



Memorandum

Date : 25 April 2015
To : Professor Robert G. Eccles
From : Joseph Shang / Pascal Jiang
Cc : Hua Zhong / Molly Wang
Re : **Responses to Research Queries on Corporate Social Responsibility**

Dear Prof Eccles,

We refer to your request of providing a memo for the purpose of assisting the analysis of the viability of an Annual Board “Statement of Significant Audiences and Materiality” from the perspective of the current legal landscape of the laws of the People’s Republic of China (**PRC**). We understand the purpose of this memo is to provide general information from the PRC law perspective as one of the research jurisdictions, and we have tried to cover the most important and need-to-know aspects according to the template research queries, which however are not exhaustive.

Based on the template research queries provided by you and subject to a few qualifications at the end of this memo, please find below our responses as follows.

Responses to Template Research Queries

Setting the Legal Landscape

- 1. Briefly explain the broader legal landscape regarding the obligations that a company has to its stakeholders or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders over all other stakeholders.**

1.1 Under PRC law, there are mainly three types of business organization: individual

proprietorship enterprise, partnership and company, which are governed by different laws and regulations separately. Individual proprietorship enterprises are governed by the *Law of Individual Proprietorship Enterprises of the PRC*, while partnerships are governed by the *Partnership Law of the PRC*. Individual proprietorship enterprises and partnerships do not have the status of legal person under PRC law and generally, do not belong to the category of a company we would generally refer to, which would not be discussed in this questionnaire.

- 1.2 Companies are formed and governed under the *Company Law of the PRC* which went through an overhaul in 2013 and became effective on 28 December 2013 (the “**Company Law**”). The Company Law mainly regulates two types of companies: Limited Liability Company, Company Limited by Shares, in addition, One-Person Limited Liability Companies and Wholly State-Owned Companies are two special forms of Limited Liability Company.

The Company Law (in Article 5) explicitly stipulates a company has obligations to its stakeholders in the ordinary course of business:

A company shall, when engaging in business activities, abide by laws and administrative regulations, observe social moralities and business ethics, act in good faith, accept the supervision of the government and the general public, and undertake social responsibilities.

This Article 5 serves as the fundamental principal and guideline of a company’s responsibility to the stakeholders, however the Company Law does not further elaborate on these obligations. In contrast, the Company Law has stipulated specific rules of a company’s responsibility to the shareholders, ranging from the right of information to the right of decision-making.

Regulatory Framework

2. To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?

To some extent, PRC law has inherited the socialist legal system from the Soviet Union Period. Noting that the socialist legal system was actually based on the civil law system with major modifications and additions from Marxist-Leninist ideology, the current PRC legal system presents most of the features of the civil law system, in which the core principles are codified and serve as the primary source of law.

3. Are corporate/securities laws regulated federally, nationally, provincially or both?

The Company Law was passed by the 6th Session of the Standing Committee of the Twelfth National People's Congress (the “NPC”), which is the national legislator and thus the Company Law governs nationwide. Likewise, the *Securities Law of the PRC* (the “**Securities Law**”) was passed and amended by the NPC and thus also governs nationwide.

In terms of the hierarchy of legislative power, firstly, the NPC and its Standing Committee enact national “law” which governs nationwide and have the highest authority; secondly, the State Council and its subordinate ministries/administrations promulgate “regulations”, “administrative measures” and “implementing rules” which also govern nationwide but its effect runs second to the “law”; and thirdly, local government authorities (province, municipal, city and county) formulate local rules which govern just that specific locality.

4. Who are the government corporate/securities regulators and what are their respective powers (in summary only)?

4.1 The State Administration for Industry & Commerce (the “SAIC”) of the PRC is the ministerial level authority directly under the State Council, in charge of corporate matters, market supervision/regulation and related law enforcement through administrative means. The SAIC functions in maintaining market order and protecting the legitimate rights and interests of businesses and consumers by carrying out regulations in the fields of enterprise registration, competition, consumer protection, trademark protection and combating economic illegalities. The responsibilities of SAIC include:

- (a) regulate the market through administrative enforcement, draft relative laws and rules, and make regulations and policies on administration of industry and commerce;
- (b) carry out and administer registration of enterprises (including foreign-invested enterprises), agricultural cooperatives, entities or individuals engaged in business operation and resident representative offices of foreign companies; and take charge of the investigation and prohibit unlicensed business operation;
- (c) regulate and maintain market order; regulate product quality and food safety in the market; protect consumers’ rights and interests in the service sector; investigate and punish irregularities such as counterfeiting, faking and inferior quality; guide the acceptance and handling of consumer inquiries, appeals and complaints, and guide the development of related networks thereof; protect legal rights and interests of business operators and consumers;
- (d) enforce the anti-trust law with regard to monopolistic agreements, abuse of market dominant position, and practices to eliminate or restrict competition through abuse

of administrative power (excluding price monopoly); investigate and punish economic irregularities such as unfair competition, commercial bribery, and smuggling;

- (e) regulate brokers, brokerages and their broking activities according to law;
- (f) carry out administrative supervision over contracts and auctions, register chattel mortgage, and investigate and punish illegal acts such as contractual fraud;
- (g) guide development of the advertising industry and supervise advertising activities;
- (h) take charge of trademark registration and regulation, protect the exclusive right of trademark, investigate and punish any infringement thereof; handle trademark-related disputes; reinforce efforts to recognize and protect well-known trademarks; register, file, and protect special marks and official marks;
- (i) organize and instruct credit rating of enterprises, self-employed entrepreneurs and commodity transaction markets; analyze and publish basic information about incorporation registration and trademark registration of market players, and thereby provide information service for government decision making and the public in general; and
- (j) serve and regulate self-employed entrepreneurs and private enterprises.

4.2 The China Securities Regulatory Commission (the “CSRC”), a ministerial-level public institution directly under the State Council, performs a unified regulatory function, according to the relevant laws and regulations, and with the authority by the State Council, over the securities and futures market of the PRC, maintains an orderly securities and futures market order, and ensure a legal operation of the capital market. The CSRC performs the following duties in the supervision and administration of the securities market according to Article 179 of the Security Law:

- (a) study and formulate policies and development plans for the securities and futures markets; draft the relevant laws and regulations on the securities and futures markets as well as put forward suggestions for formulation or modification of the said laws and regulations; and work out the relevant rules, regulations and measures for the securities and futures markets;
- (b) exercise a vertical administration over the domestic securities and futures regulatory institutions and conduct a unified supervision over the securities and futures markets; and perform a regulatory supervision over the managements and the managerial officials of the relevant securities companies;
- (c) supervise the issuance, listing, trading, custody and settlement of stocks, convertible bonds, bonds of securities companies, and bonds and other securities under the charge of the CSRC as assigned by the State Council; supervise the securities investment bonds; approve the listing of corporate bonds; and supervise the trading

- of the listed treasury bonds and corporate bonds;
- (d) supervise the securities market behaviors of the listed companies and their shareholders who shall fulfill the relevant obligations according to the relevant laws and regulations;
 - (e) supervise the listing, trading and settlement of domestic contract-based futures; and monitor the overseas futures businesses of the domestic institutions in accordance with the relevant regulations;
 - (f) supervise the securities and futures exchanges as well as their senior management personnel in accordance with the relevant regulations; and supervise the securities and futures associations in the capacity of a competent authority;
 - (g) supervise the securities and futures business institutions, securities investment fund management companies, securities depository and clearing corporations, futures clearing institutions, securities and futures investment consulting institutions, and securities credit rating institutions; examine and approve the qualifications of fund custodian institutions, and supervise their fund custody businesses; formulate and implement measures on the qualifications of senior management for the relevant institutions; and guide the Securities Association of China and the Futures Associations of China in the administration of the qualifications of the personnel engaged in securities and futures businesses;
 - (h) supervise the direct or indirect issuance and listing of shares overseas by domestic enterprises as well as the listing of convertible bonds by the companies listed overseas; supervise the establishment of securities and futures institutions overseas by domestic securities and futures business institutions; and supervise the establishment of securities and futures institutions in China by overseas institutions for securities and futures businesses;
 - (i) supervise the communication of the securities and futures information; and take charge of the management of the statistics and information resources for the securities and futures markets;
 - (j) work with the relevant authorities in the examination and approval of the qualifications of the accounting firms, the asset evaluation institutions and their personnel for securities and futures intermediary businesses; and supervise the law firms, the lawyers and the eligible accounting firms, the asset appraisal institutions and their personnel in their securities and futures business activities;
 - (k) investigate and penalize the activities in violation of the relevant securities and futures laws and regulations.

4.3 Other ministries – such as the National Development and Reform Commission, which regulates pricing, anti-trust and enterprise bonds for a company – may have overlapped functions, but the SAIC and the CSRC are the two most important regulators in terms of

corporate and securities administration in the PRC.

5. Does the jurisdiction have a stock exchange(s)?

Yes, we have two main stock exchanges in the PRC: (i) Shanghai Stock Exchange (the “SSE”), for the Main-board Market; and (ii) Shenzhen Stock Exchange (the “SZSE”), for the Main-board Market, the SME Market and the Growth Enterprise Market. In addition, we also have a national OTCBB market - National Equities Exchanges and Quotations (the “NEEQ”) and several regional OTCBB markets, such as Shanghai Equity Exchange (the “SEE”).

Incorporation and Listing

6. Do the concepts of “limited liability” and “separate legal personality” exist?

Yes, a company is defined as an enterprise legal person with independent legal person capacity under PRC law. The company shall assume liabilities for its debts with all its assets. The shareholders of a limited liability company shall assume liabilities for the company to the extent of their respective subscribed capital contribution. The shareholders of a company limited by shares shall assume liabilities for the company to the extent of their respective subscribed shares. However, exception applies to the limited liability concept and the shareholders shall assume joint liabilities of the company’s debts, when the shareholders abuse the independent legal person status to have severely harmed the interests of the creditors of the company.

7. Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or to respect its stakeholders?

7.1 Generally, for both incorporation and listing, the obligation of the recognition by the company or its directors of a duty to society is always noted at the outset of the Company Law, in both historical and then-current versions, by the statement or similar expression that “a company shall, when engaging in business activities, abide by laws and administrative regulations, observe social moralities and business ethics, act in good faith, accept the supervision of the Government and the general public, and undertake social responsibilities.”

7.2 Specifically, a listed company shall abide by stricter requirements both when listing and after being listed.

- (a) Before listing, the company shall hire an accounting firm to conduct the financial due diligence and a law firm to conduct legal due diligence and disclose all aspects of the duties of the company to society such as environment protection, employment, etc.

In accordance with the *Standards for Sponsors' Due Diligence Work*, due diligence refers to the process in which the sponsor conducts comprehensive investigation of companies intended to be recommended for public offering of securities, fully understands the operation status of, and the risks and problems faced by, the issuer, and has sufficient reasons to believe that the issuer complies with the laws and regulations such as the Securities Law and the issuance conditions prescribed by the CSRC and believes that the issuer's application documents and documents on the public offering are true, accurate and complete.

- (b) After being listed, it shall abide by the *Measures for the Administration of Information Disclosure by Listed Companies*, which stipulates the obligations for a listed company to disclose the company impacts to the investors which means to the public.

7.3 In addition, the *Law on State-Owned Assets of Enterprises of the PRC* (Article 17) stipulates that when carrying out operation activities, a State-invested enterprise shall adhere to laws and administrative regulations, strengthen operation management, improve economic efficiency, accept administration and supervision by governments and relevant governmental departments and agencies in accordance with the law, accept public supervision, assume social responsibilities and shall be responsible to capital contributors. However, no further rules have been elaborated on the supervision channels.

8. Do any stock exchanges have a responsible investment index, and is participation voluntary? (See e.g. FTSE4Good, Dow Jones Sustainability Index, the Johannesburg Stock Exchange's Socially Responsible Investment Index.)

Yes, we have responsible investment index in both the SZSE and the SSE:

- (a) CCTV 50 CSR (399550.SZSE)

The CCTV 50 CSR is composed by the Finance Channel of the China Central Television Station (the "CCTV") and is part of the CCTV 50 index system (*i.e.*, CCTV 50 Innovation, CCTV 50 Growth, CCTV 50 Return, CCTV 50 Corporate Governance, CCTV 50 CSR, CCTV 50 Ecology, CCTV 50 Culture). The CCTV 50 CSR evaluates companies from the perspectives of social responsibility, environment responsibility, employee responsibility, community responsibility and consumer responsibility and uses 50 top-

ranking companies as samples.

(b) SSE Social Responsibility Index (000048.SSE)

The SSE Social Responsibility Index is composed by China Securities Index Co., Ltd. and top 100-ranking companies by social contribution value per share are included as sample companies. The purpose of the SSE Social Responsibility index is to encourage and promote listed companies to carry out social responsibility and provide investors with an index to invest in.

Directors' Duties

9. To who are directors' duties generally owed?

Directors' duties are owed to the company. The Company Law provides clearly that the directors, supervisors and senior management personnel shall comply with the laws, administrative regulations, and bylaw. They shall fulfill the obligations of fidelity and diligence to the company.

Directors are empowered by law and the company's articles of association to participate in the company's management and decision making, based on the appointment of the shareholders. Therefore, directors shall serve for the company's interests, *i.e.*, the common interests of shareholders.

10. What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company's reputation?

10.1 The Company Law requires directors to fulfill fiduciary duties and the duty of diligence. Specifically, Article 148 stipulates that no director or senior management personnel may commit any of the following acts:

- (a) misappropriating the company's fund;
- (b) depositing the company's fund into an account under his own name or any other individual's name;
- (c) without consent of the shareholders' meeting, the general meeting, or the board of directors, lending the company's fund to others or providing any guarantee to any other person by using the company's property as in violation of the bylaw;
- (d) entering a contract or trading with this company by violating the bylaw or without consent of the shareholders' meeting or the general meeting;

- (e) without consent of the shareholders' meeting or general meeting, seeking business opportunities that belong to the company for himself or any other persons by taking advantages of his powers, or operating similar business of the company for which he works for himself or for any other persons;
- (f) taking commissions on the transactions between others and the company into his own pocket;
- (g) illegally disclosing the company's confidential information;
- (h) other acts inconsistent with the obligation of fidelity to the company.

10.2 For listed companies, the *Guidelines for the Article of Association of Listed Companies* promulgated by the CSRC further elaborate on how the fiduciary duties owed to the company in Article 97: the directors shall abide by laws, administrative rules, and these Articles of Association and be faithful to the company as follows:

- (a) not abuse their functions and powers to accept bribery or other illegal income and not misappropriate the company's assets;
- (b) not embezzle the company's funds;
- (c) not open accounts in their own name or in the names of others, for depositing the funds or assets of the company;
- (d) not lend the company's funds to others or provide guarantees for others with the company's assets in violation of the provisions hereof and without the approval of the general meeting or the board of directors;
- (e) not enter into any contract or transaction with the company in violation of the provisions hereof and without the approval of the shareholders general meeting;
- (f) without the approval of the general meeting, not abuse its powers and functions to seek business opportunities for themselves or others as should have been attributed to the company, nor operate for themselves or others businesses similar to those of the company;
- (g) not accept commission derived from transactions of the company, as personal gains;
- (h) not reveal the company's secrets without authorization;
- (i) not abuse associated relationships to impair the interests of the company; and
- (j) other obligations of fidelity as prescribed in the laws, administrative rules, departmental regulations and the articles of association.

10.3 Directors are also required to fulfill the obligation of diligence, which means they shall carry out their function and responsibility with reasonable care and diligence as an experienced man would do in such position. Article 98 of the *Guidelines for the Articles of Association of Listed Companies* specifies the obligation of diligence for the directors of listed companies:

- (a) prudently, earnestly and diligently exercising the rights conferred by the company so as to ensure that the company's business complies with the requirements of the State laws, administrative rules and the various State economic policies and that business activities shall not exceed the business scope mentioned in the business license;
- (b) treating all the shareholders fairly;
- (c) promptly gaining understanding of the business, operation and management conditions of the company;
- (d) reporting regularly to the company and signing the written confirmation opinions, and ensuring the authenticity, accuracy and completeness of the information disclosed by the company;
- (e) providing the relevant information and materials to the board of supervisors faithfully, and not impeding the board of supervisors or supervisors in exercising their functions and powers; and
- (f) other obligations of diligence as prescribed in the relevant laws, administrative rules, departmental regulations, and the articles of association.

10.4 In addition, the Company Law also stipulates that the directors shall attend the shareholders meeting when demanded, and assist the board of supervisors in exercising their functions and powers. There are no expressed provisions as to avoiding damage to the company's reputation. However such duties should have been implied in directors' fiduciary duties and obligations of diligence above.

11. More generally, are directors required or permitted to consider the company's impacts on non-shareholders, including impacts on the individuals and communities affected by the company's operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006)?

The Company Law requires a company to abide by laws and administrative regulations, observe social moralities and business ethics, act in good faith, accept the supervision of the government and the general public, and undertake social responsibilities. However, this principle has not been elaborated in detailed operative clauses of the Company Law.

Instead, these detailed aspects of the company's impacts on non-shareholders (or the social responsibility), such as consumer rights, environment protection, employee benefits, have been dealt with by other laws, for example, the *Law on the Protection of Consumer Rights and Interests*, the *Environmental Protection Law*, and the *Labor Law and the Labor Contract Law*.

These laws have very specific requirements and standards for companies in terms of their obligations towards certain groups of people, such as employees and consumers, which the directors are required to consider when making decisions. Therefore, directors are required to consider the company's impact on non-shareholders, which is not driven by the concept of social responsibility, but rather, detailed laws that in fact regulate the various aspects relating to or overlapping with the social responsibility.

Due to independent legal person status for a company, directors are generally required to consider the matters relating to this company, and not the impacts by subsidiaries, suppliers and other business partners which will be considered by the directors of those entities respectively.

12. If directors are required or permitted to consider impacts on non - shareholders to what extent do they have discretion in determining how to balance different factors including such impacts?

Where the relevant aspects of the social responsibility have been clearly defined in specific laws, directors shall comply with such laws in decision-making process and thus do not have discretion. However, where the PRC law is still silent on such aspects of the social responsibility, directors have discretion in determining how to balance different factors including such impacts.

13. What are the legal consequences for failing to fulfill any duties described above; and who may take action to initiate them? What defenses are available? Can these issues given rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?

13.1 Where any director, supervisor or senior management personnel violates any law, administrative regulation, or the bylaw during the course of performing his duties, which has caused damages to the company, he shall be liable for indemnification of such damages to the company. For example, directors shall be responsible for the directors' resolutions and if the directors have passed a resolution which is in violation of any law, administrative regulation, the articles of association or the shareholders' resolutions and has caused severe damages to the company, the directors voting affirmatively shall be liable to the company.

If any director or senior management personnel damages the company's interest, the shareholders may (i) lodge a lawsuit in the court; (ii) request in writing the board of

supervisors to initiate a lawsuit in the court. If the board of supervisors, or if they fail to initiate a lawsuit within 30 days after receiving the request, or if, in case of emergency, the failure to lodge an action immediately will cause unrecoverable damages to the interests of the company, the shareholder(s) can directly lodge a lawsuit in the court.

13.2 If any director or senior management personnel's decision has made the company to cause damages to the stakeholders, the company will be sued by the relevant stakeholders or be investigated by the relevant government authorities.

Generally directors will be exempted from liabilities – the company will assume the liabilities towards such stakeholders – when performing their duties, except that such damages were caused by the directors' gross negligence or willful misconduct, in which case directors will be held accountable to the shareholders who can initiate legal proceedings under Section 13.1 above.

14. Are there any other directors' duties which are relevant to the interests of stakeholders?

There are no other duties relevant to the interests of stakeholders.

15. For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures? What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?

15.1 Two tier board structures exist in the PRC, which however is slightly different from the differentiation of executive directors and non-executive directors. We have adopted a separate board of supervisors in parallel with the board of directors, as in Article 52 and Article 53 of the Company for both Limited Liability Company and Company Limited by Shares, according to which the board of supervisors may exercise the following powers:

- (a) conducting inspection of the financial issues of the company;
- (b) supervising the performance of duties by the directors and senior management personnel, and submitting a proposal on the removal of any director or senior management person who violates laws or administrative regulations, the company's articles of association, or any resolution of the shareholders' meeting;
- (c) requiring the directors or senior management personnel to correct their conducts that prejudice the interests of the company;
- (d) proposing to convene interim shareholders' meetings, and convening and presiding over shareholders' meetings when the board of directors fails to perform the duties of

- convening and presiding over shareholders' meetings as specified in this Law;
- (e) putting forward proposals to the shareholders' meeting;
- (f) filing actions against the directors or senior management personnel in accordance with Article 151 of the company law; and
- (g) exercising other powers specified in the company's articles of association.

15.2 For other senior management personnel who are not directors, they shall assume same obligations as those of the directors. In the Company Law, senior management personnel is referenced in the same clause (Chapter 6 – Qualifications and Obligations of the Directors, Supervisors and Senior Management Personnel of a Company) as the directors in terms of their obligations.

Further, the powers of the general manager (in equivalent of CEO) are specifically mentioned in Article 49 of the Company Law: a limited liability company may have a manager whose employment or dismissal shall be subject to the decision of the board of directors. The manager shall be accountable to the board of directors and shall exercise the following powers:

- (a) taking charge of the management of the production and business operations of the company, and organizing the implementation of the resolutions of the board of directors;
- (b) organizing the implementation of the annual operation plans and investment plans of the company;
- (c) drafting the plans on the set-up of the internal management bodies of the company;
- (d) drafting the fundamental management systems of the company;
- (e) formulating specific regulations of the company;
- (f) proposing to employ or dismiss the vice manager(s) or personnel in charge of financial issues of the company;
- (g) making decisions on the employment or dismissal of the persons in charge of management other than those whose employment or dismissal shall be subject to the decision of the board of directors; and
- (h) exercising other powers conferred by the board of directors.

Based on the above powers, the general manager (and other senior management personnel) is running the company in the daily operations.

In accordance with the *Criminal Law of the PRC*, where an entity commits a crime, the persons who are directly in charge and the other persons who are directly responsible for the crime shall be pursued criminal liability together with the entity they are running. Thus, senior management personnel – as they are in charge of the company's daily

operations - would be exposed to criminal liabilities, rather than directors, if the company is pursued criminal liabilities (for example, commercial bribery, and crime relating to causing serious safety accidents in large-scale mass activities)

Reporting

- 16. Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non - shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).**

16.1 Annual Report Filing (Mandatory)

The SAIC used to apply an annual inspection system for all companies registered in the PRC, which system has been most recently changed to an online filing and disclosure system. According to the *Interim Regulations on the Disclosure of Enterprise Information*, a company shall, on an annual basis and within the prescribed time period, make online submission of its annual report to the relevant local bureau of the SAIC (*i.e.*, Administration for Industry and Commerce of each locality, the “AIC”) via the Market Player Credit Information Disclosure System. In practice, only very little information will be disclosed in the annual report filed with the SAIC (historically and currently), such as the basic information of the company, the payment of capital contributions by its shareholders (sponsors) etc. The filing information will not include the impacts of their operations to the impacts on non-shareholders.

16.2 Financial Reporting

(a) Listed Companies (Mandatory)

Listed companies shall comply with the strict rules for disclosure in accordance with the *Measures for the Administration of Information Disclosure by Listed Companies* promulgated by the CSRC. Listed companies shall neither evade the obligations to disclose, nor to disclose misleading information to the market. Specifically, listed companies are required to disclose in greater details their financial position,

operational conditions and material lawsuits, and publish its quarterly, half-year and annual reports which include both financial accounting data and major incidents occurred within the reporting period and their influence on the company, including certain impacts on the non-shareholders, such as impacts on the environment (if any).

Where a listed company makes any information disclosure, the documents shall be submitted for inspection to the local bureau of the CSRC where the listed company is located, and make them available at the domicile of the company for public inquiry purposes. At the same time, the listed company shall submit the draft public announcement and other documents for inspection to the stock exchange, and publish the same on the media designated by the CSRC. The information disclosure documents shall mainly include the prospectus, bond prospectus, listing announcements, regular reports, and interim reports, etc. In case of any major incident, the company shall disclose within two trading days as of the date when the directors are aware of such incident.

(b) Non-listed Companies (Voluntary)

Non-listed companies have the discretion as to whether and when to make disclosure. Most non-listed companies choose not to make such disclosure, but some like China Investment Corporation and Huawei Group make voluntary disclosure for being transparent with the public.

16.3 Corporate Social Responsibility Reporting (Mandatory/Voluntary)

Initiated by the Research Center for Corporate Responsibility Chinese Academy of Social Sciences and supported by several industry magnates, the CSR Reporting system issued a series of CSR report writing guidelines for different industries which serve as the templates of CSR report.

The SSE requires three categories of listed companies (standards corporate governance sector, financing sector and offshore listing sector) to disclose their CSR reports along with the annual reports, and for other listed companies, a voluntary reporting system is adopted. The SZSE requires those sample companies included in SZSE 100 Index to disclose the CSR reports along with the annual reports, and for the others, adopts a voluntary reporting system. In 2014, 399 SSE-listed companies ((including 90 listed companies making voluntary disclosure)) and 282 SZSE-listed companies (including 186 listed companies making voluntary disclosure) have disclosed their CSR reports, accounting for 27.6% A-share listed companies.

17. Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?

As the basic principle for information disclosure for a listed company in the PRC, if any information will affect the share price or the investors' judgment on the listed company, the company shall make reporting timely, regardless of whether such impact occurred outside of the jurisdiction, of the subsidiaries, suppliers and other business partners. However, these reporting obligations mainly apply to the scope of business developments, material transactions, financing and accounting perspectives, rather than the social responsibility perspectives (except for environment and employment issues that may cause impacts on the business or financial aspects of a company).

18. Who must verify these reports; that can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?

For the annual reports filed online with the AIC system, the legal representative and the finance manager will sign off and be responsible to verify. The AIC will only conduct procedural examination of the reports submitted. Where a company fails to report or has misrepresentation in its report,

- (a) the relevant AIC at or above the county level shall include such company in the black-list (the list of enterprises with abnormal business operations), make public the same via the Enterprise Credit Information Disclosure System, and remind the company to perform its disclosure obligations;
- (b) in case of severe violation, administrative penalties shall be imposed against the company in question by relevant competent authorities;
- (c) where losses have been caused to others, the company in question shall be liable for compensation; and, where criminal offenses are constituted, the company in question shall be investigated and pursued criminal liabilities.

For the annual reports of the listed companies, the CSRC and its local bureaus are responsible to verify. Where a listed company fails to disclose the annual report within the specified time limit, the CSRC will immediately initiate a case and conduct investigations, and the stock exchange will cooperate with the investigation according to the listing rules. If there are false records, misleading statements, or major omissions in the information disclosed, the CSRC shall impose punishment to the company and the persons directly responsible in accordance

the Securities Law.

Further, pursuant to the Securities Law, when the external service providers preparing and producing such documents as audit reports, asset valuation reports, financial advisory reports, credit rating reports or legal opinions for securities business activities as securities issuing, listing and trading, the service providers shall perform duties diligently in examining and verifying the truthfulness, accuracy and completeness of the contents of the documents and materials. Where there are false entries, misleading statements, or major omission in the documents prepared and produced by them, which cause losses to others, the service providers shall be held jointly and severally liable for compensation together with the issuers or listed companies, unless they can prove that false entries, misleading statements, or major omission are not caused by them.

- 19. What is the external assurance regime for reporting on a company's impacts on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance. Please summarize any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.**

To our knowledge, there is no other external assurance regime except for the reporting systems described in Section 16.

Stakeholder Engagement

- 20. Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?**

To our knowledge, there are no specific restrictions on circulating shareholder proposals with impacts on non-shareholders.

- 21. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard?**

To our knowledge, institutional investors are not required to consider the impacts in their investment decisions. In addition, there is no stipulation concerning the legal duty that pension funds owe with regard to investment decisions.

How does the legal duty of the fund align with term and contractual performance criteria

of fund managers – does this facilitate or deter consideration of such impacts?

For securities investment funds, fund managers and fund custodians shall conscientiously fulfill their duties and perform their obligations to be honest, good faith, and be prudent and diligent in accordance with the *Law on Securities Investment Funds*. Meanwhile, the senior management personnel shall also abide by the *Measures for the Administration of Service of Senior Executives of Securities Investment Fund Industry* promulgated by the CSRC. However, for other funds, there is no specific stipulation for now.

22. Can non-shareholders address companies' annual general meetings? What is the minimum shareholding required for a shareholder to raise a question at a company's AGM?

There is no legal provision prohibiting non-shareholders addressing the companies' annual general meetings, though in practice, the company will not or very rarely invite non-shareholders to address the meeting.

There is no minimum shareholding requirement for a shareholder to raise a question at the AGM but whether the shareholder will be answered depends on the rights of information he is entitled to. The Company Law stipulates that any shareholder can inspect and duplicate the company's articles of association, the minutes of the shareholders' meetings, the resolutions of the board of directors, the resolutions of the board of supervisors, and the financial and accounting reports of the company. However, if the company has reasons to believe that the shareholder's request to inspect the accounting books is for any improper purpose and may prejudice the legitimate interests of the company, the company may reject the request and shall, within 15 days after the shareholder submits the written request, give a written reply to the shareholder and state the reasons therefor. Where the company refuses to allow inspection by the shareholder, the shareholder may request the court to require the company to provide the access to inspection.

Other issues of corporate governance

23. Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the Global Compact, the OECD Guidelines for Multinational Enterprises etc.) , related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?

No specific provisions, except for the general principle set forth in Article 5 of the Company Law.

24. Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?

In accordance with the Company Law, for a limited liability company established with investment from two or more State-owned enterprises or two or more other types of State-owned investing parties, its board of directors shall include the representatives of the employees of the company. For other limited liability company, the board of directors may include representatives of the employees, which however is not mandatory.

25. Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?

To our knowledge, there are no laws requiring gender, racial/ethnic, religious or other stakeholder representation or non-discrimination on company boards.

That said, the *Labor Law of the PRC* requests that employers shall treat the employees fair regardless of their ethnic backgrounds, races, gender or religious beliefs (Article 12). Further, females shall have the equal right of employment as males. During the recruitment process, except for the works or positions not suitable for females, employers shall not refuse to recruit females or raise the standards of female recruitment (Article 13).

In addition, the *Constitution of the PRC* stipulates that all nationalities in the PRC are equal (Article 4).

26. In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholder groups? Are there any serious proposals to impose such responsibility?

As a shareholder, the parent company shall assume liabilities for its subsidiary to the extent of its subscribed capital contribution or shares, except for:

- (a) where the shareholder of a company evades debts by abusing the independent legal person status of the company or by abusing the shareholder's limited liabilities, thus severely prejudicing the interests of the creditors of the company, the shareholder shall be jointly and severally liable for the debts of the company, which may be pursued in the court by

- the creditors of the company.
- (b) where the parent company has obtained a special operating permit from the government authority and authorizes (guide) its subsidiary to operate based on the permitted scope of such operating permit, and the parent company undertakes to assume joint and several liabilities with its subsidiary.

Other than the above circumstances, the parent company generally would not incur liability for its subsidiaries and we are not aware of any serious proposals to impose such responsibility.

27. Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.

To our knowledge, there is no incoming law or proposals that are relevant to the issues raised in this questionnaire for now.

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This memo shall only serve as our interpretation and summary of the related PRC legal landscape relating to corporate social responsibility in response to the template research queries for Professor Robert G. Eccles' academic research purposes, which shall not however be interpreted as our legal advice for a client matter and nor shall our response be relied upon in any commercial transactions or projects.

This memo is issued based on our understanding of the then-current PRC laws, regulations, rules or interpretation of applicable governmental authorities of the PRC, that are publicly available and currently in force on the date hereof, and we assume no responsibility to update this memo even if any facts, circumstances, events or developments that hereafter may be brought to our attention and that may alter, affect or modify the opinion expressed herein. Our responses are strictly limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters and responses expressly stated herein.

Kind regards

Dacheng Law Offices