activist votes “no” in a MoM vote, it is coded a “success” if the significant management proposal was vetoed as a result of the MoM vote. If an activist files a lawsuit to invalidate certain corporate acts, it is coded a “success” if the court invalidates such an act. When an activist makes its dissatisfaction about a significant management action known publicly, the activist campaign is coded as a “success” if the action was rectified after the dissatisfaction being made public. Finally, an activist's tender offer is coded a success when the activist receives a sufficient portion of shares from public investors in response to the tender offer to take control of the target company. These standards for successful activist strategies are summarized in Table 5. When multiple

¹³⁵ According to the current PRC Company Law, any shareholder can sue to set aside a corporate act (a board resolution or a shareholder meeting resolution) if there is procedural defect. PRC Company Law 2005, supra note 124, art. 37.

¹³⁶ A recent study by Robin Huang and Randall Thomas seems to confirm the lack of exercise of shareholder inspection rights against listed companies in China. From 2012 to 2017, they found that only four joint stock limited companies (JSC), out of a total of 193 defendants in shareholder inspection suits, ever became defendants in such suits. A listed company in China must be a JSC although the opposite doesn't have to be true. See Robin Hui Huang & Randall S. Thomas, *The Law and Practice of Shareholder Inspection Rights: A Comparative Analysis of China and the United States*, 53 VAND. J. TRANSNAT'L L. 907, 919 (2020).

¹³⁷ For law and practices of tender offers in China, see Wei Zhang et al., *Mandatory Bids in China: You Can Lead a Horse to Water, but You Can't Make It Drink*, 22 EUR. BUS. ORG. L. REV. 351 (2021).

strategies were employed in one campaign, it is considered successful only if each individual strategy is successful. If some strategies succeeded while others failed, then the overall campaign is coded partially successful.

It should be noted that in coding whether an activist is successful or unsuccessful we limit our observations to the observable success/failure within the four corners of the activist campaign. Stated differently, we only examine the legal result of the campaign itself and do not consider the aftermath of the campaign for the purpose of coding its success/failure. For example, an activist campaign would be coded a success if the objective of the campaign was to place an activist appointed director on the board and the activist appointed director was successfully elected to the board in the shareholders meeting. However, it may be the case that sometime in the future – regardless of the successful vote – the activist elected director is removed from the board or is barred from attending the board meeting. In such cases, which make up an extremely small percentage of the cases in our sample, we still code the original activist campaign a success. There are two reasons justifying our approach. First, publicly available post-campaign information is extremely patchy. Second, coding based on events post-campaign would render it almost impossible to deem a campaign either a success or failure as the situation in the target company continuously evolves. As discussed below, however, in significant cases where post-campaign information is available, we consider it, not for coding success/failure, but rather to provide insights into how legally successful campaigns impact the corporate governance of target companies in the long-term.

Based on the above definitions of success, partial success, and failure, in the CSAD there are 63 successful, 10 partially successful, and 81 unsuccessful campaigns out of a total of 156 campaigns in our sample.¹³⁸ Given the small number of partially successful cases, for the purpose of determining the rate of success of activist campaigns, we treat partially successful cases as successful in our statistical analysis, unless stated otherwise. When partial successes are included, the success rate of shareholder activism in China is 47.40%, roughly on par with the success rate of 54.04% in Japan,¹³⁹ and about one third lower than the rate in the United States which is 66.4%.¹⁴⁰

¹³⁸ Two campaigns are still ongoing as of the time we write this paper, so their outcomes remain unknown.

¹³⁹ Wataru Tanaka & Gen Goto, *The Long-term Effect of Hedge Fund Activism in Japan* [日本におけるアクティビズムの長期的影響], 115, 153 (2022).

¹⁴⁰ Alon Brav, Wei Jiang, Frank Partnoy & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, *supra* note 84, at 1742.

F. Politics or Market: Univariate Analysis

Based on the above definition of success, we examine the relationship between parties' relative political influence and the rate of success. First, we calculate the success rate of each type of activist campaign in Table 3. Table 6 reports the results. When partial successes are included, the highest success rate is in activist campaigns in which a private activist shareholder (PAS) targets a Central SOE. This result runs counter to Western conventional wisdom that political power is significant in shaping the contours of Chinese corporate governance.¹⁴¹ Instead, it suggests that China has developed a rules-based market for shareholder activism. Interestingly, the lowest rate of success is in activist campaigns in which a Central state activist shareholder (SAS) targets a Local SOE. This also does not fit with a conception of China in which the national government can use its political power to dictate the result in cases involving Local SOEs – further suggesting the rules-based nature of shareholder activism in China.

If we only look at the fully successful campaigns, the “political influence theory” holds even less weight as a Central SAS activist not only fares the worst when it targets a local SOE, but even if it goes against a POE, its chance of success is not much better, having the second lowest success rate of all types of activist campaigns. However, it is noteworthy that there is no statistically significant difference between the success rates of any of the nine categories of activist campaigns. This further supports the suggestion that the relative political power of shareholder activists and target companies has little bearing on the success rate of activist campaigns in China.

Table 6

| Type | Success Rate (Partial Success* Rate) | Standard Deviation of Success Rate (SD of Partial Success* Rate) | Number of Observations | Number of Success Cases (of Partial Success* Cases) |
|------|--------------------------------------|------------------------------------------------------------------|------------------------|-----------------------------------------------------|
| 1 | 37.04% (44.44%) | 48.59% (50%) | 81 | 30 (36) |
| 2 | 43.75% (50%) | 51.23% (51.64%) | 16 | 7 (8) |
| 3 | 42.85% (57.14%) | 53.45% (53.45%) | 7 | 3 (4) |
| 4 | 50% (53.57%) | 50.92% (50.79%) | 28 | 14 (15) |
| 5 | 55.56% (55.56%) | 52.70% (52.70%) | 9 | 5 (5) |
| 6 | - | - | 0 | 0 |
| 7 | 28.57% (42.86%) | 48.80% (53.45%) | 7 | 2 (3) |
| 8 | 25% (25%) | 50% (50%) | 4 | 1 (1) |

¹⁴¹ Joris Mueller, Jaya Wen & Cheryl Wu, *supra* note 19, at 14; Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19; Jiangyu Wang & Tan Cheng-Han, *supra* note 58, at 1060; Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 194; Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*, *supra* note 19, at 637; Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 19, at 677.

| | | | | |
|---------|-----------------|-----------------|-------|---------|
| 9 | 50% (50%) | 70.71% (70.71%) | 2 | 1 (1) |
| Overall | 40.91% (47.40%) | 49.33% (50.10%) | 154** | 63 (73) |

* Including completely and partially successful campaigns

** Outcomes of two campaigns are pending.

One shortcoming of the CSAD is that it only includes activist campaigns that are observable – without taking account of the potential selection bias that may arise due to the type of shareholders who become activists. It is possible that different types of shareholder activists are driven by different incentives. For example, SAS might be less selective in choosing their targets because for them launching an activist campaign may be a key performance indicator for their government position; whereas PAS may be driven purely by economic gain. Although we cannot entirely eliminate this possibility, there is no suggestion in our data that SAS and PAS are driven by different incentives. To the contrary, our data suggests that SAS and PAS are driven by similar incentives due to their similar success rates in activist campaigns and that the return on assets (ROA) of targets of SAS and PAS (in the quarter prior to activist campaigns) shows no statistically significant difference.

Next, we compare the average iscore of successful and unsuccessful campaigns. Table 7 reports the results. Again, iscores do support the “political influence theory” as unsuccessful campaigns have a higher iscore than the successful ones, which means activists with greater political power relative to targets are more likely to fail. However, this difference is not statistically significant – again suggesting that the relative political power of shareholder activists and target companies has little bearing on the success rate of activist campaigns in China.

Apart from political power, we also examined two other factors that may affect the likelihood of winning activist campaigns: (1) the activist’s percentage of shareholding in the target company; and (2) the target’s ROA in the quarter immediately prior to the activist campaign. In contrast to the iscore, these two factors attempt to measure whether China has rules-based and market-driven shareholder activism.

Prior studies generally show that both the chance of being targeted by activists and the chance of activist’s success are negatively correlated with the target’s relative economic performance.¹⁴² On the other hand, there is a positive correlation between the activist’s

¹⁴² For chance of being targeted, see Alon Brav, Wei Jiang, Frank Partnoy & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, supra note 84. For chance of activists’ success, see Lilli

percentage of shareholding in the target and the activist's rate of success. This makes sense because activists with a higher percentage of shares will have more voting power and will also be more likely to garner support from others as they have more skin in the game. Therefore, we would expect that if an activist owns a higher percentage of shares in the target or if the target has a lower ROA, the chance of the activist campaign succeeding would be greater (and vice versa). Based on the results reported in Table 7, it appears that in successful campaigns activists have a significantly higher percentage of shareholdings whereas targets have a lower ROA. In fact, the targets of successful activist campaigns had on average an ROA over 50 percentage points lower than those in unsuccessful campaigns. However, neither of these differences is statistically significant.

Table 7

| Mean | Success (including partial success) | Failure | Difference = success - failure (t-statistics) |
|----------------------------|-------------------------------------|---------|-----------------------------------------------|
| iscore | 0.08 | 0.12 | -0.04 (-0.31) |
| Percentage of shareholding | 14.74% | 10.93% | 3.81% (2.55) |
| Target ROA* | -47.55% | 6.71% | -54.26% (-0.36) |

* One outlier, a successful campaign with an ROA of -2961%, was dropped.

G. Politics or Market: Multivariate Analysis

Although the above statistical tests point towards China having a rules-based market for shareholder activism, univariate tests cannot tell whether the observed correlation between variables is due to certain confounding factors. As such, we undertook a multivariate logistic regression analysis by using two different measures of the political power in activist campaigns. First, we use the iscore to capture each party's relative political power in each activist campaign. Second, we include state-owned activists and state-owned targets, both of which are dummy variables, in the regressions as an alternative measurement of the parties' relative

A. Gordon & John Pound, *Information, Ownership Structure, and Shareholder Voting: Evidence from Shareholder-sponsored Corporate Governance Proposals*, 48 J. FIN. 697, 707 (1993); Deon Strickland, Kenneth W. Wiles & Marc Zenner, *A Requiem for the USA: Is Small Shareholder Monitoring Effective?*, 40 J. FIN. ECON. 319 (1996). However, in Japan, success of activist campaigns appear to rise with targets' prior ROA, see Wataru Tanaka & Gen Goto, *Nihon ni okeru kabunushi akuthibizumu no chokiteki eikyo* (日本におけるアクティビズムの長期的影響) [The Long-term effect of shareholder activism in Japan], in *Nihon Shokengyo Kyokai* (insert japanese name) [Japan Securities Dealers' Association] ed., *JSDA Capital Market Forum (dai 2ki) ronbunshu* [Collected Papers of the JSDA Capital Market Forum (2nd Season)] (2020), at 115, available at <https://www.jsda.or.jp/about/kaigi/chousa/JCMF/gototanakaranbun2.pdf>.

political influence. We control industry fixed effects and year fixed effects to tease out the impact on activism results due to industry-, as well as time-, specific factors. The standard errors of the estimations are clustered at the industry level. Table 8 below reports the results using various empirical models.

Table 8: Multivariate Logit Regression

| Dependent Variable: (Partial + Full) Success | I | II | III | IV | V | VI |
|----------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| iscore | 0.08 (0.43) | 0.08 (0.62) | 0.12 (0.66) | | | |
| State-owned activist | | | | 0.11 (0.53) | -0.08 (0.68) | 0.04 (0.72) |
| State-owned target | | | | 0.08 (0.79) | -0.05 (1.10) | 0.04 (1.30) |
| Percent of shareholding | 0.09 (0.02)*** | 0.12 (0.02)*** | 0.12 (0.03)*** | 0.09 (0.02)*** | 0.12 (0.03)*** | 0.12 (0.03)*** |
| ROA of prior quarter | | -0.01 (0.04) | -0.01 (0.04) | | -0.01 (0.04) | -0.01 (0.04) |
| Strategic investor | | | -0.41 (0.75) | | | -0.43 (1.00) |
| Industry fixed effects | Yes | Yes | Yes | Yes | Yes | Yes |
| Year fixed effects | Yes | Yes | Yes | Yes | Yes | Yes |
| Pseudo R ² | 0.24 | 0.28 | 0.28 | 0.24 | 0.28 | 0.28 |
| Obs | 140 | 116 | 114 | 140 | 116 | 114 |

Note: Standard errors clustered at the industry level are in parentheses.

*, **, and *** indicate significance at 10%, 5% and 1% levels respectively.

One outlier, a successful campaign with an ROA of -2961%, was dropped.

Similar to the univariate regression analysis, in Table 8 we find no statistically significant correlation between the probability of success of activist campaigns and the parties' relative political power. However, the multivariate regressions clearly show that the percentage of an activist's shareholdings in targets is positively and significantly correlated with their likelihood of success. With respect to a target's ROA, the estimated coefficients point to a negative correlation, but the results are not statistically significant.

Several leading academics have highlighted the importance of President Xi's 2015 party-building initiatives as a conduit for introducing political influence into the governance of corporations in China.¹⁴³ As such, to test whether these party-building initiatives had an impact on shareholder activism in China, we created a dummy variable equal to 1 for campaigns occurring after 2015 and conducted standard interaction tests to ascertain the impact of the

¹⁴³ Some well-known studies on this topic are John Zhuang Liu & Angela Huyue Zhang, *supra* note 58, at 3; Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 58, at 187; Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 19, at 3.

party-building agenda on outcomes of activist campaigns. Model I and Model II in Table 9 show the results of the regressions.

Conversely, as explained above, the 2018 CCG was implemented to further champion shareholder rights and to align China more closely with prevailing practices in Anglo-American jurisdictions.¹⁴⁴ If corporate governance in China follows a rules-based, free market paradigm, then we would expect that market-driven forces would increase after the implementation of the 2018 CCG. Therefore, we constructed a dummy variable equal to 1 to capture any post-CCG changes in activist campaigns and examine their interaction effects with factors representing market forces. Model III and Model IV in Table 9 report the results of these interaction effects.

Table 9: Multivariate logit regression results: Effects of policy / rule change

| Dependent Variable: (Partial + Full) Success | I | II | III | IV |
|----------------------------------------------|-------------------|-------------------|--------------------|--------------------|
| iscore | 0.32 (1.04) | | -0.08 (0.81) | |
| Post-party building policy (ppb) | 1.17 (1.37) | 1.44 (1.75) | | |
| iscore * ppb | -0.28 (0.85) | | | |
| State-owned activist | | 1.84 (1.71) | | -0.11 (0.76) |
| State-owned activist * ppb | | -2.17 (1.78) | | |
| State-owned target | | -0.52 (1.75) | | -0.03 (1.36) |
| State-owned target * ppb | | 0.65 (0.87) | | |
| Percent of shareholding | 0.11 (0.03)*** | 0.11 (0.03)*** | 0.16 (0.06)*** | 0.16 (0.05)*** |
| Post-rule change (p2018) | | | 2.56 (2.57) | 2.49 (2.58) |
| Percent of shareholding * p2018 | | | -0.11 (0.06)* | -0.10 (0.05)** |
| ROA of prior quarter | -0.01 (0.04) | -0.02 (0.04) | 0.53 (0.24)** | 0.53 (0.20)*** |
| ROA of prior quarter * p2018 | | | -0.56 (0.21)*** | -0.55 (0.18)*** |
| Strategic investor | -0.43 (0.78) | -0.50 (1.04) | -0.01 (1.13) | 0.01 (1.37) |
| Industry fixed effects | Yes | Yes | Yes | Yes |
| Year fixed effects | Yes | Yes | Yes | Yes |
| Pseudo R ² | 0.28 | 0.29 | 0.34 | 0.34 |
| Obs | 114 | 114 | 109 | 109 |

Note: Standard errors clustered at the industry level are in parentheses.

*, **, and *** indicate significance at 10%, 5% and 1% levels respectively.

One outlier, a successful campaign with an ROA of -2961%, was dropped.

¹⁴⁴ Wei Zhang, *Learning from Your Rival?*, *supra* note 74, at 2 n.2.

In Table 9, we see no increase in the influence of political power following the 2015 party-building initiatives. If anything, after the party-building initiatives, political status seems to work against both activist shareholders and target companies as far as the outcomes of activism are concerned. This further calls into question the political influence theory in Chinese corporate governance. On the other hand, there is some empirical evidence that supports the rules-based market theory. After the amendment of the 2018 CCG, a target's lower ROA in the quarter prior to an activist campaign is more likely to be associated with success in an activist campaign, compared to the period before the CCG amendment.¹⁴⁵ Of course, given the substantial overlap of the post-party-building-initiatives and post-Code-change periods, we cannot deny the possibility that it was the party building initiatives that contributed to the market-oriented outcomes of shareholder activism in China. However, reasonable minds may disagree on this point.

In sum, our empirical analyses find no evidence to support the argument that the outcomes of shareholder activism in China are determined by political power. On the contrary, on balance, the empirical evidence suggests that China largely has a rules-based market for shareholder activism, which is generally driven by financial incentives.

IV. CASE STUDIES OF SHAREHOLDER ACTIVISM IN CHINA

Our empirical findings above present a challenge to the conventional Western view that the CCP wields its power in all aspects of Chinese corporate governance as they suggest that shareholder activism in China has largely occurred in a rules-based system driven by market forces. It also suggests that the more nuanced academic literature on the political influence of the CCP on Chinese corporate governance has overlooked the importance of shareholder activism – a significant force driving Chinese corporate governance in which the CCP's political influence appears to play a limited role.

To gain a more accurate understanding of this significant overlooked development in Chinese corporate governance, we drilled down beyond the empirical analysis by reviewing the facts in the 156 cases of shareholder activism in the CSAD. There are two reasons why we thought

¹⁴⁵ At the same time, in the years following the implementation of the 2018 CCG, the impact of an activist's percentage of shareholding on the success rate also diminishes. However, this result disappears if we use full success, instead of partial success, as the dependent variable in the logistic regressions.

highlighting the facts in several significant cases of shareholder activism in China may add value to our research. First, it is possible that although overall shareholder activism in China occurs in a rules-based market context, in a few individual cases the CCP has used its political power to shape the outcome of shareholder activist campaigns – which may be unobservable in the empirical analysis. As such, we reviewed the facts in the CSAD to try to identify such cases. Second, we were surprised how little information about the 156 cases in the CSAD have been reported in English. Therefore, we thought it would be beneficial for comparative scholarship and future research to provide some details about a few significant cases of shareholder activism in China, which to the best of our knowledge have not been widely reported in English.

A. Retail Investor Activism Succeeds Against a National Champion: Evidence of Market Forces and the CCP’s Pro-Minority Shareholder Policies

A conventional Western view of China suggests that bottom-up activism is not tolerated by the CCP – especially ground level activism that challenges powerful state-controlled entities.¹⁴⁶ From this perspective, one may expect that retail investors would be unable to launch a successful shareholder activist campaign against a national champion – the name bestowed on the most powerful Central SOEs that are seen as having the greatest level of political power and have been at the core of China’s economic miracle over the past several decades.

China COSCO Shipping Holding Corporation (COSCO Holding), is a subsidiary of COSCO Shipping Group, which is a quintessential national champion with enormous economic, political and geopolitical importance for China. The COSCO Shipping Group is the largest dry bulk carrier in China and one of the largest dry bulk shipping operators in the world.¹⁴⁷ It is also China’s largest liner carrier and one of China’s best-known brands.¹⁴⁸ The COSCO Shipping Group has been integral in China’s controversial BRI and firms within the group were sanctioned by the United States government several years ago for breaching the United States

¹⁴⁶ See *infra* Table 3; Researches show that institutional investors in China seldom take active actions in listed companies, see Fuxiu Jiang & Kenneth A. Kim, *supra* note 52, at 211; Yu-Hsin Lin, *supra* note 30, at 1 (“Conventional wisdom holds that shareholder activism is only effective in firms with dispersed ownership ... Traditionally – with the exception of Japan – Asia has had very few instances of shareholder activism.”); Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 12, at 119.

¹⁴⁷ China COSCO Shipping Corporation Limited, https://en.coscoshipping.com/col6918/art/2016/art_6918_45339.html (last visited May 27, 2024).

¹⁴⁸ *Id.*

sanctions against Iran.¹⁴⁹ More recently, the COSCO Shipping Group has collaborated with some of China's tech giants to develop blockchain technology for the shipping industry.¹⁵⁰ In this respect, the COSCO Shipping Group is among the most politically important and economically powerful companies in China.

Based on a conventional Western perspective, it would seem unthinkable that retail investors would organize online to conduct a successful shareholder activist campaign against a core company within the COSCO Shipping Group – but, as has been widely reported in China, this is precisely what happened. Less than a year after “Roaring Kitty” became (in)famous in the United States for launching a retail investor revolution on an online forum called Wallstreetbets, an anonymous investor, nicknamed “Legend of the Red Scarf” (LRS), used the online forum “snowball” [雪球] to launch a shareholder activist campaign against COSCO Holding.¹⁵¹ LRS's complaint against COSTCO Holding was that despite its enormous size and profitability it had not paid a dividend for over a decade.¹⁵²

On November 21, 2021, LRS posted a message on Snowball proposing to collect proxies in order to gather enough votes to make use of China's 3% Proposal Right – which as explained above is the most popular strategy for carrying out shareholder activism in China.¹⁵³ LRS's success online was extraordinary – within one day LRS had collected nearly 500 million proxy votes and was successful in meeting the 3% requirement.¹⁵⁴ Minority shareholders attempted to put forward a shareholder proposal requesting the company to modify its dividend plan for the next three years guaranteeing shareholders that it would not pay a dividend of less than 50%

¹⁴⁹ Press Statement, Michael R. Pompeo, *The United States Imposes Sanctions on Chinese Companies for Transporting Iranian Oil* (Sept. 25, 2019), <https://2017-2021.state.gov/the-united-states-imposes-sanctions-on-chinese-companies-for-transporting-iranian-oil/>.

¹⁵⁰ *Cosco Shipping and Alibaba Latest Efforts Using Blockchain in Shipping*, THE MARITIME EXECUTIVE (July 7, 2020, 3:58 PM), <https://maritime-executive.com/article/cosco-shipping-and-alibaba-latest-efforts-using-blockchain-in-shipping>.

¹⁵¹ < insert pinyin > (红领巾传奇) [Legend of the Red Scarf], *Guanyu Zhongyuan Haikong Zhongxiao Gudong Lianhe 3% Guquan xiang Dongshihui Tian de Changyi* (关于中远海控中小股东联合 3%股权向董事会提案的倡议) [Proposal regarding COSCO Shipping Holdings' Minority Shareholders Jointly Submitting a Proposal with 3% Equity to the Board of Directors], Nov. 21, 2021, <https://xueqiu.com/5310697058/203711129>.

¹⁵² According to our data collected on CSMAR, the corporation has not been given out cash dividend since March 2011.

¹⁵³ See *infra* part III(D).

¹⁵⁴ *Buzuo Chenmo de Gudong, Zhongxiao Touzizhe Tiyi Zhongyuanhaikong Tigao Paixibi, Huigou Gufen, Yijiqi 4.7 Yigu* (不做沉默的股东，中小投资者提议中远海控提高派息比、回购股份，已集齐 4.7 亿股) [Minority Investors Propose that COSCO Shipping Holdings Increase the Dividend Payout Ratio and Repurchase Shares, Having Already Gathered 470 million shares], <insert pinyin> (insert Chinese name) [Sina Finance], Nov. 22, 2021, <https://finance.sina.com.cn/jjxw/2021-11-22/doc-iktzseyy7062658.shtml>.

of its net profits and to repurchase the company's outstanding A-shares and H-shares.¹⁵⁵ On December 6, 2021, COSCO Holding held a board meeting and decided to seek general authorization from the shareholders meeting for the board to repurchase A-shares and H-shares.¹⁵⁶ On May 2022, the company's shareholder meeting decided to distribute cash dividends, 50.15% of attributable profits of the parent company and 15.6% of the net profit attributable to shareholders of the listed company COSCO Holdings.¹⁵⁷

This shareholder activist campaign, as highlighted by mainstream media in China, successfully targeted a national champion and was in alignment with the central government's policy of ensuring that companies fairly distribute their profits to public investors.¹⁵⁸ The CSRC has consistently stressed the significance of listed companies providing fair returns to minority shareholders. Since 2006, cash dividends have been a prerequisite for companies seeking a second public offering.¹⁵⁹ In 2015, the CSRC, in conjunction with other regulatory bodies, issued notifications encouraging listed companies to engage in cash dividends and share repurchases, specifying that companies which satisfy the requirements that make them eligible to pay dividends should pay them accordingly.¹⁶⁰ In 2023, the CSRC further revised regulatory guidelines for listed companies to facilitate the payment of interim dividends. Government officials noted that the total cash dividends of listed companies in 2023 reached a record high of 2.13 trillion yuan for the year – suggesting that the regulatory architecture and government pressure for profitable companies to pay dividends has had an impact in practice.¹⁶¹

There are three interesting observations about shareholder activism in China that are worth highlighting from this case. First, it is surprising that such a major case of retail investor

¹⁵⁵ Although we didn't locate this proposal on CHINFO, we could still code this campaign as a publicly expressed dissatisfaction to public shareholders.

¹⁵⁶ [Cosco Holding Public Announcement, Dec. 7, 2021, https://stock.stockstar.com/SN2021120600007769.shtml](https://stock.stockstar.com/SN2021120600007769.shtml).

¹⁵⁷ [Cosco Holding Public Announcement \(2022-032\), May 28, 2022, https://stock.stockstar.com/SN2022052700016492.shtml](https://stock.stockstar.com/SN2022052700016492.shtml).

¹⁵⁸ CCTV-2, Dec. 1, 2021, video available at <https://tv.cctv.com/2021/12/01/VIDE1M1uvWYGbVMdTzUJGpd211201.shtml>.

¹⁵⁹ Shangshi Gongsu Zhengquan Faxing Guanli Banfa (上市公司证券发行管理办法) [Administrative Measures for the Issuance of Securities by Listed Companies] (promulgated by China Securities Regulatory Commission, May 6, 2006, effective May 8, 2006), art 8. (China) < check dates >.

¹⁶⁰ Zhengjianhui Cazhengbu Guozhwei Yinjianhui Guanyu Guli Shangshi Gongsu Jianbing Chongzu Xianjin Fenhong ji Huigou Gufen de Tongzhi (证监会、财政部、国资委、银监会关于鼓励上市公司兼并重组、现金分红及回购股份的通知) [Notice of the China Securities Regulatory Commission, the Ministry of Finance, the State-Owned Assets Supervision and Administration Commission and the China Banking Regulatory Commission on Encouraging Mergers, Acquisitions and Restructuring, Cash Dividends and Share Repurchase of Listed Companies] (promulgated Aug. 31, 2015, effective Aug. 31, 2015) (China).

¹⁶¹ <insert pinyin> (2024 年 1 月 12 日新闻发布会) [Jan 12 News Release], CHINA SECURITIES REGULATORY COMMISSION (Jan. 12, 2024), <http://www.csrc.gov.cn/csrc/c100029/c7457231/content.shtml>.

shareholder activism, against one of the largest shipping companies in the world, has almost entirely escaped the attention of major Western media and comparative corporate governance scholars who focus on China and/or shareholder activism – highlighting how this important aspect of Chinese corporate governance has been hiding in plain sight. Second, the ability of retail investors to organize online to force a national champion, which had failed to pay a dividend for over a decade, to dramatically change its dividend policy illustrates how retail investors in China can effectively use their strong minority shareholder rights – particularly the 3% Proposal Right – to protect their economic interests as minority shareholders. Third, it is noteworthy that this activist campaign dovetailed with the CCP’s policy surrounding dividends, which illuminates how shareholder activism likely often serves to reinforce the government’s policies by improving corporate governance and the efficiency of companies – which benefits China’s economic development and, in turn, reinforces the ultimate power of the CCP. In this sense, the rules-based market for shareholder activism that has been promoted in China is congruent with the CCP’s goal of building world-class companies to grow the economy, which is foundational to the CCP’s legitimacy and longevity.

B. Unexpectedly Aggressive Tactics by Private Shareholders Against the Government: Evidence of Rules-Based Shareholder Activism in China

The power of the CCP as the ultimate ruler over Chinese companies is a common theme in the conventional Western understanding of Chinese corporate governance.¹⁶² Viewed through this lens, it would seem unlikely that in a shareholder activist campaign, in which the government investor is pitted against a private investor, that the private investor would use aggressive tactics and rely on legal technicalities to prevail over the government. Also, in a system driven by politics, which is not rules-based, one would not expect private parties to rely on legal technicalities to thwart government investors. Indeed, based on a conventional view of China, especially in the President Xi era, one may expect the government to run roughshod over the shareholder rights of private parties in the context of shareholder activist campaigns in which a government investor is involved. In this context, it is surprising to find cases in the CSAD in which private investors use aggressive tactics and legal technicalities to prevail over government investors, and government investors exercise their rights based in public

¹⁶² Tamar Groswald Ozery, *The Politicization of Corporate Governance*, *supra* note 57, at 43; Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *The Effect of Political Influence on Corporate Valuation*, *supra* note 19, at 2.

enforcement mechanism, suggesting that China has a rules-based system in which the government's political power is constrained.

In May 2020, a provincial SOE owned by Zhejiang SASAC – Fuzhe Capital – commenced an activist campaign against a private listed company – Innovation Medical – which was in the medical services industry. By September 2020, Fuzhe Capital had acquired 4.02% of Innovation Medical's shares, and along with two other private shareholders who collectively owned 3.29% of Innovation Medical's shares (Government-Led Minority Activists), exercised their rights under the 3% Shareholder Proposal Rule, to propose nominating six directors to Innovation Medical's board.

The incumbent board relied on a seemingly spurious argument that the proposal failed to fulfill certain technical requirements and thus refused to allow a vote on the election of the six shareholder activist directorial candidates.¹⁶³ The Government-Led Minority Activists persisted by challenging the slate of directors nominated by Innovation Medical's incumbent board, which resulted in three out of the nine incumbent nominated directorial candidates failing to secure a majority of the votes required for them to be elected.¹⁶⁴

In response to the prima facie violation of the company law by Innovation Medical's incumbent board, due to its refusal to allow a vote on the activist's directorial candidates, the Government-Led Minority Activists filed a complaint with the Zhejiang Securities Regulatory Bureau (Bureau).¹⁶⁵ As a result of the complaint, the Bureau issued a regulatory letter to Innovation Medical, seeking clarification on its behavior, which prima facie, appeared to be in direct contravention of the company law.¹⁶⁶ Despite the Bureau's letter, Innovation Medical's incumbent board maintained its position and failed to allow a vote on the activist's directorial candidates.

In February 2021, the Government-Led Minority Activists attempted to call an extraordinary general shareholders meeting to again have its slate of directors voted on – but the incumbent board failed to hold the meeting.¹⁶⁷ In March 2021, the incumbent board finally called a special

¹⁶³ For an elaborate report on this case, please see <insert pinyin> (创新医疗全体董监高被证监局约谈！新股东提名董事会成员被拒，股权争夺再升级) [Innovation Medical's Directors and Senior Management being Summoned by Regulators, Struggle for Control Escalated], Pengpai (澎湃), Nov. 18, 2020, https://m.thepaper.cn/baijiahao_10051224.

¹⁶⁴ Public Announcement of Innovation Medical (2020-084), available at CHINFO Innovation Medical.

¹⁶⁵ Public Announcement of Innovation Medical (2020-083), available at CHINFO Innovation Medical.

¹⁶⁶ *Id.*

¹⁶⁷ Public Announcement of Innovation Medical (2021-030), available at CHINFO Innovation Medical.

shareholder meeting to fill Innovation Medical's three vacant board seats. At the meeting the incumbent board, without providing any reasons, again rejected the Government-Led Minority Activist's proposal to have its slate of directors consider for election. Subsequently, Innovation Medical's incumbent board publicly announced that it was canceling the scheduled shareholders meeting.¹⁶⁸

Finally, the Government-Led Minority Activist's commenced a lawsuit in the People's Court of Zhuji (where the target company is registered) to challenge the incumbent board's flagrant violation of the company law. In July 2021, the court held for the Government-Led Minority Activists, setting aside the decision of Innovation Medical's incumbent board to reject the shareholder's proposal and requiring there to be a new directors' election.¹⁶⁹ In November 2021, the Shaoxing Intermediate Court upheld this decision.¹⁷⁰ However, surprisingly, despite the favorable court ruling, the Government-Led Minority Activist's decided to sell their shares, without pursuing their right to hold an election for their directorial candidates.

It appears that the Innovation Medical Case is not an isolated incident. In 2018/2019, there was a shareholder activist campaign in a Tibetan beer company (Tibetan Development Company Case), in which a Tibet SASAC-owned shareholder was pitted against private shareholders in a contest of director election.¹⁷¹ The local state-owed shareholder's votes, which would have determined the outcome of the directorial election, were disallowed based on spurious technical grounds, resulting in an opposing slate of directorial candidates being elected. The local state-owed shareholder reported this incident to the Shenzhen Stock Exchange and Tibet Securities Regulatory Bureau, both of which issued regulatory letters to the company.¹⁷² The shareholder who was aligned with the local state-owed shareholder, filed a lawsuit to invalidate the election of the directors. However, before a definitive judgment was reached, the ally of the local SAS completely exited the company.¹⁷³

¹⁶⁸ Public Announcement of Innovation Medical (2021-039), available at CHINFO Innovation Medical.

¹⁶⁹ Public Announcement of Innovation Medical (2021-081), available at CHINFO Innovation Medical.

¹⁷⁰ Public Announcement of Innovation Medical (2021-104), available at CHINFO Innovation Medical.

¹⁷¹ For an elaborate report on this case, see <insert author>, <insert pinyin of title> (A 股最长股东会争辩升级 西藏发展国资股东投票被否到底谁之过) [Longest Shareholder Meeting in the A-Share History, Who Stripped the Voting Rights of Tibet State-owned Shareholder?], <insert pinyin> (每经网) [NATIONAL BUS. DAILY], Jan. 20, 2019, <https://www.nbd.com.cn/articles/2019-01-20/1293136.html>.

¹⁷² I'm not sure how to shorten the address. And this announcement does not have a serial number.

<http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=gssz0000752&stockCode=000752&announcementId=1205773695&announcementTime=2019-01-16>.

¹⁷³ Public Announcement of Tibet Development (2019-019), available at CHINFO Tibet Development.

What is striking about the Innovation Medical Case and Tibetan Development Case is how minority government shareholders involved in activist campaigns faced aggressive tactics from private parties. In both cases, the rights of government minority shareholders were abused by private parties – the opposite of what one would assume under the conventional Western understanding of Chinese corporate governance. In addition, in both cases the government minority shareholders relied on filing a claim with the regulator and were assisted by court decisions to enforce the rules which private parties had breach – illustrating how government shareholders follow the rules-based system of shareholder activism in China (i.e., in these cases they did not appear to use their political influence to thwart the law).

C. Looking Beyond the Formal Activist Campaign: Possible Evidence of Political Influence?

So far, almost all the empirical and case study evidence suggests that China has developed a vibrant rules-based market for shareholder activism – in which the political power of investors plays little role. However, in our review of the 156 cases in the CSAD, the facts in one case – *Shenzhen Mingyao v First Automobile Works* (“FAW Case”) – provides an example in which the political power of a national champion may have allowed it to avoid the consequences of an otherwise successful shareholder activist campaign.

FAW Group Corporation was established in 1953 and produced China’s first truck and first car.¹⁷⁴ It sells ultra luxury cars under the “Hongqi (red flag)” brand name. Hongqi cars are often used by Chinese officials, seen as a symbol of Chinese craftsmanship, and grace the parades of the highest political significance – including the 10th anniversary celebration of the founding of New China in 1959 and National Day parades thereafter.¹⁷⁵

FAW Car Company (“FAW Car”) is a listed company, which is controlled by FAW Group Corporation (“FAW Group”) – a central SOE and a quintessential national champion. In 2011, FAW Group underwent a reorganization which resulted in the creation of a newly established holding parent company called “FAW Holding”. The publicly stated purpose of the reorganization was to resolve issues concerning related party transactions that were allegedly tunneling wealth out of FAW Car to benefit FAW Group (“Reorganization”). Shareholders of

¹⁷⁴ Official Introduction of FAW Group, <https://www.faw.com.cn/fawcn/373692/jtgl/jtj42/index.html> (last visited May 30, 2024).

¹⁷⁵ <insert pinyin> (红旗)轿车接受毛主席的检阅 [1959: The Red Flag sedan is inspected by Chairman Mao], FAW Official Website, Sep. 29, 1959, https://www.faw.com.cn/zt_fawcn/dq100zn/zj/5388697/index.html.

FAW Car were originally promised, at the time of the Reorganization in 2011, that the Reorganization would be completed in five years. However, as the 2016 deadline approached, FAW Car sought shareholder approval to extend the deadline for the Reorganization by three years and to exempt FAW Holding from any liability resulting from the delay.¹⁷⁶

Dissatisfied with the proposed delay, on June 5, 2016, Shenzhen Mingyao, a private equity fund (“PE Fund”), launched an open letter campaign on its website, urging FAW Car investors to oppose FAW Holding’s request to extend the deadline for the Reorganization.¹⁷⁷ The PE Fund solicited proxies, encouraged shareholders to cast dissenting votes, and sought to exercise its 3% Proposal Right in FAW Car’s upcoming shareholder meeting to claim compensation from FAW Group for the delayed Reorganization.¹⁷⁸

On June 16, 2016, the PE Fund obtained proxies representing over 3% of FAW Car shares and, with support from the Jilin Securities Regulatory Bureau, successfully submitted its proposal to FAW Car.¹⁷⁹ However, FAW Car refused to include the proposal in the shareholders meeting agenda, alleging that the proposal documents were deficient because they failed to contain the original documents required to identify the shareholders, invalidating the proxies.¹⁸⁰ This prompted the Shenzhen Stock Exchange to issue a letter of concern regarding FAW Car’s conduct and the Jilin Securities Regulatory Bureau to issue a supervisory letter to FAW Car requesting more information about its conduct.¹⁸¹

On June 27, 2016, at FAW Car’s shareholders meeting, 97.3% of independent shareholders voted against the management proposal to extend the timeline for the Reorganization and to exempt FAW Holding from any liability arising from the delay.¹⁸² FAW Holding, as FAW Car’s controlling shareholder, was excluded from voting on the management proposal as it was a party in the related party transactions which were the subject of the vote. On this basis, the PE

¹⁷⁶ Public Announcement of FAW Car(2016-028), available at CHINFO FAW Car (now “FAW Jiefang”).

¹⁷⁷ <insert pinyin> (insert Chinese name) [A Public Letter to All FAW Car Shareholders], June 5, 2016, Shenzhen Mingyao, <http://www.vimchina.com.cn/newsinfo.aspx?CateId=14&Id=72>,.

¹⁷⁸ For an elaborate report on this case, see *Yiqi Jiaochu Jiang Zhongxiao Gudong Juzhimenwai Simu Zengzhaoxiong Sike* (一汽轿车将中小股东拒之门外 私募曾昭雄死磕) [FAW Car Shuts out Minority Shareholders, with Private Equity's Zeng Zhaoxiong Fighting to the End], Dongfang Caifu (东方财富) [EastMoney], June 24, 2016, <https://finance.eastmoney.com/news/1354,20160624636705766.html>.

¹⁷⁹ Public Announcement of FAW Car (No.2016-032), available at CHINFO FAW Car (now “FAW Jiefang”).

¹⁸⁰ Public Announcement of FAW Car, <https://static.cninfo.com.cn/finalpage/2016-06-22/1202381106.PDF> (last visited May 30, 2024).

¹⁸¹ Public Announcement of FAW Car (2016-031) and Public Announcement of FAW Car (2016-032), both available at CHINFO FAW Car (now “FAW Jiefang”).

¹⁸² Public Announcement of FAW Car (2016-033), available at CHINFO FAW Car (now “FAW Jiefang”).

Fund succeeded in its shareholder activist campaign as it defeated a management proposal that would have had a significant deleterious impact on the company and its minority shareholders.

However, if we look beyond the formal activist campaign and consider the result following the successful shareholder vote, the PE Fund's "success" in the activist campaign appears to have been a "failure" in practice. Our review of publicly available information reveals that despite the 97.3% shareholder vote against the three-year extension and waiver of liability, the Reorganization did not occur until three-years after the shareholders meeting and FAW Holding was not held liable for the three-year delay – the same result that would have occurred if the FAW Car shareholders would have voted the opposite way (i.e., in support of the three-year delay and for the waiver of liability).

There are three noteworthy observations that can be taken from the FAW Case. First, it provides another example of a PAS launching a shareholder activist campaign against a powerful national champion – defying the conventional Western understanding of Chinese corporate governance. Second, despite the target being a national champion, government agencies supported the PAS by ensuring that the corporate law and procedural rules were followed by the target during the campaign – evidence of the rules-based market for shareholder activism in China. Third, and most interestingly, it appears that despite the "success" of the activist campaign and ostensible support from regulators, ultimately the national champion did what it desired – in contravention of the successful activist campaign and with impunity. Although it is impossible to know why FAW Car and FAW Holding were not challenged for what appears to be their blatant disregard of the formal result of the "successful" activist campaign, we would be remiss to not raise the possibility that this is because of FAW Car and FAW Holdings political status as national champions.

D. Government Entities Competing as Activists and Targets: A Mechanism to Improve Chinese Corporate Governance?

If one assumes that the Chinese government is a monolith then one would not expect to find two SASs competing in an activist campaign to control a POE or an SAS launching a shareholder activist campaign against an SOE. To the uninitiated observer, such shareholder activist campaigns would seem illogical as it would appear that the Chinese government is engaging in shareholder activism against itself. However, intergovernmental competition at the national level between various departments, and competition at the local level between different provinces, is well recognized as a mechanism that may serve to improve Chinese

corporate governance.¹⁸³ As such, it is unsurprising that our review of the facts of the 156 cases in the CSAD revealed 15 cases involving government entities in competition with each other in shareholder activist campaigns.

As one of us has explained in detail elsewhere in research examining shareholder activism involving institutional investors in China: “the CCP realizes the corporate governance and economic benefits of having [SASs] serve as a check on the controlling shareholder power of SOEs, which is congruent with the CCP’s long-standing policy to support the development of institutional investors as a mechanism to improve corporate governance and stabilize the stock market”.¹⁸⁴ As such, it is unsurprising that in our review of the facts of the cases in the CSAD that 15 out of the 156 activist campaigns involved cases where an SAS launched an activist campaign against an SOE. This suggests that shareholder activism in China may serve as an important corporate governance mechanism among government entities to promote good corporate governance, improve efficiency, and weed out corruption.

Our factual analysis of cases in the CSAD also revealed that 4 out of the 156 activist campaigns involved SAS from different provinces competing to influence a private target, utilizing tactics akin to what one would expect to find between purely private activist shareholders. It is noteworthy that such competition between shareholder activists from different provinces play out in public as they could presumably be worked out behind closed government doors – a further indication of a rules-based system of shareholder activism in China.

Taken together, SASs launching activist campaigns against SOEs and SASs competing against each other for influence over private targets suggests that shareholder activism in China occurs in a rules-based system – where political entities often appear to play by the same rules as private entities. However, as mentioned earlier, it is important to recognize that the CSAD only includes cases which were publicly reported. It contains no information about potential activist campaigns which are not publicly reported, or which may have been prevented from arising in the first place.

As noted earlier, our review of the facts of the 156 cases in the CSAD did not reveal even a single case in which a local SAS attempted to launch a campaign against a national champion – suggesting that the political hierarchy between local state entities that are shareholders and

¹⁸³ Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, supra note 12.

¹⁸⁴ *Id.*, at 131.

national champions may serve to quell such campaigns. In addition, more research needs to be done on the role that such inter-governmental shareholder activism in China plays in corporate governance and how this may impact the governance of the Chinese government more generally.

V. CONCLUSION

Prior to our research, shareholder activism was assumed to be a non-existent or marginal feature of Chinese corporate governance. Contrary to this assumption, our hand-collected data and case studies reveal that shareholder activism in China is thriving. This overlooked reality opens a new area of corporate governance research in the world's second largest economy.

Our comprehensive analysis paints a surprising picture of shareholder activism in China, one that defies the prevalent Western narrative of a corporate governance system in which political influence reigns supreme. Contrary to expectations, we find a burgeoning, rules-based market for shareholder activism, where both private and state-owned shareholders engage in campaigns with notable success, irrespective of the political status of their targets. That retail investors organized online to successfully extract a dividend out of one of China's most politically important national champions confounds Western conventional wisdom about Chinese corporate governance and begs the question of why this widely reported case in China has not been reported in the West.

Our findings underscore the importance of empirical evidence in challenging conventional wisdom. The statistical parity in success rates between state-controlled and private activist shareholders, the significant influence of shareholding size on campaign outcomes, and the correlation between activist success and company performance metrics all point to a market influenced more by economic incentives than by political interference.

While there are "known unknowns" regarding the extent of unobservable political influence, our case studies provide robust support for the conclusion that China's shareholder activism is primarily driven by rules-based market forces. This evolving landscape offers rich avenues for further research, particularly in understanding the interplay between political power and market mechanisms.

It is worth noting that at the end of 2023, China's Company Law underwent a significant amendment, with the new Company Law taking effect on July 1, 2024. The 2024 Company

law, the second significant amendment since the enactment of China's first Company Law in 1993, has one of its key focuses being the empowerment of minority shareholders.¹⁸⁵ Among the changes, the threshold for shareholder proposals in listed companies has been lowered to 1%, and shareholders are explicitly granted broad inspection rights, with the scope of inspection extending even to wholly-owned subsidiaries.¹⁸⁶ Additionally, shareholders are now allowed to initiate double derivative suits.¹⁸⁷ This portends that the recent wave of shareholder activism in China is likely to grow.

Fans of rules-based markets should be heartened by our findings. Chinese companies have become world leaders in many important industries. Over the past 15 years, China has had the world's largest market for initial public offerings and the world's second largest stock market, which has grown five-fold in the past decade. To think that this success is the result of a system in which the government uses its political influence to dictate corporate governance outcomes gives far too much credit to the Chinese government – and far too little credit to rules-based markets. There is a reason why the USSR regularly had shortages of toilet paper and why it did not have shareholder activism. China now has an abundance of both.

¹⁸⁵ National People's Congress, Improve Modern Enterprise and Promote High-quality Development (完善中国特色现代企业制度推动经济高质量发展), http://www.npc.gov.cn/c2/c30834/202401/t20240104_434091.html(last visited May 3, 2024).

¹⁸⁶ PRC Company Law (as amended in 2023, effective on July 1, 2024), art 115, art 110.

¹⁸⁷ PRC Company Law (as amended in 2023, effective on July 1, 2024), art. 189.

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