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## Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China

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# Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China

Virginia Harper Ho\*

## ABSTRACT

*Corporate social responsibility (CSR) is often understood as the voluntary actions firms take beyond legal compliance. However, in recent years, governments around the world have also begun to actively promote CSR, reflecting broader governance trends that embrace “soft law,” quasi-voluntary standards, and other novel incentives to move companies toward and beyond minimum regulatory goals. Comparative legal scholarship has only recently begun to consider the intersections of these mechanisms with positive law, formal institutions, and traditional regulatory enforcement structures. The adoption of these policies in historically weak regulatory environments raises puzzling questions about their motivation, scope, and potential.*

*As a leader among emerging markets, China offers an important context in which to consider state CSR policies and the role of alternative regulatory tools in legal implementation. This Article adopts a comparative perspective to examine how national and subnational governments in China advance CSR.*

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\* Associate Professor, University of Kansas School of Law. This research was completed with the support of the Sun Yat-Sen (Zhongshan) University School of Government, the Zhejiang University Guanghua School of Law, the University of Kansas Center for East Asian Studies, and the University of Kansas Office of International Programs. This Article benefited from the insights of Wang Hongyi, Chen Xudong, and Liu Guangyou, as well as participants at the 2012 Workshop on Chinese Law sponsored by the Centre for Chinese Studies at the Columbia University School of Law; the University of Oklahoma China Faculty Forum sponsored in October 2011 by the Institute for U.S.–China Issues; a research workshop at the Chinese University of Hong Kong; the 2011 conference on “Corporate Social Responsibility as Comparative Governance” sponsored by the Fudan University School of International Relations and Public Affairs; and presentations at the Zhejiang University Guanghua School of Law and at the Sun Yat-sen University School of Law and School of Government. I am indebted as well to the officials, nongovernmental organizations, lawyers, and managers whose perspectives contributed to this project and to Kejun Zhu, Jie Li, and Jiang Yueting for their excellent research assistance. The accuracy of the content of all Tables and the Appendix are the responsibility of the author.

*Based on primary interview data, it develops a state-centric model of CSR that contrasts with the market-based model adopted by U.S. governments and the relational model advanced by EU member states. The Article concludes by considering the implications of state-centric CSR initiatives for norm creation and legal implementation.*

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## I. INTRODUCTION

Constrained regulatory capacity and an awareness of the limits of traditional command and control regulation have led many governments around the world to look for alternative tools to incentivize good corporate conduct.<sup>1</sup> Public recognition of these same limits has spurred a diverse and dynamic corporate social responsibility (CSR) movement, which historically has been driven by consumers, investors, and civil society organizations,<sup>2</sup> but in recent years has also captured the attention of governments,<sup>3</sup> including some in emerging markets.<sup>4</sup> Indeed, the role of governments in

1. A deep literature analyzes these trends. See, e.g., ROBERT AGRANOFF & MICHAEL MCGUIRE, *COLLABORATIVE PUBLIC MANAGEMENT: NEW STRATEGIES FOR LOCAL GOVERNMENTS* (2003); IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 3, 19 (1992); EUGENE BARDACH & ROBERT A. KAGAN, *GOING BY THE BOOK: THE PROBLEM OF REGULATORY UNREASONABLENESS* (1982); FIONA HAINES, *CORPORATE REGULATION: BEYOND 'PUNISH OR PERSUADE'* (1997); JAY A. SIGLER & JOSEPH E. MURPHY, *INTERACTIVE CORPORATE COMPLIANCE: AN ALTERNATIVE TO REGULATORY COMPULSION* (1988); Jody Freeman, *Collaborative Governance in the Administrative State*, 45 *UCLA L. REV.* 1 (1997); Peter J. May, *Compliance Motivations: Affirmative and Negative Bases*, 38 *LAW & SOC'Y REV.* 41, 41–42 (2004).

2. See, e.g., DAVID VOGEL, *THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* 16 (2005); Doreen McBarnet, *Corporate Social Responsibility Beyond Law, Through Law, For Law: The New Corporate Accountability*, in *THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW* 9, 45–54 (Doreen McBarnet, Aurora Voiculescu & Tom Campbell eds., 2007).

3. Laura Albareda et al., *The Changing Role of Governments in Corporate Social Responsibility: Drivers and Responses*, 17 *BUS. ETHICS: EUR. REV.* 347, 347 (2008); see also, e.g., JOSEP M. LOZANO, LAURA ALBAREDA & TAMYKO YSA, *GOVERNMENTS AND CORPORATE SOCIAL RESPONSIBILITY: PUBLIC POLICIES BEYOND REGULATION AND VOLUNTARY COMPLIANCE* (2008); Jeremy Moon, *Government as a Driver of Corporate Social Responsibility* 1 (ICCSR Res. Paper Series, No. 20-2004, 2004); *infra* Part II (surveying state-backed CSR initiatives).

4. See *infra* Part II.B; see also GTZ & BERTELSMANN STIFTUNG, *THE CSR NAVIGATOR: PUBLIC POLICIES IN AFRICA, THE AMERICAS, ASIA AND EUROPE* (2007), available at <http://www.bertelsmann-stiftung.de>; Jeremy Moon, Nahee Kang & Jean-Pascal Gond, *Corporate Social Responsibility and Government in Western Europe and Northeast Asia from a National Governance Systems Perspective*, 3–4 (ICCSR Res. Paper Series, No. 56-2010, 2010). See generally TOM FOX, HALINA WARD & BRUCE HOWARD, *WORLD BANK, PUBLIC SECTOR ROLES IN STRENGTHENING CORPORATE SOCIAL RESPONSIBILITY: A BASELINE STUDY* (2002), available at <http://pubs.iied.org/pdfs/16017IIED.pdf> (surveying CSR practices in emerging markets).

promoting CSR reflects broader governance trends that embrace “soft law,” quasi-voluntary standards, and other novel incentives to move companies toward and beyond minimum regulatory goals.<sup>5</sup>

A diverse literature has examined the emergence and impact of these new tools on firm behavior.<sup>6</sup> Related work, much of it within political science and public administration, has also begun to examine the role of governments in promoting CSR; some of this literature explores the connections between state-backed CSR and “new governance” approaches, where private and quasi-private actors and institutions supplement or complement the traditional roles of the state.<sup>7</sup> Scholars of international law have also frequently examined the intersections of alternative governance tools with positive law, formal institutions, and traditional regulatory enforcement structures,<sup>8</sup> but few comparative scholars have considered CSR within that mix.<sup>9</sup> This Article brings these literatures together to investigate a surprising phenomenon—the recent efforts of governments in China to advance CSR.

As a leader among emerging markets, China offers an important context in which to examine state promotion of CSR. Over the past decade, governments in China at various levels have instituted new measures to promote CSR as an explicit policy objective. Many are tied directly to legal compliance or regulatory mandates; others go “beyond regulation” but make use of existing institutions and incentive structures.<sup>10</sup> These trends place China in the company of

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5. See sources cited *supra* note 1. The public administration literature on governance emphasizes relational networks, deregulation, the intersection of public and private resources, and the use of multiple policy instruments. Carolyn J. Heinrich et al., *Governance as an Organizing Theme for Empirical Research*, in *THE ART OF GOVERNANCE: ANALYZING MANAGEMENT AND ADMINISTRATION* 3, 3 (Patricia W. Ingraham & Laurence E. Lynn, Jr. eds., 2004). On the connection between CSR and new regulatory trends, see, e.g., LOZANO, ALBAREDA & YSA, *supra* note 3, at 25–26 (reviewing related literature); VOGEL, *supra* note 2, at 8–10 (addressing new trends); McBarnet, *supra* note 2, at 31–44. See also *infra* Part II.A.

6. See sources cited *supra* note 1.

7. See sources cited *supra* note 5. On “new governance” and its intersections with regulation, see generally *LAW & NEW GOVERNANCE IN THE E.U. AND THE U.S.* (Gráinne de Búrca & Joanne Scott eds., 2006); David M. Trubek & Louise G. Trubek, *New Governance & Legal Regulation: Complementarity, Rivalry, and Transformation*, 13 *COLUM. J. EUR. L.* 539 (2007).

8. See, e.g., JENNIFER ZERK, *MULTINATIONALS AND CORPORATE SOCIAL RESPONSIBILITY: LIMITATIONS AND OPPORTUNITIES IN INTERNATIONAL LAW* 69–72 (2006) (discussing “soft law” and its role in the development of international law on CSR); Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 *VAND. J. TRANSNAT'L L.* 501, 501 (2009) (considering the contributions of new governance tools as a form of international regulation).

9. Notable exceptions include ZERK, *supra* note 8, at 7 (noting that many new regulatory proposals are “designed to enhance corporate accountability”), and Li-Wen Lin, *Corporate Social Responsibility in China: Window Dressing or Structural Change?*, 28 *BERKELEY J. INT'L L.* 64, 64 (2010).

10. See *infra* Part III (surveying state-backed CSR in China).

governments around the world that are actively promoting CSR—in fact, by some measures, China leads many of its emerging market peers and even many Organization for Economic Cooperation and Development (OECD) countries in the level of government support for CSR.<sup>11</sup> Yet these developments have only recently attracted the attention of Western legal scholars.<sup>12</sup>

Given the continued dominance of the state in the Chinese economy and society, it may come as no surprise that China's governments are now defining CSR as well. On the other hand, that governments in China might be emerging as CSR advocates strikes many observers as a contradiction in terms. Indeed, state policies to advance CSR in emerging markets like China and other historically weak regulatory environments raise puzzling questions about their motivation, scope, and potential: Why, for example, would governments that are unable or unwilling to effectively enforce labor, environmental, or consumer-protection laws advance CSR? How do CSR policies intersect, if at all, with law? And most fundamentally, how can state-backed CSR move companies toward basic compliance, not to mention best practices, when positive law has failed? The answers to these questions are of interest to scholars of comparative regulatory systems, legal reform, and compliance, but they are also critical for foreign investors who face competitive challenges from uneven legal implementation and weak compliance incentives in these important growth markets.

This Article offers a preliminary response based on an analysis of the recent efforts of Chinese governments at both the national and subnational levels to advance CSR. Following methodology used in prior comparative studies of state-led CSR practice,<sup>13</sup> the analysis rests in part on a documentary review of Chinese legislative sources, official policy documents, and secondary sources referencing government initiatives that either expressly promote CSR or that indirectly incentivize responsible business practice, broadly defined.<sup>14</sup>

11. See GTZ & BERTELSMANN STIFTUNG, *supra* note 4, at 9–10 (placing China above Brazil, India, and Poland and on par with the United States by some measures).

12. See, e.g., Lin's excellent survey of CSR developments in China. Lin, *supra* note 9, at 68. A recent special issue of the *University of British Columbia Law Review* on Corporate Social Responsibility in the Asia-Pacific Rim also includes contributions on CSR developments in China. Pittman B. Potter, *Corporate Social Responsibility in the Pacific Rim*, 45 U.B.C. L. REV. 635, 635–36 (2012). Leading treatments of the topic by Chinese scholars include ZHENGFU TUIJIN QIYE SHEHUI ZEREN FALU WENTI YANJIU [GOVERNMENT PROMOTION OF CSR AND THE LAW] (Wang Dan ed., 2010) [hereinafter GOVERNMENT PROMOTION OF CSR]; ZHENGFU YU QIYE SHEHUI ZEREN: GUOJI JINGYAN YU ZHONGGUO SHIJI [GOVERNMENTS AND CSR: INTERNATIONAL EXPERIENCES AND CHINESE PRACTICES] (Chen Jiagui et al. eds., 2010) [hereinafter GOVERNMENTS & CSR 2010]. Scholarship on regulatory fields intersecting with CSR, such as environmental, labor, consumer protection, and philanthropy, is of course too vast to reference here.

13. See sources cited *supra* note 3.

14. This review adopted the broadest possible view of CSR and included sources referencing “harmonious” (*hexie* 和谐) business practice or sustainability

The results of this stage of the analysis are summarized in Part IV and in Table 1 of the Appendix. These findings are supplemented by over seventy semi-structured interviews conducted in 2011 and 2012 with local and provincial-level officials and representatives of nongovernment organizations (NGOs), domestic and foreign businesses, and trade associations in Guangdong and Zhejiang provinces, as well as in Beijing and Shanghai. Since CSR policies are constantly evolving, many important examples have no doubt been overlooked. However, this approach makes possible general observations about the scope, diversity, and motivations of state-backed CSR initiatives.

Although comparative legal scholarship tends to focus on national law and legal systems, disaggregating the analysis to the subnational level here is important for a number of reasons. First, the Chinese central government has decentralized many core administrative responsibilities and primary enforcement authority to subnational governments.<sup>15</sup> Provincial and local resources and commitment are therefore most critical to legal enforcement and implementation of national legislation.<sup>16</sup> Second, like most other national governments worldwide, China has not yet adopted a national CSR policy.<sup>17</sup> Its central government has also given subnational governments considerable latitude for policy innovation

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(*kechixu fazhan* 可持续发展) as well. Primary online sources used to identify many of the subnational initiatives examined here include CHINA CORP. SOC. RESP. MONITORING & EVALUATION SYS., <http://www.siccsr.org/en/> (last visited Feb. 6, 2013) (Sino-Dutch CSR Project); SINO-GERMAN CORP. SOC. RESP. PROJECT, [www.chinacsrproject.org](http://www.chinacsrproject.org) (last visited Feb. 6, 2013); SINO-SWEDISH CSR COOPERATION NETWORK, <http://csr.mofcom.gov.cn> (last visited Feb. 6, 2013). All are in partnership with the Chinese Ministry of Commerce (MOFCOM). Other key secondary sources from which government CSR programs have been identified include CHINA WTO TRIBUNE & SINO-GERMAN CORPORATE SOC. RESPONSIBILITY PROJECT, ZHONGDE MAOYI KECHIXU FAZHAN YU QIYE XINGWEI WEI GUIFAN XIANGMU, ZHONGGUO DIFANG ZHENGFU TUIJIN QIYE SHEHUI ZEREN ZHENGCE FENXI [THE ANALYSIS OF LOCAL GOVERNMENTS' CSR POLICIES IN CHINA] (2010) [hereinafter GIZ 2010 REPORT]; ZHONGGUO DIFANG ZHENGFU TUIJIN QIYE SHEHUI ZEREN ZHENGCE GAILAN [OVERVIEW OF CSR POLICY DEVELOPMENT BY LOCAL GOVERNMENTS IN CHINA] (Gao Baoyu et al. eds., 2012), available at <http://www.chinacsrproject.org> [hereinafter OVERVIEW OF CSR POLICY DEVELOPMENT]; Joelle Brohier, *CSR Frameworks in China and the European Union Insights for CSR Workshops*, CHINA-EUROPA FORUM (June 2010), [http://www.china-europa-forum.net/bdfdoc-1704\\_en.html](http://www.china-europa-forum.net/bdfdoc-1704_en.html). Media reports of CSR initiatives, official reports on CSR implementation, official government websites, and other secondary sources were also consulted.

15. See, e.g., Jae Ho Chung, *Central-Local Dynamics: Historical Continuities and Institutional Resilience*, in MAO'S INVISIBLE HAND: THE POLITICAL FOUNDATIONS OF ADAPTIVE GOVERNANCE IN CHINA 297, 297–313 (Sebastian Heilmann & Elizabeth J. Perry eds., 2011) (placing reform-era decentralization in historical context).

16. See JIANFU CHEN, CHINESE LAW: CONTEXT AND TRANSFORMATION 653–92 (2008) (surveying the sources and nature of China's implementation challenges).

17. GTZ & BERTELSMANN STIFTUNG, *supra* note 4, at 32–33.

and experimentation based on local conditions.<sup>18</sup> Therefore, references here to the “state” refer broadly to a range of national-level state agencies and subnational governments. It is also important to acknowledge that the Chinese state, like other political systems, is not monolithic, and the views of individual officials at various levels of the Chinese government and in different agencies may vary widely from the perspectives reflected in official policy.

Placing these trends in comparative context, Part II first defines CSR and challenges common understandings of CSR as strictly “beyond regulation.” It then introduces a widely recognized framework developed by the World Bank for conceptualizing the role of governments in promoting CSR and explores the range of tools governments have adopted to do so, drawing on examples from Europe, the United States, and several emerging markets. Part III then applies and extends this analytical framework to introduce the CSR tools adopted by national and subnational governments in China.

Based on the interview and documentary data presented in Part III, Part IV develops a state-centric model of CSR and considers its implications for norm creation and legal implementation. This Article does not presume any causal relationship between firms’ commitments to CSR (or legal compliance) and financial performance, although CSR advocates, including governments in China, rely heavily on the “business case” for CSR. The author has engaged with this debate elsewhere.<sup>19</sup> This Article observes first that state promotion of CSR creates new incentive structures for some firms that are designed to promote legal compliance. Moreover, in contrast to other governments that support CSR practices, Chinese governments are able to define and advance CSR not only directly in their capacity as legislators, regulators, enforcers, and market players, but also indirectly through relational and institutional ties to the business community and leading civil society organizations.<sup>20</sup>

This expansive role of the state is in keeping with China’s brand of state capitalism and allows the state to solicit firms’ support of its policy goals under the rubric of CSR. However, the centrality of the state’s role means that the legitimacy and effectiveness of these initiatives depends on the continued commitment, resources, and influence of governments at various levels. In short, this Article argues that the success of state-centric CSR, like legal

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18. See generally Sebastian Heilmann, *Policy Experimentation in China’s Economic Rise*, 43 *STUD. COMP. INT’L DEV.* 1 (2008).

19. See Virginia Harper Ho, “Enlightened Shareholder Value”: *Corporate Governance Beyond the Shareholder-Stakeholder Divide*, 36 *J. CORP. L.* 59, 82–86 (2010) (surveying empirical evidence of the links between CSR and corporate financial performance and between stakeholder-oriented investment strategies and superior returns on investment).

20. See *infra* Part IV.



implementation itself, depends ultimately on *government* responsibility.

State-centric CSR is therefore unlikely to overcome existing governance gaps that impede the implementation of law. However, it represents an adaptation of the institutions and accountability structures that shape law's legitimacy, enforcement, and even substance. This Article maps the intersections between state-backed CSR initiatives and the law and lays a foundation for future empirical work on their impacts.

## II. CSR AND THE STATE REGULATION AND "BEYOND REGULATION"

CSR is a concept that is susceptible of myriad meanings.<sup>21</sup> However, common definitions converge on two basic dimensions: (1) how the company conducts its business, in other words, "good corporate citizenship," and (2) the company's responsiveness to stakeholders, such as employees, local communities, and the environment.<sup>22</sup> Under the first dimension, CSR encompasses efforts by the company to adhere to moral and ethical norms and to make a positive impact on society. The second dimension emphasizes that a company is not only accountable to its shareholders for the financial success of the firm, but that it also has an obligation to a wider range

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21. See, e.g., *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: A Renewed EU Strategy for 2011–14 for Corporate Social Responsibility*, ¶ 3.1, COM (2011) 681 final (Oct. 25, 2011) [hereinafter *EC 2011 CSR Strategy*], available at [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm) (defining CSR as "the responsibility of enterprises for their impacts on society"); FOX, WARD & HOWARD, *supra* note 4, at 1 (defining CSR as "[t]he commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life" (alteration in original)); see also ZERK, *supra* note 8, at 29–32 (surveying definitions of CSR).

22. Similar definitions have been recognized by Chinese scholars as well. See, e.g., GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 28–30 (discussing its stakeholder foundations); Liu Cheng, *Gongsi Shehui Zerende Dingwei [Defining Corporate Social Responsibility]*, 18 ZHONGWAI FAXUE [PEKING U. L.J.] 530–40 (discussing various dimensions of the concept of CSR in Chinese scholarship).

of constituencies.<sup>23</sup> This dimension is often linked to the corporation's contribution to economic and environmental sustainability.<sup>24</sup>

At first blush, the proposition that governments can play a role in promoting CSR may seem self-contradictory. CSR is typically understood as *voluntary* actions companies take *beyond* what is required by law.<sup>25</sup> This common conception implies that CSR operates exclusively “beyond regulation” and at the initiative of private, rather than public, actors. It draws support from the fact that pressure toward CSR in the developed world has typically come from market players—namely, consumers and investors—and from civil society organizations.<sup>26</sup> From this perspective, a government's role in CSR is carried out through its core legislative and enforcement function, and indeed, most aspects of CSR, such as labor rights and environmental protection, are already the subject of independent legal obligations in most jurisdictions.<sup>27</sup>

However, most commentators now acknowledge that CSR cannot be defined simplistically in terms of distinctions between voluntary tools or “soft law,” on the one hand, and “hard” enforceable legal mandates on the other,<sup>28</sup> nor is the assumed divide between the two a

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23. See Cheng, *supra* note 22 (identifying these dimensions within Chinese scholarship); see also *EC 2011 CSR Strategy*, *supra* note 21, ¶ 1.1 (“CSR requires engagement with internal and external stakeholders . . .”); GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 28–30 (noting that CSR could be analyzed in the framework of Chinese economics law base on social interest); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-744, NUMEROUS FEDERAL ACTIVITIES COMPLEMENT U.S. BUSINESS'S GLOBAL CORPORATE SOCIAL RESPONSIBILITY EFFORTS 5 (2005) [hereinafter GAO REPORT], available at <http://www.gao.gov/new.items/d05744.pdf> (discussing different definitions and components of CSR).

24. See, e.g., *EC 2011 CSR Strategy*, *supra* note 21, ¶ 1.2 (“CSR underpins the [European] strategy for smart, sustainable, and inclusive growth . . .”); INT'L ORG. FOR STANDARDIZATION [ISO], DISCOVERING ISO 26000, (2012), available at [http://www.iso.org/iso/discovering\\_iso\\_26000.pdf](http://www.iso.org/iso/discovering_iso_26000.pdf) (emphasizing that the various components of an organization's CSR commitment under the ISO26000:2010 CSR standard are designed to collectively increase its contribution to sustainability).

25. See, e.g., *EC 2011 CSR Strategy*, *supra* note 21, ¶ 1 (stating that CSR “concerns actions by companies over and above their legal obligations towards society and the environment”); *Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility*, ¶ 20, COM (2001) 366 final (July 7, 2001) [hereinafter *EC 2001 CSR Green Paper*] (defining CSR as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”).

26. See generally DAVID VOGEL, *THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* (2005) (discussing the origins and potential of CSR).

27. The “core subjects and issues” included in the ISO26000:2010 CSR standard illustrate this clearly; they include organizational governance, human rights, labor practices, the environment, fair operating practices, consumer issues, and community involvement and development. ISO, *supra* note 24, at 7.

28. See Zerk, *supra* note 8, at 69–72 (addressing the distinction between “soft law” and “hard law” in an international context).

clear one.<sup>29</sup> Indeed, legal compliance is widely recognized as a foundational element of CSR.<sup>30</sup> For example, ISO26000:2010, an international CSR standard developed through the combined effort of ninety-nine member countries of the International Organization for Standardization (ISO), defines CSR to include legal compliance and “respect for the rule of law.”<sup>31</sup> Similarly, in the well-known pyramid model of CSR developed by Archie Carroll, law forms the pyramid’s base, while corporate philanthropy, ethical and moral dimensions, and the internalization of CSR strategy into firm operations lie at the peak of the pyramid and evidence a more extensive commitment to CSR.<sup>32</sup>

Moreover, both legal obligations and CSR commitments that go beyond regulation can be enforced using a range of tools that span the supposed divide between voluntary and mandatory rules.<sup>33</sup> For example, firms’ voluntary CSR commitments are in fact enforced by global NGOs, consumer activism, and other alternative governance mechanisms; they can influence the content of future regulation as well.<sup>34</sup> At the same time, regulation, policymaking, standard setting, and other forms of governmental facilitation of CSR can influence firms’ voluntary adoption of responsible business practices beyond enhanced compliance with legal rules.<sup>35</sup> The assumed boundary between CSR and the law blurs further when governments become involved in setting CSR policies and integrate those policies into their traditional legislative and regulatory functions, as described below. CSR and the law are therefore intertwined and mutually influencing.<sup>36</sup>

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29. See *id.* at 30 (challenging the voluntary–mandatory distinction as “confusing and unhelpful”). See generally Doreen McBarnet, *Corporate Social Responsibility Beyond Law, Through Law, For Law: The New Corporate Accountability*, in *THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW* (Doreen McBarnet, Aurora Voiculescu & Tom Campbell eds., 2007).

30. See *EC 2011 CSR Strategy*, *supra* note 21, ¶ 3.1 (“Respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for [CSR].”); *EC 2001 CSR Green Paper*, *supra* note 25, ¶ 21 (“Being socially responsible means not only fulfilling legal expectations but also going beyond compliance . . .”).

31. See ISO, *supra* note 24, at 3 (“[C]ompliance with law is a fundamental duty of any organization and an essential part of their social responsibility.”); see also INT’L ORG. STANDARDIZATION, [www.iso.org](http://www.iso.org) (last visited Feb. 6, 2013) (listing ISO members).

32. Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Towards the Moral Management of Organizational Stakeholders*, *BUS. HORIZONS*, July–Aug. 1991, at 40–43.

33. ZERK, *supra* note 8, at 35. On these intersections, see generally CHRISTINE PARKER, *THE OPEN CORPORATION: EFFECTIVE SELF-REGULATION AND DEMOCRACY* (2002); Pierre-Hugues Verdier, *Transnational Regulatory Networks and Their Limits*, 34 *YALE J. INT’L L.* 113 (2009).

34. See ZERK, *supra* note 8, at 32–36 (discussing how voluntary standards can ultimately shape legal rules).

35. For empirical evidence, see, e.g., Christine Parker’s work on “meta-regulation,” that is, the regulation of self-regulation. PARKER, *supra* note 33, at 245–91.

36. ZERK, *supra* note 8, at 35.

### A. Government Roles in Advancing CSR

As the European Commission has recently affirmed, positive law and related regulations serve as a foundation on which voluntary CSR initiatives may build.<sup>37</sup> However, law is only one of many sources of norms that ground economic and social interactions, and its limits are well recognized.<sup>38</sup> From the legislative process to the optimal calibration of legal incentives to enforcement of enacted laws and regulations—all of these dimensions present challenges.<sup>39</sup> The rise of modern global economic systems, multinational enterprises, and the technological capacity for the rapid exchange of information, capital, and even culture has made these limits more obvious.<sup>40</sup>

As a matter of domestic regulation, then, governments around the world have experimented with a range of regulatory tools to address these limits, moving beyond traditional command-and-control, penalty-based regulation toward a mix of strategies that includes reliance on cooperative tools that emphasize voluntary and quasi-voluntary strategies, rather than the threat of penalties, to influence corporate and individual behavior.<sup>41</sup> These tools include penalty waivers for self-disclosure of violations, educational programs, and financial incentives for firms who implement voluntary internal compliance systems.<sup>42</sup> Many of the CSR policy tools introduced here replicate or reinforce these cooperative- or compliance-oriented enforcement strategies.

37. See, e.g., text accompanying *supra* note 35.

38. See PETER SCHUCK, *THE LIMITS OF LAW: ESSAYS ON DEMOCRATIC GOVERNANCE* 419–55 (2000) (discussing the contributions of law, norms, and markets); CHRISTOPHER STONE, *WHERE THE LAW ENDS: THE SOCIAL CONTROL OF CORPORATE BEHAVIOR* (1975) (surveying alternatives to law as a source of norms).

39. See Christine Parker, *The “Compliance” Trap: The Moral Message in Responsive Regulatory Enforcement*, 40 *LAW & SOC’Y REV.* 591, 591–92 (2006) (explaining the regulatory dilemma of deterrence-based and compliance-based incentives); see also sources cited *supra* note 1.

40. See ZERK, *supra* note 8, at 243–83 (discussing the emergence of transnational voluntary regimes in response to the limits of territorially based regulatory tools). See generally Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 *VAND. J. TRANSNAT’L L.* 501 (2009) (same); Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 *N.Y.U. L. REV.* 733, 803–04 (2005) (noting the limits of law as a constraint on corporate conduct, in part because “variations in legal regulation among different nations . . . inevitably leave legal gaps requiring supplementation by social and moral sanctions that operate internationally”); Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 *U.C. DAVIS L. REV.* 705 (2002) (challenging standard economic arguments that conducting business “within the bounds of the law” provides a clear standard for modern multinationals).

41. See sources cited *supra* note 1; see also *EC 2011 CSR Strategy*, *supra* note 21, ¶ 4.3 (“Self and co-regulation are acknowledged by the EU as a part of the better regulation agenda.”).

42. See SIGLER & MURPHY, *supra* note 1, at 143–65 (surveying these tools).

To be sure, many factors beyond regulatory goals motivate governments to promote CSR. These include attracting investment and improving private-sector competitiveness, integrating local and global markets, and solving complex social and environmental problems through public-private partnerships.<sup>43</sup> However, governments also support CSR in an effort to minimize the negative externalities of corporate activity, create a level playing field for business, bolster the legitimacy of law and state policy, and fill governance gaps created by the state's own institutional weakness.<sup>44</sup> They seek to achieve these goals by harnessing voluntary firm practice as a complement to state regulation.

The World Bank and the United Nations have identified key public-sector roles in CSR to include "mandating, facilitating, partnering and endorsing" CSR.<sup>45</sup> Of these four roles, only the "mandating" role contemplates a traditional role for the government as legislator or regulator. These roles are not mutually exclusive, and some tools span multiple roles.

*Endorsing.* By endorsing CSR, governments raise awareness and lead by example. Governments' tools to endorse CSR include information dissemination, training, and educational programs; governments also endorse CSR as market actors by building CSR into public procurement and other contracting requirements.<sup>46</sup>

*Facilitating.* Governments facilitate firm CSR practices through standard setting, voluntary guideline and certification systems, auditing and monitoring, and establishing financial and reputational incentives for firms. They can also facilitate CSR by enacting enabling regulation to support civil society organizations and by implementing multilateral conventions and guidelines. Targeted CSR trainings, government-coordinated or government-subsidized services to aid companies in CSR reporting, and other forms of capacity building also facilitate CSR practices.<sup>47</sup>

*Partnering.* This dimension includes direct government collaboration with companies on specific projects (public-private partnerships), state participation in efforts of international organizations to promote CSR, and state-mediated dialogue around CSR involving companies and other stakeholders.<sup>48</sup> In many cases,

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43. UN GLOBAL COMPACT & BERTELSMANN STIFTUNG, THE ROLE OF GOVERNMENTS IN PROMOTING CORPORATE RESPONSIBILITY AND PRIVATE SECTOR ENGAGEMENT IN DEVELOPMENT 10-11 (2010), available at [http://www.unglobalcompact.org/docs/news\\_events/8.1/UNGC\\_Bertelsmannn.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/UNGC_Bertelsmannn.pdf).

44. *Id.* See generally Jeremy Moon, *Government as a Driver of Corporate Social Responsibility* (ICCSR Res. Paper Series, No. 20-2004, 2004) (surveying the UK experience).

45. FOX, WARD, & HOWARD, *supra* note 4, at iii; UN GLOBAL COMPACT & BERTELSMANN STIFTUNG, *supra* note 43, at 16-18.

46. FOX, WARD, & HOWARD, *supra* note 4, at 6-8.

47. *Id.*

48. *Id.* at 5.

the relationship between governments and businesses is a bidirectional one, where both contribute to evolving practices and policies.<sup>49</sup> Governments may also directly engage civil society organizations and business in designing, implementing, and monitoring CSR programs, for example, through joint working groups on CSR policy.<sup>50</sup> Accordingly, partnerships around CSR issues can become a three-way collaboration between governments, the business community, and civil society organizations, in which governments serve as initiators, moderators, or facilitators.<sup>51</sup>

*Mandating.* Finally, governments can mandate CSR adoption through legislation and regulatory enforcement. Strategies in this category include mandatory sustainability reporting and standards for the content of corporate codes of conduct that may reach beyond legal compliance.<sup>52</sup> As the European Commission has recognized, traditional top-down regulation can itself play an important complementary role in “creating an environment more conducive to enterprises voluntarily meeting their social responsibility.”<sup>53</sup>

Examples of particular policies in each of these areas are listed in Table 1 of the Appendix. Table 1 orders the tools as shown above, moving from soft tools (e.g., endorsing or facilitating) to hard tools (e.g., mandating). As Table 1 details, government backing for CSR most obviously includes state initiatives that are explicitly designated as advancing CSR. However, it also includes state-backed voluntary compliance programs, like the European Union’s Eco-Management and Audit Scheme (EMAS), discussed below, which are intended to move companies beyond compliance as part of regulatory enforcement strategies.

### B. CSR and the State in Comparative Perspective: The United States, Europe, and Emerging Markets

Over the past decade, a number of studies have surveyed the diverse roles played by governments in the United States, the

49. See LOZANO, ALBAREDA & YSA, *supra* note 3, at 37 (describing relational CSR approaches); FOX, WARD, & HOWARD, *supra* note 4 (discussing the respective roles of business and government).

50. LOZANO, ALBAREDA & YSA, *supra* note 3, at 35–39; FOX, WARD, & HOWARD, *supra* note 4, at 22.

51. See Albareda et al., *supra* note 3, at 350, 352 (“[O]ne of the emerging themes regarding the role of government in the development of CSR is centered on its role as mediator, facilitator and partner.”); see also LOZANO, ALBAREDA & YSA, *supra* note 3, at 36–37 (discussing allocation of responsibility in CSR collaboration); UN GLOBAL COMPACT & BERTELSMANN STIFTUNG, *supra* note 43, at 16 (same).

52. See generally Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT’L L. 389 (2005) (advocating such measures).

53. EC 2011 CSR Strategy, *supra* note 21, ¶ 1 (noting that “certain regulatory measures create an environment” that is more conducive to voluntary CSR practices).

European Union, and many emerging markets in advancing CSR.<sup>54</sup> This literature confirms that governments' approaches to CSR are informed by each country's political, economic, and cultural context, as well as by existing relationships between business, government, and civil society.<sup>55</sup> Not surprisingly, the "themes" or focus areas encompassed by CSR cover a wide policy landscape—including corporate governance, philanthropy, social standards (labor and employment), environmental standards, socially responsible investment, human rights, consumer protection, and finance, among others<sup>56</sup>—and political and institutional factors influence which areas governments prioritize.<sup>57</sup> Drawing from this literature, this subpart surveys the extent of state participation in the CSR space by governments around the globe and provides a comparative context for Part III's discussion of the role of governments in China in advancing CSR.

### 1. The Market-Driven Model: The United States

Prior studies have observed that there is far less public demand for, or even acceptance of, CSR as a public policy in the United States as compared to Europe.<sup>58</sup> Accordingly, CSR is understood more commonly as reaching beyond compliance with law, and governments generally promote CSR only indirectly, beyond traditional regulatory spheres.<sup>59</sup> Firms' CSR practices are driven almost entirely by robust civil society organizations and by firms themselves, often in response

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54. See sources cited *supra* note 3.

55. See GTZ & BERTELSMANN STIFTUNG, *supra* note 4, at 4; LOZANO, ALBAREDA & YSA, *supra* note 3, at 4–5 (and sources cited therein); Albareda et al., *supra* note 3, at 350; FOX, WARD, & HOWARD, *supra* note 4, at iv.

56. EC 2011 CSR Strategy, *supra* note 21, ¶ 3.3; FOX, WARD, & HOWARD, *supra* note 4, at iii.

57. See generally LOZANO, ALBAREDA & YSA, *supra* note 3 (creating a typology of CSR policies based on these factors).

58. See Susan Ariel Aaronson & James Reeves, Nat'l Policy Ass'n, The European Response to Public Demands for Global Corporate Responsibility 50–51 (Feb. 5, 2002) (unpublished manuscript), available at [http://centreonphilanthropy.com/files/kb\\_articles/1251121958European%20Response%20to%20CSR.pdf](http://centreonphilanthropy.com/files/kb_articles/1251121958European%20Response%20to%20CSR.pdf).

59. See, e.g., GAO REPORT, *supra* note 23, at 24; Susan Ariel Aaronson, *Corporate Responsibility in the Global Village: The British Role Model and the American Laggard*, 108 BUS. & SOC'Y REV. 309, 318–29 (2003) (addressing the differences between American and British approaches to CSR). A 2005 survey by the federal Government Accountability Office (GAO) using the World Bank framework noted the lack of any broad federal CSR mandate and found wide variation among federal agencies on the question of whether active endorsement of CSR was even appropriate within their mission and scope of authority. GAO REPORT, *supra* note 23, at 17–18. Some local governments are equally sensitive. See *Changing the Plans*, ECONOMIST, July 14, 2012, at 29 (quoting the director of the Houston, Texas, sustainability office who emphasized that the city was “not mandating that [businesses] have to do this [i.e. adopt CSR]”)

to market pressures from investors and consumers and increased demands from NGOs.<sup>60</sup>

Nonetheless, the federal and some state governments in the United States have developed various cooperative enforcement tools that facilitate voluntary compliance with regulatory mandates.<sup>61</sup> The more prominent examples include the over forty voluntary programs introduced under the EPA's Reinventing Environmental Regulation initiative in the 1990s and similar federal and state cooperative compliance programs relating to occupational health and safety.<sup>62</sup> Like the United Kingdom and other countries in Europe,<sup>63</sup> many governments in the United States also seek to lead by example when they act as market players, as evidenced by green-government procurement standards, which have been adopted by California, Massachusetts, and other U.S. states.<sup>64</sup> The United States also has a strong culture of public-private collaboration, elements of which support corporate legal compliance and broader social responsibility commitments.<sup>65</sup> At present, twenty-five states and many major cities have sustainable development programs, some of which engage the private sector.<sup>66</sup>

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60. See, e.g., Larry E. Ribstein, *Accountability and Responsibility in Corporate Governance*, 81 NOTRE DAME L. REV. 1431, 1444–47 (2006) (arguing on this basis that market forces are sufficient to drive CSR practice). *But see* VOGEL, *supra* note 2, at 3–4 (pointing to the limits of market drivers).

61. See generally Cary Coglianese & Jennifer Nash, *Government Clubs: Theory and Evidence from Voluntary Environmental Programs*, in VOLUNTARY PROGRAMS: A CLUB THEORY PERSPECTIVE 231, 231–58 (Matthew Potoski & Aseem Prakesh eds., 2009) [hereinafter VOLUNTARY PROGRAMS] (discussing governmental initiatives in voluntary environmental programs); Matthew Potoski & Aseem Prakesh, *The Regulation Dilemma: Cooperation and Conflict in Environmental Governance*, 64 PUB. ADMIN. REV. 152 (2004) (same).

62. Neil Gunningham, *Environmental Regulation and Non-State Law*, in INTERNATIONAL GOVERNANCE AND LAW: STATE REGULATION AND NON-STATE LAW 109, 118 (Hanneke van Schooten & Jonathan Verschuuren eds., 2008). Some of the more prominent compliance programs, including the EPA's Performance Track program, have been terminated. *National Environmental Performance Track*, EPA, <http://www.epa.gov/performancetrack/> (last updated Jan. 12, 2011). For a list of current programs, see *Partnership Programs Home*, EPA, <http://www.epa.gov/partners/> (last updated Aug. 2, 2011). See also OSHA's *Cooperative Programs*, U.S. DEPARTMENT LAB., [http://www.osha.gov/dcsp/compliance\\_assistance/index\\_programs.html](http://www.osha.gov/dcsp/compliance_assistance/index_programs.html) (last visited Jan. 18, 2013) (detailing federal compliance programs administered by the Occupational Safety and Health Administration).

63. See generally Susan Ariel Aaronson & James Reeves, Nat'l Policy Ass'n, *The European Response to Public Demands for Global Corporate Responsibility* (Feb. 5, 2002) (unpublished manuscript).

64. McBarnet, *supra* note 2, at 42–43.

65. See generally Ellen Rogers & Edward P. Weber, *Thinking Harder About Outcomes for Collaborative Governance Arrangements*, 40 AM. REV. PUB. ADMIN. 546 (2010) (presenting case studies of successful public-private collaborations around environmental issues).

66. See *State by State*, CTR. SUSTAINABILITY, [www.centerforsustainability.org/resources.php?root=91&category=94](http://www.centerforsustainability.org/resources.php?root=91&category=94) (last visited Mar. 21, 2013) (mapping these



In addition to the voluntary compliance programs described above, several federal agencies, including the Department of Commerce, the Department of State, and the Department of Energy, also endorse or facilitate CSR through explicit CSR award and training programs; the Overseas Private Investment Corporation (OPIC) imposes CSR criteria as a condition of participation in its programs.<sup>67</sup> Other EPA and Department of Energy programs involve partnerships with business around sustainability goals.<sup>68</sup> However, at the federal level, few agencies have adopted specific CSR programs; those that do have devoted relatively limited resources toward their support, and some face skepticism about their impact and efficiency.<sup>69</sup>

For the most part, government incentives for firms to consider their stakeholder impacts are primarily tied to enforcement of legal mandates, such as incentives for labor and environmental compliance.<sup>70</sup> In addition, many federal and state laws, including the federal income-tax deduction for charitable contributions, state constituency statutes, and the creation of new stakeholder-focused business forms in some states, facilitate private-sector CSR efforts.<sup>71</sup> Disclosure obligations under federal securities regulation also promote CSR by requiring greater transparency from some firms with regard to stakeholder impacts;<sup>72</sup> examples include risk disclosures, recent guidance from the Securities and Exchange Commission on climate change-related disclosures, and forthcoming rules under the

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initiatives). For an example of a city program, see *Changing the Plans*, *supra* note 59, at 29 (discussing Houston's sustainability programs).

67. See GAO REPORT, *supra* note 23, at 23 (discussing the EPA's Climate Leaders Program, which partners with businesses to encourage voluntary monitoring of greenhouse gas emissions); *OPIC Policies*, OPIC, <http://www.opic.gov/doing-business-us/OPIC-policies> (last visited Feb. 6, 2013).

68. GAO Report, *supra* note 23, at 23 (surveying these programs).

69. *Id.* at 19–21; see also Coglianesi & Nash, *supra* note 61, at 231–58 (reporting some of these criticisms).

70. See GAO REPORT, *supra* note 23, at 17–18, 24 (noting also that many federal agencies, such as the Department of Labor, whose core regulatory mission relates to CSR, are hesitant to advocate CSR specifically).

71. See, e.g., *Kahn v. Sullivan*, 594 A.2d 48, 63 (Del. 1991) (interpreting DEL. CODE ANN. tit. 8, § 122(9) (2011), which authorizes corporate charitable contributions). On for-benefit corporations and related enterprise forms, see Anne Field, *Benefit Corporations, L3Cs and All the Rest: Making Sense of Those Confusing Choices*, FORBES (May 25, 2012, 9:58 AM), <http://www.forbes.com/sites/annefield/2012/05/25/benefit-corporations-l3cs-and-all-the-rest-making-sense-of-those-confusing-choices/>.

72. Sustainability or CSR reports as such are not mandatory in the United States, but federal securities law generally requires corporate disclosure of all material information that might impact an investor's decision to purchase the company's stock. See *TSC Indus. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). On the limits of nonfinancial reporting under federal law, see generally Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 HARV. L. REV. 1197, 1289–93, 1299–1311 (1999).

2010 Dodd–Frank Financial Reform Act for the extractive industries.<sup>73</sup>

In sum, within a typology of government approaches to CSR,<sup>74</sup> the role of governments in the United States can therefore best be understood as a market-based model. In a market-based approach, governments may adopt incentives that motivate companies to reach and exceed legal requirements as part of their regulatory mission; they may also partner with business or civil society. However, much of the impetus toward responsible business practice depends on firms' self-regulation; their engagement with customers, investors, and other stakeholders; and their voluntary participation in third-party standard setting and monitoring.

## 2. The Relational Model: The European Union

As in the United States, there is generally little public support within Europe for state CSR mandates; therefore, European governments generally emphasize voluntary CSR commitments.<sup>75</sup> As the European Commission's Renewed EU Strategy 2011–14 for Corporate Social Responsibility explains:

The development of CSR should be led by enterprises themselves. Public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation, for example to promote transparency, create market incentives for responsible business conduct, and ensure corporate accountability.<sup>76</sup>

In contrast to the United States, European firms are part of a business culture that is more comfortable engaging with government around social welfare issues, and many European member states boast a record of international leadership around sustainability issues.<sup>77</sup> Regional, provincial, and local governments in Europe have

73. See Proxy Disclosure Enhancements, 74 Fed. Reg. 68,334 (Dec. 23, 2009) (to be codified at 17 C.F.R. pts. 229, 239, 240, 249 & 274) (mandating enhanced risk-management disclosure); Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290 (Feb. 2, 2010) (to be codified at 17 C.F.R. pts. 211, 231, 241); Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 78(a), (m), 124 Stat. 1376, 1502–04 (2010) (requiring rulemaking on conflict minerals, mine safety, and extractive industry government payments transparency). On Dodd–Frank's expansion of the role of federal securities laws in these policy spaces, see generally David M. Lynn, *The Dodd-Frank Act's Specialized Corporate Disclosure: Using the Securities Laws To Address Public Policy Issues*, 6 J. BUS. & TECH. L. 327 (2011).

74. This typology is presented more fully in Part IV. See *infra* Figure 2.

75. See GTZ & BERTELSMANN STIFTUNG, *supra* note 4, at 4; ZERK, *supra* note 8, at 160–94; Aaronson & Reeves, *supra* note 59, at 2–5.

76. EC 2011 CSR Strategy, *supra* note 21, ¶ 3.4.

77. See Albareda et al., *supra* note 3, at 350 (noting that European firms are more willing to work with their governments to promote CSR than businesses in the United States).

also taken the lead in developing CSR policies and initiatives, often in advance of central governments.<sup>78</sup>

The diverse approaches of individual member states to CSR are framed by common perspectives reflected in a series of fundamental texts on CSR adopted by the European Union since 2001 that conform to international standards, by codes such as the OECD Guidelines for Multinational Enterprises, and by international labor standards.<sup>79</sup> In addition to endorsing key CSR standards and promoting CSR leaders,<sup>80</sup> the European Commission sees CSR as a space in which governments play a facilitative role and in which policies must be developed through dialogue between the business community and other social actors.<sup>81</sup> For example, a key element of EU policy toward CSR was the creation in 2006 of a business-led European Alliance for CSR,<sup>82</sup> composed of 180 firms tasked with developing CSR tools to address, among other issues, supply-chain management and firm engagement with investors around nonfinancial performance.<sup>83</sup> Governments in some member states, such as the United Kingdom, Germany, and Sweden, have established institutions to form and implement CSR policy, either independently or in conjunction with industry and civil society actors.<sup>84</sup>

The European Union also facilitates compliance-oriented CSR; for example, it sponsors the EMAS, which offers financial and reputational rewards to participating organizations of member states.<sup>85</sup> Many EU member states have also developed disclosure

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78. See *EC 2011 CSR Strategy*, *supra* note 21, ¶ 4.7 (encouraging regional and local governments to adopt policies in support of CSR); see also LOZANO, ALBAREDA & YSA, *supra* note 3, at 79–80, 151 (detailing subnational initiatives in Denmark and Italy, respectively).

79. These include *EC 2011 CSR Strategy*, *supra* note 21; *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*, COM (2006) 136 final (Mar. 22, 2006) [hereinafter *EC 2006 CSR Communication*]; *Communication from the Commission Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*, at 3, COM (2002) 347 final (July 2, 2002); *EC 2001 CSR Green Paper*, *supra* note 25.

80. See *EC 2011 CSR Strategy*, *supra* note 22, ¶ 1 (urging member states to facilitate CSR disclosures, dissemination of best practices, award programs, CSR-based public procurement, and stakeholder engagement).

81. See LOZANO, ALBAREDA & YSA, *supra* note 3, at 59, 179. In fact, CSR policy in the European Union has itself been developed collaboratively through a series of public debates and intergovernmental negotiations. See *EC 2011 CSR Strategy*, *supra* note 21, ¶ 4.1; EUROPEAN MULTISTAKEHOLDER FORUM ON CSR, FINAL RESULTS & RECOMMENDATIONS 2 (2004), available at <http://circa.europa.eu>.

82. See *EC 2006 CSR Communication*, *supra* note 79, at 2–3.

83. See *EC 2011 CSR Strategy*, *supra* note 21, at 5.

84. LOZANO, ALBAREDA & YSA, *supra* note 3, at 86–87, 101–03, 128–29.

85. See, e.g., *What Is EMAS?*, EUR. COMM'N, [http://ec.europa.eu/environment/emas/index\\_en.htm](http://ec.europa.eu/environment/emas/index_en.htm) (last visited Jan. 21, 2013); see also ZERK, *supra* note 8, at 39 n.136 (noting that EMAS-compliant firms in the United Kingdom receive a lower risk rating, which affects the fees firms must pay to the regulatory authority).

incentives, nonbinding codes of conduct for various industries, and other self-regulatory schemes that urge firms to go beyond compliance.<sup>86</sup>

Comparative scholars have depicted state support for CSR in the European Union in terms of a relational model that emphasizes cooperation and joint responsibility between public- and private-sector actors.<sup>87</sup> It contemplates that governments, business, and civil society will contribute to agenda setting, provide resources, share responsibility for the success of particular projects, and jointly establish monitoring and dispute-resolution networks.<sup>88</sup> The relational approach therefore represents a form of “new governance,” that is, a regulatory pluralism that reallocates responsibility and regulatory power from traditional state bureaucracies to networks of private actors, such as NGOs, self-regulating organizations, voluntary stakeholder associations, and indeed firms themselves.<sup>89</sup> In this model, governments adopt a soft regulatory agenda, acting as participants, organizers, and facilitators, and preferring positive incentives over regulatory penalties.<sup>90</sup> As Figure 1 illustrates, this relational approach creates four potential relationships: the government–business dimension, the government–society dimension, the business–society dimension, and the interrelationship among the three.<sup>91</sup>

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86. The United Kingdom is one example. See ZERK, *supra* note 8, at 38–39 (describing incentives associated with each). Some of these systems deter shirking by allowing for direct regulatory oversight in the event of breach. *Id.*

87. See, e.g., LOZANO, ALBAREDA & YSA, *supra* note 3, at 35–36 (applying the regional model to analyze CSR public policies); Albareda et al., *supra* note 3, at 351 (assessing CSR public policies in Italy, Norway, and the United Kingdom).

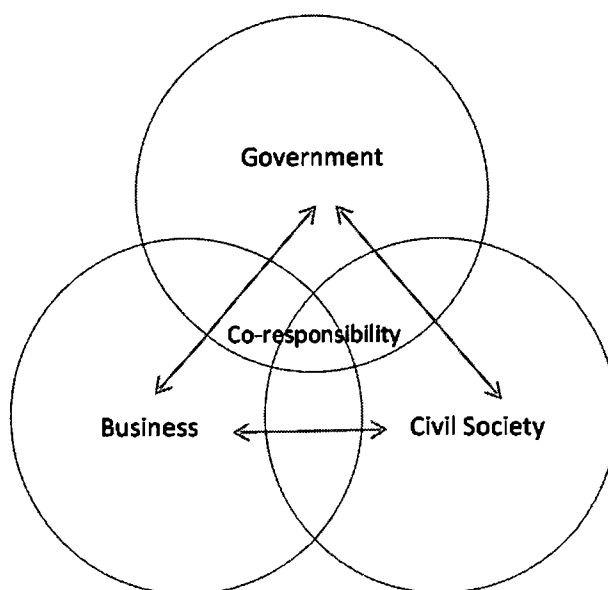
88. See LOZANO, ALBAREDA & YSA, *supra* note 3, at 36 (describing the relational governance model); Albareda et al., *supra* note 3, at 351 (same); Gunningham, *supra* note 62, at 117–18 (describing the role of NGOs in “participatory governance” as a form of civil regulation); see also Chris Ansell & Alison Gash, *Collaborative Governance in Theory and Practice*, 18 J. PUB. ADMIN. RES. & THEORY 542, 544–45 (2007) (defining similar approaches as part of “collaborative governance”).

89. Gunningham, *supra* note 62, at 115.

90. Albareda et al., *supra* note 3, at 350, 352.

91. See LOZANO, ALBAREDA & YSA, *supra* note 3, at 36–38.

Figure 1: A Relational Model of CSR



Source: Adapted from LOZANO, ALBAREDA & YSA, *supra* note 3, at 36–37.

The relational approach is strongest in the United Kingdom, and in the northern European countries of Denmark, Finland, the Netherlands, and Sweden, where the state has historically played a central role in social welfare.<sup>92</sup> Prior studies find that these governments often work cooperatively with firms to develop and implement shared policy objectives.<sup>93</sup> National governments actively use tax policy and other incentives to motivate CSR adoption by companies, and local governments are intensely involved in coordinating and facilitating CSR initiatives.<sup>94</sup>

The United Kingdom is widely recognized as a global CSR leader for its governments' engaged and participatory approach to CSR.<sup>95</sup> Its

92. Lozano et al. characterize these nations as following the "Partnership Model." See LOZANO, ALBAREDA & YSA, *supra* note 3, at 43.

93. *Id.* at 42.

94. See Aaronson & Reeves, *supra* note 58, at 16 (noting that Australia and the United States provide tax credits to promote CSR).

95. See GTZ & BERTELSMANN STIFTUNG, *supra* note 4, at 32–33. The "Business in the Community model" refers to the approach adopted by Ireland and the United Kingdom, where government has facilitated or mediated CSR efforts in support of the private sector and encouraged a vision of shared responsibility between the government and the business community. LOZANO, ALBAREDA & YSA, *supra* note 3, at 93–113. It is characterized by "soft intervention policies to encourage company involvement in governance challenges affecting the community" through entrepreneurship and sustainable economic development. *Id.* at 42.

comprehensive approach to CSR was first developed in order to enlist firms in dealing with public policy crises.<sup>96</sup> Formed through an extended process of public engagement, it emphasizes soft implementation tools.<sup>97</sup> CSR is facilitated by a separate government department headed by designated ministry-level officials (the UK Department for Business Innovation and Skills).<sup>98</sup>

In Germany, France, and elsewhere in continental Europe, state partnerships with business and civil society are less extensive.<sup>99</sup> However, firms there also have a strong tradition of corporate citizenship and engagement with labor, local communities, and other stakeholder groups.<sup>100</sup> In this context, governments have emphasized sustainable development and encouraged businesses to actively create social capital and assume responsibility for social and economic development.<sup>101</sup> In the Mediterranean countries of Greece, Italy, Portugal, and Spain, national CSR strategies are at an earlier stage relative to the rest of the European Union.<sup>102</sup> Governments there have served primarily as a facilitator of dialogue among business organizations, trade unions, academic institutions, and other stakeholders to develop public consensus on CSR.<sup>103</sup>

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96. See Albareda et al., *supra* note 3, at 358 (discussing CSR as part of welfare state policies); see also *EC 2011 CSR Strategy*, *supra* note 21, ¶ 1.2 (describing the importance of CSR in “[h]elping to mitigate the social effects of the . . . economic crisis”).

97. On the legislative process behind the United Kingdom’s CSR programs, see Gordon L. Clark & Eric R.W. Knight, *Implications of the U.K. Companies Act 2006 for Institutional Investors and the Market for Corporate Social Responsibility*, 11 U. PA. J. BUS. L. 259, 259–63 (2009); Cynthia A. Williams & John M. Conley, *An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct*, 38 CORNELL INT’L L.J. 493, 499–523 (2005).

98. See DEPARTMENT BUS. INNOVATION & SKILLS, <http://www.bis.gov.uk/> (last visited Feb. 7, 2013) (describing the role of the Department for Business Innovation and Skills). This department is the successor entity to the Department for Business, Enterprise and Regulatory Reform.

99. See GTZ & BERTELSMANN STIFTUNG, *supra* note 4, at 18–21.

100. See Aaronson & Reeves, *supra* note 58, at 2–5. Lozano et al. identify a “Sustainability and Citizenship model,” which includes Austria, Belgium, France, Germany, and Luxembourg. They further subdivide this model into (1) the Citizenship submodel, which emphasizes labor issues and sustainable development; and (2) the Regulatory submodel, adopted by France, which emphasizes mandatory tools and state CSR leadership. LOZANO, ALBAREDA & YSA, *supra* note 3, at 42–44.

101. France in particular has adopted a more strongly regulatory approach toward sustainability, with less emphasis on collaborative policymaking. See LOZANO, ALBAREDA & YSA, *supra* note 3, at 119–26 (analyzing the French government’s approach to CSR). In contrast to the United Kingdom, for example, France has introduced mandatory social and environmental disclosures for listed companies. *Id.* at 125.

102. LOZANO, ALBAREDA & YSA, *supra* note 3, at 44.

103. In Lozano et al.’s typology, these countries are categorized as the “Agora model.” *Id.*

### 3. Emerging Markets and the Developing World

Although much of the research on CSR implementation has focused on developed economies, governments in many developing countries and emerging markets, including South Africa, Thailand, Indonesia, the Philippines, India, Brazil, Egypt, Chile, South Korea, Nigeria, and Vietnam, have established public policies on CSR.<sup>104</sup> Regional organizations, including the Association of Southeast Asian Nations, are also endorsing and promoting CSR policies and coordination among their member states.<sup>105</sup> Many have endorsed international CSR standards, such as ISO26000:2010.<sup>106</sup> They have also promoted firms' CSR practices by facilitating or mandating social reporting, incorporating CSR concepts into corporate governance standards, and partnering with industry and civil society organizations to build firms' capacity.<sup>107</sup>

Some scholars explain this phenomenon as part of broader political shifts toward "new governance," perhaps along European lines,<sup>108</sup> but few studies to date have engaged in any in-depth examination of state-backed CSR outside the developed world. Given the aspirations of many countries in emerging markets and across the Global South to follow in China's footsteps, there is a clear need for a deeper understanding of why and how governments in China are advancing CSR. These questions are the focus of Part III.

### III. STATE SPONSORSHIP OF CSR IN CHINA

At the 2011 annual plenary meeting of the National People's Congress (China's top legislative body), Chairman Wu Bangguo announced that China had succeeded in establishing "[a] socialist system of laws with Chinese characteristics . . . 'on schedule'" as of

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104. See generally GTZ & BERTELSMANN STIFTUNG, *supra* note 4, at 4 (surveying CSR practice in emerging markets); FOX, WARD, & HOWARD, *supra* note 4, at 1–2 (same); Wayne Visser, *Corporate Social Responsibility in Developing Countries*, in THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY 473, 473–94 (Andrew Crane et al. eds., 2008) (conducting a meta-analysis of prior studies of firm CSR practices in emerging markets).

105. See, e.g., ASEAN Promotes CSR, ASS'N SOUTHEAST ASIAN NATIONS (Sept. 19, 2011), <http://www.asean.org/news/asean-secretariat-news/item/asean-promotes-csr> (reporting on an Association of Southeast Asian Nations (ASEAN) regional CSR workshop with participants from member states and the ASEAN CSR Network).

106. See ISO, *supra* note 24 (providing guidance on social responsibility).

107. See generally UN GLOBAL COMPACT & BERTELSMANN STIFTUNG, *supra* note 43, at 8–11 (surveying these developments); FOX, WARD, & HOWARD, *supra* note 4, at 1–2 (same).

108. See, e.g., Visser, *supra* note 104, at 483–84 (reviewing the literature on CSR as a substitute for governance gaps).

the end of 2010.<sup>109</sup> Yet that same year, China made international headlines with scandals that underscored the mismatch between the vast body of legislation it has developed over the past thirty years and its inability to effectively implement and enforce legal rules through the institutions it has created.<sup>110</sup> This context makes the growing commitment of Chinese governments to promote CSR particularly curious.

As a starting point to consider this puzzle, the following discussion surveys the role of national and subnational governments in China in advancing CSR. These developments are with few exceptions quite recent—most date back only to 2006. They should also be understood in the context of the deep changes in Chinese society that have occurred over the past decades as the state has transitioned out of the planned economy. Most obvious among these is the proliferation of civil society organizations within China in recent years, many filling needs for social services once provided exclusively by the state.<sup>111</sup> Some organizations directly support firm adoption of CSR practices, for example, by partnering with firms on charitable projects, conducting CSR-related research, or offering training on sustainability reporting or environmental and labor compliance.<sup>112</sup> Private philanthropy by individuals and firms has also risen substantially in recent years,<sup>113</sup> and recent survey results suggest that a growing number of domestic Chinese firms are embracing CSR practices as part of corporate strategy.<sup>114</sup> Many do so independent of

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109. *Socialist System of Laws with Chinese Characteristics Enriches World's Legislative Framework*, XINHUA (Mar. 10, 2011, 10:03 AM), [www.npc.gov.cn](http://www.npc.gov.cn).

110. In 2010, strikes at Honda plants in Guangzhou and worker suicides at Foxconn, Apple, Inc.'s Chinese supplier, highlighted the labor rights crisis and made headlines in the international press. See, e.g., Frederik Balfour & Tim Culpan, *The Man Who Makes Your iPhone*, BUS. WK., Sept. 9, 2010, [http://www.businessweek.com/magazine/content/10\\_38/b4195058423479.htm](http://www.businessweek.com/magazine/content/10_38/b4195058423479.htm) (discussing the suicides at Foxconn); Keith Bradsher & David Barboza, *Strike in China Highlights Gap in Workers' Pay*, N.Y. TIMES, May 29, 2010, at A1 (discussing a Chinese strike at a Honda factory). A year earlier, Chinese courts had imposed death sentences on executives at Sanlu, one of China's leading state-owned enterprises, who were found guilty of lacing infant formula with the industrial chemical melamine. See *Chinese Milk Scam Duo Face Death*, BBC NEWS (Jan. 22, 2009, 12:02 PM), <http://news.bbc.co.uk/2/hi/7843972.stm>.

111. See Karla W. Simon, *The Regulation of Civil Society Organizations in China: Current Environment and Recent Developments*, 9 INT'L J. CIV. SOC'Y L. 55, 58 n.87 (2011) (noting that 243,000 social organizations were registered in China at the end of 2010).

112. Examples can readily be found through a range of online sources. See, e.g., SYNTAO-SUSTAINABILITY SOLUTIONS, [www.syntao.com](http://www.syntao.com) (last visited Jan. 21, 2013).

113. See generally 2011 ZHONGGUO GONGYI FAZHAN BAOGAO [BLUE BOOK OF CIVIC PHILANTHROPY: ANNUAL REPORT ON CHINA'S CIVIC PHILANTHROPY DEVELOPMENT] 35–56 (Zhu Jianguang ed., 2012) (presenting summary statistics and analysis on the growth and funding sources of philanthropic organizations and charitable funds).

114. See CONFERENCE BD., BUSINESS & SUSTAINABILITY IN CHINA (2011).



any direct state influence.<sup>115</sup> Therefore, state-backed CSR initiatives are not emerging in a vacuum; however, the developments introduced here offer a window into the role of the state in this dynamic policy space.

### A. Historical Antecedents

CSR (*qiye shehui zeren* 企业社会责任) is a Western borrowing in the Chinese language as well as in its policy,<sup>116</sup> and ideological and cultural precedents can best be found with the benefit of hindsight.<sup>117</sup> However, the basic notion that business enterprises contribute to the public welfare has deep roots—before the state-sector reforms of the 1990s, state-owned enterprises (SOEs) were not only the lynchpin of the economy but also the state's conduit for meeting public-welfare needs (*qiye ban shehui* 企业办社会).<sup>118</sup> Although Chinese proponents of CSR today are eager to distinguish it from outmoded notions of the role of business in society,<sup>119</sup> this legacy nonetheless remains a powerful one.

Early references to CSR in the media and in the academy had already emerged in China by the mid-1980s.<sup>120</sup> However, CSR concepts were introduced to Chinese companies primarily through codes of conduct and third-party audits in the wake of the sweatshop exposés of the 1990s.<sup>121</sup> The reaction of the Chinese leadership to CSR concepts prior to 2006 was decidedly negative. Many saw CSR as a tool wielded by foreign consumers, NGOs, and trading partners to pressure Chinese businesses; CSR was also closely associated with labor and employment issues, which were particularly contested

115. This was confirmed anecdotally in numerous interviews with representatives of firms in Hangzhou, Guangzhou, and Shanghai. For many of these firms, the CSR commitments of individual executives are critical.

116. Other scholars concur. See, e.g., Lin, *supra* note 9, at 64–67. Unless otherwise noted, references to policy here and throughout refer solely to mainland Chinese policy.

117. See Geoffrey K.H. See, *Harmonious Society and Chinese CSR: Is There Really a Link?*, 89 J. BUS. ETHICS 1, 3 (2009) (noting potential Confucian and socialist roots for the ethical dimensions of CSR).

118. On the history of CSR in China, see GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 8–12, 84–88; QIYE SHEHUI ZEREN LILUN YU SHIXIAN [THEORY AND PRACTICE OF CSR] 48–59 (Chen Ying ed., 2009).

119. See, e.g., GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 119.

120. See ZHONGGUO QIYE LIANHEHUI/ZHONGGUO QIYEJIA XIEHUI [CHINA ENTER. CONFEDERATION/CHINA ENTER. DIRECTORS ASS'N], 2007 ZHONGGUO QIYE SHEHUI ZEREN FAZHAN BAOGAO [2007 DEVELOPMENT REPORT ON CSR IN CHINA] 18 (Zhang Yanning et al. eds., 2007) [hereinafter 2007 DEVELOPMENT REPORT ON CSR IN CHINA].

121. See Lu Tang & Hongmei Li, *Corporate Social Responsibility Communication of Chinese and Global Corporations in China*, 35 PUB. REL. REV. 199–212, 200–01 (2009).

during the 1990s.<sup>122</sup> In response, state agencies and some subnational governments began to develop homegrown labor standards and codes of conduct. For example, in 2004, the local government in Changzhou, a major exporting hub in Jiangsu Province, developed its own voluntary labor standard, CSA8000, as an alternative to the international labor standard SA8000, and in 2005, the China National Textile and Apparel Council (CNTAC) developed its own social standard, CSC9000T, for the domestic textile industry.<sup>123</sup> CSR concepts became a regular focus of conferences and policy roundtables, many involving provincial and local government leaders.<sup>124</sup>

National policy toward CSR began to shift in the mid-2000s. In 2005, President Hu Jintao articulated China's new policy vision of building a "harmonious society," which was adopted as a policy mandate by the Central Committee of the Communist Party in 2006.<sup>125</sup> This policy directive included a mandate for all governments to "strengthen CSR,"<sup>126</sup> paving the way for governments at the central and subnational level to move into this policy space.<sup>127</sup> Beginning in 2006, President Hu Jintao and other leaders within the Party and the National People's Congress began to emphasize that businesses operating in China must not place profit seeking above morality and the broader social welfare, but rather should adopt responsible and sustainable business practices.<sup>128</sup>

122. See Anita Chan, *China Says No to Developed Countries' Corporate Social Responsibility*, 12 INT'L UNION RTS. 18–19 (2005); Li Yin, *Xinde Maoyi Bihong? [SA8000, a New Trade Barrier?]*, NANFANG DUSHI BAO [S. METROPOLIS DAILY], Nov. 20, 2003.

123. GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 113–15; THEORY AND PRACTICE OF CSR, *supra* note 118, at 61.

124. See also ZHONGGUO QIYE SHEHUI ZEREN JIANSHE LANPISHU [THE FOUNDING OF CHINESE CSR: 2010 BLUE BOOK] 444–76 (Li Youhuan et al. eds., 2011) (presenting a chronology of CSR developments in China); Org. for Econ. Co-operation & Dev. [OECD], *China-OECD Project on Government Approaches to Encouraging Responsible Business Conduct*, at 5–6, OECD Doc. DAF/INV/WD(2007)17 (Dec. 5, 2007).

125. See *China Publishes Its Resolution on Building a Harmonious Society*, ST. COUNCIL INFO. OFF. CHINA (Nov. 15, 2006), <http://www.scio.gov.cn/zgxybybd/en/2006/22/200612/t103742.htm>.

126. Zhonggong Zhongyang Guanyu Goujian Shehuizhuyi Hexie Shehui Ruogan Zhongda Wentide Jueding [CCP Central Committee Decision on Important Issues Concerning the Establishment of a Harmonious Socialist Society], 6th Party Plenum of the 16th CCP Central Committee, art. 5(4) (Oct. 11 2006), available at [http://news.xinhuanet.com/politics/2006-10/18/content\\_5218639.htm](http://news.xinhuanet.com/politics/2006-10/18/content_5218639.htm).

127. See *See*, *supra* note 117, at 2 (describing the CCP's new policy initiative); see also Lin, *supra* note 9, at 90–93 (describing social and environmental problems as the "internal pull" towards CSR).

128. GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 156–58; see also, e.g., *Wen Jiabao Tan Qiyetia Zeren: Chengxin he Daode Shi Xiandai Shehui Yinggai Jiejuede Jipo Wenti [Wen Jiabao on Entrepreneur's Responsibilities: Integrity and Morality Are the Urgent Problems for a Modern Society To Solve]*, PEOPLE'S DAILY ONLINE (Feb. 27, 2010, 4:54 PM), <http://politics.people.com.cn/GB/11041111.html>.

This policy focus on “harmonious” and “scientific” development motivated the enactment of new labor and environmental legislation and the incorporation of CSR into the 2006 revision to China’s Company Law.<sup>129</sup> Although its meaning is much debated,<sup>130</sup> Article 5 of the Company Law now provides that mainland Chinese companies shall “comply with the laws and administrative regulations, social morality and business morality” and “bear social responsibilities.”<sup>131</sup>

The Sichuan earthquake of 2008 and the global financial crisis gave China’s leadership new cause to call for greater social responsibility from business.<sup>132</sup> While attending the Asia-Pacific Economic Cooperation (APEC) leaders’ meeting that year, President Hu Jintao stated: “The government of every nation must strengthen leadership and oversight, and by establishing and perfecting the law, create a positive environment for companies to bear social responsibilities.”<sup>133</sup> In 2009, Premier Wen Jiabao echoed this sentiment in speeches on the financial crisis,<sup>134</sup> and officials at the central and subnational levels began to publicly advocate the economic development benefits of CSR.<sup>135</sup> With the clear backing of China’s central leadership, many new national and subnational CSR programs got their start in 2008 and 2009.<sup>136</sup>

129. On the legislative history of Article 5 of the Company Law, see Lin, *supra* note 9, at 68–72.

130. For clear statements of the two primary interpretations, see, e.g., Lou Jianbo, *Zhongguo Gongsifa diwu Tiao Diyikuande Wenyi Jieshi ji qi Shishi Lujing* [A Literal Interpretation of Article 5, Clause 1 of China’s Corporate Law, and Its Approach of Application], in *STUDIES ON CORPORATE SOCIAL RESPONSIBILITY* 224, 224–42 (Lou Jianbo et al. eds., 2009) (interpreting Article 5 as potentially enforceable); Shi Jichun et al., *Lun Gongshe Shehuizeren: Falu Yiwu, Dao de Zeren ji Qita* [On CSR: Legal, Ethical, and Other Duties], 2 *SHOUDU SHIFAN DAXUE XUEBAO* [PEKING NORMAL U. J.] (2008) (interpreting Article 5 as aspirational and unenforceable).

131. *Gongsifa* [Company Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 27, 2005, effective July 1, 1994, amended Jan. 1, 2006), translated at <http://www.lawinfochina.com> (subscription only).

132. See, e.g., *THEORY AND PRACTICE OF CSR*, *supra* note 118, at 1 (citing both of these events).

133. Hu Jintao Zai APEC Di Shiliuci Lingdaoren Feizhengshi Huiyishangde Jianghua [Hu Jintao Speech at the APEC 16th Informal Leaders Meeting] (Nov. 22, 2008), transcript available at [www.gov.cn/ldhd/2008-11/23/content\\_1156875.htm](http://www.gov.cn/ldhd/2008-11/23/content_1156875.htm).

134. See Wen Jiabao Zongli Zai Yingguo Jianqiao Daxue Fabiao Yanjiang: Yong Fazhande Yanguang Kan Zhongguo [Wen Jiabao, Premier, Speech at Cambridge University: Seeing China from a Development Perspective] (Feb. 2, 2009), transcript available at [http://news.xinhuanet.com/world/2009-02/03/content\\_10755604.htm](http://news.xinhuanet.com/world/2009-02/03/content_10755604.htm) (highlighting the role of morality and social responsibility in solving the financial crisis).

135. See *ZHONGGUO SHEHUI KEXUEYUAN JINGJIXUEBU QIYE SHEHUI ZEREN YANJIU ZHONGXIN* [CHINESE ACAD. OF SOC. SCI. CSR RESEARCH CTR. [CASS]], 2010 *NIAN ZHONGGUO QIYE SHEHUI ZEREN FAZHAN BAOGAO* [2010 CSR DEVELOPMENT REPORT] 2–3 (2010) [hereinafter CASS 2010].

136. Firms were not necessarily receptive to CSR during this period, however, as many were struggling to recover from the effects of the financial crisis. Interview with Daniel Taras, Head of Section, Emerging Econs. (Portfolio Transformation), GIZ, in Beijing, China (June 30, 2011).

As in the United Kingdom and other European nations,<sup>137</sup> then, the impetus for CSR in China at the central government level has come from the recognition of the role of business in exacerbating and perhaps resolving complex public policy challenges. China's Twelfth Five-Year Plan for 2011–2015<sup>138</sup> reemphasizes that widening economic disparities, environmental degradation, and consumer protection remain top priorities for China's leadership because of the challenge they represent to social stability and ultimately to the legitimacy of the state<sup>139</sup>—all are areas in which business has influence. Central government support for CSR continues to fuel active academic and policy debates surrounding CSR concepts and has encouraged Chinese governments at various levels to take a more active role in defining and advancing CSR.

### B. National CSR Initiatives

Since 2006, numerous initiatives around CSR at the national level have been introduced in China, but no single State Council ministry has yet asserted leadership over CSR as a broad policy domain. Instead, as in much of Europe,<sup>140</sup> numerous agencies—including the Ministry of Commerce (MOFCOM), the State Assets Supervision and Administration Commission (SASAC), the Ministry of Environmental Protection (MEP), and the People's Bank of China (PBOC)—are actively promoting CSR in some form within their respective areas of expertise.<sup>141</sup> For example, MOFCOM focuses on CSR programs for export-oriented and foreign-invested enterprises as part of its promotion of international trade and investment, while the MEP focuses on incentivizing environmental compliance. The Ministry of Industry and Information Technology is developing CSR

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137. On the European Union, see Aaronson & Reeves, *supra* note 58, at 2–5. On the United Kingdom, see Moon, *supra* note 3, at 1–2.

138. A full English translation of the Twelfth Five-Year Plan is available from *Delegation of the European Union to China*, EUR. EXTERNAL ACTION SERVICE, [http://eeas.europa.eu/delegations/china/index\\_en.htm](http://eeas.europa.eu/delegations/china/index_en.htm) (last visited Feb. 7, 2013).

139. China's citizens have proven willing to use formal administrative legal channels created by the state, such as administrative, tort, and labor litigation processes, in increasing numbers, and grass-roots protests are growing in size and frequency. See, e.g., Michael Forsythe, *China's Spending on Internal Police Force in 2010 Outstrips Defense Budget*, BLOOMBERG (Mar. 6, 2011, 1:27 AM), <http://www.bloomberg.com/news/2011-03-06/china-s-spending-on-internal-police-force-in-2010-outstrips-defense-budget.html> (reporting 180,000 mass incidents in 2010).

140. See Albareda et al., *supra* note 3, at 354 (observing CSR initiatives in Italy, Norway, and the United Kingdom to be housed in different ministries with parallel but generally uncoordinated agendas); see also LOZANO, ALBAREDA & YSA, *supra* note 3, at 174 (citing examples from Ireland, among others, of government departments dealing with CSR from their own particular perspective).

141. For a survey of central-level agencies promoting CSR, see OVERVIEW OF CSR POLICY DEVELOPMENT, *supra* note 14, at 12.

policies that would apply to small- and medium-sized enterprises.<sup>142</sup> All of these measures are described below and in Table 1 of the Appendix.<sup>143</sup>

Table 1 adapts the typologies developed by the World Bank to categorize government roles around common approaches; it also includes principal-agent controls as an additional category beyond the World Bank framework to account for the direct managerial and administrative tools available to the state in promoting CSR among state enterprises.<sup>144</sup> The national and subnational initiatives outlined below are shown as a spectrum of soft to hard tools, as suggested by the World Bank typology. While Table 1 isolates particular CSR tools and instruments, some governments or agencies have adopted multiple strategies as part of a multilayered CSR policy, while others are active at only one level. The following discussion and Table 1 do not include basic legislation on labor, environmental, or other CSR-related issues, although most Chinese analyses of CSR do so.

## 1. Endorsing

As observed above, the central government has already endorsed CSR through direct policy statements and sustainability goals. Several central-level ministries have also endorsed CSR by rewarding top CSR performers and raising awareness of CSR issues. These include the Ministry of Civil Affairs, which has initiated a China Charity Awards program, and MOFCOM, which disseminates information on CSR programs by governments and by business, in partnership with the Swedish, Dutch, and German governments.<sup>145</sup> The Chinese Academy of Social Sciences (CASS) has taken the lead in compiling data on CSR practices and publishes a list of CSR leaders.<sup>146</sup>

Like many of its trading partners, China has also directly endorsed CSR initiatives developed by intergovernmental organizations, including the UN Global Compact, the UN Principles for Responsible Investment (PRI), and the International Finance

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142. Interview with Gao Baoyu, Senior Technical Advisor, GIZ, in Beijing, China (June 30, 2012).

143. See *infra* Table 1. For the methodology by which these and other examples were compiled, see *supra* notes 13–14 and accompanying text. As noted earlier, national agencies continue to innovate in the area of CSR, so the measures noted in this Part are current through December 2012.

144. The Chinese Academy of Social Sciences (CASS) has adopted a similar typology of state roles: regulator (*guizhizhe* 规制者), promoter (*tuijinzhe* 推进者), and monitor (*jianduzhe* 监督者). See GOVERNMENTS & CSR 2010, *supra* note 12, at 1.

145. On the MOFCOM programs, see *supra* note 14 and accompanying text.

146. See, e.g., CASS 2010, *supra* note 135; CASS, 2011 ZHONGGUO QIYE SHEHUI ZEREN YANJIU BAOGAO [2011 CSR BLUE BOOK OF CORPORATE SOCIAL RESPONSIBILITY] 28 (Chen Jiagui et al. eds., 2011) (identifying twenty-four of the top one hundred Chinese enterprises as CSR leaders).

Corporation's Equator Principles, which apply to global banking institutions engaged in project finance.<sup>147</sup> For example, China has had a Global Compact liaison office since 2004 that has operated primarily under the auspices of the China Enterprise Confederation (CEC), an industry association with strong state ties; many leading SOEs, financial institutions, and private firms are Global Compact or PRI signatories.<sup>148</sup> Most recently, China participated in the development of the ISO26000:2010 standards, and the stock exchanges are promoting the adoption of the Global Reporting Initiative's (GRI's) reporting standards by domestic firms.<sup>149</sup> A number of state agencies have also been involved in high-level intergovernmental exchanges focused on sustainability and CSR, including, for example, a collaboration between the OECD and MOFCOM, which was launched in 2006.<sup>150</sup>

## 2. Facilitating

State agency facilitation of CSR at the national level is carried out in large part through research initiatives, capacity building, and the adoption of voluntary CSR guidelines. With regard to the former, MOFCOM and CASS have each established research centers focused specifically on CSR issues; MOFCOM has also undertaken CSR trainings and central-level conferences to build firm capacity and support subnational governments in promoting CSR.<sup>151</sup> Quasi-voluntary measures that apply to all enterprises include the "green finance" measures adopted by the China Banking Regulatory Commission (CBRC) and the MEP in 2007, which condition public listing, preferential loans, insurance, and tax refunds on compliance with environmental standards.<sup>152</sup>

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147. The UN Global Compact is a framework of ten principles derived from international law that signatory firms and organizations can voluntarily adopt. See UNITED NATIONS GLOBAL COMPACT, [www.unglobalcompact.org](http://www.unglobalcompact.org) (last visited Feb. 7, 2013). The UNPRI is a similar framework for institutional investors. See PRINCIPLES RESPONSIBLE INVESTMENT, [www.unpri.org](http://www.unpri.org) (last visited Feb. 7, 2013). On the Equator Principles, see EQUATOR PRINCIPLES, [www.equator-principles.com](http://www.equator-principles.com) (last visited Jan. 21, 2013).

148. For signatories, see *Local Networks: China*, UNITED NATIONS GLOBAL COMPACT, [http://www.unglobalcompact.org/NetworksAroundTheWorld/local\\_network\\_sheet/CN.html](http://www.unglobalcompact.org/NetworksAroundTheWorld/local_network_sheet/CN.html) (last visited Feb. 7, 2013); PRINCIPLES RESPONSIBLE INVESTMENT, *supra* note 147.

149. Interview with Consultant, Global Reporting Initiative [GRI], in Beijing, China (June 18, 2011) (reporting in addition that the Shanghai Stock Exchange is recommending CSR reports be based on the GRI).

150. See GOVERNMENTS & CSR 2010, *supra* note 12, at 11 (citing SASAC's role); OECD, *supra* note 124, at 7.

151. See generally GIZ, [www.giz.de/china](http://www.giz.de/china) (last visited Feb. 7, 2013) (detailing MOFCOM's CSR programs).

152. See Guojia Huanjing Baohu Zongju, Zhongguo Yinhang Hangye Jiandu Guanli Weiyuanhui & Zhongguo Renmin Yinhang [Env'tl. Prot. Agency, Chinese Bank Regulatory Comm'n & People's Bank of China [PBOC]], *Guanyu Luoshi Huanbao*

China's stock exchanges in Shenzhen and Shanghai, which operate under the regulatory oversight of the China Securities Regulatory Commission (CSRC),<sup>153</sup> have also facilitated CSR more directly by establishing CSR indices and encouraging CSR reporting for listed companies.<sup>154</sup> Unfortunately, the reporting requirements do not require independent auditing, nor do they require that all material information be disclosed. Accordingly, researchers uniformly observe wide variation in the quality of CSR and sustainability reporting in China, with even leading public companies only rarely reporting any negative information.<sup>155</sup>

In 2008 and again in 2010, the State Council made several efforts to craft broad national CSR guidelines that would apply to both state and nonstate enterprises, but these efforts have not yet borne fruit.<sup>156</sup> However, CASS has developed CSR reporting

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*Zhengce Fagui Fangfan Xindai Fengxian de Yijian [Opinion on Implementing Law and Policy for Environmental Protection To Guard Against Credit Risk]*, July 12, 2007; PBOC, *Guanyu Gaijin he Jiaqiang Jieneng Huanbao Lingyu Jinrong Fuwu Gongzuo de Zhidao Yijian [Guidelines on Improving and Enhancing Financial Service for Energy Conservation and Environmental Protection]*, PBOC Pub. No. 215, June 29, 2007, available at [http://www.gov.cn/zwgk/2007-07/06/content\\_675200.htm](http://www.gov.cn/zwgk/2007-07/06/content_675200.htm) (listing four major measures); *Zhongguo Yinjianhui Guanyu Yinfa Luse Xindai Zhiyin de Tongzhi [Notice Regarding Green Credit Guidelines]*, No. 4, Feb. 20, 2012.

153. See Zhengquan P.R.C. [Securities Law], arts. 178–179 (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 27, 2005, effective Jan. 1, 2006) (charging the CSRC with “carry[ing] out supervision and administration of the securities market”); see also Benjamin R. Liebman & Curtis J. Milhaupt, *Reputational Sanctions in China's Securities Market*, 108 COLUM. L. REV. 929, 935–41 (2008) (describing the history and status of the stock exchanges in relation to the CSRC).

154. See Shanghai Zhengquan Jiaoyisuo, *Guanyu Jiaqiang Shangshi Gongsi Shehui Zeren Chengdan Gongzuo Ji Fabu “Shanghai Zhengquan Jiaoyisuo Shangshi Gongsi Huanjing Xinxi Pilu Zhiyin” de Tongzhi [Shanghai Stock Exchange Notice on Strengthening Listed Companies' Assumption of Social Responsibility and on Issuing the Guidelines on Listed Companies' Environmental Information Disclosure]*, May 14, 2008 [hereinafter *SSE CSR Notice*]; Shenzhen Zhengquan Jiaoyisuo, *Shenzhen Zhengjiaoyisuo Shangshi Gongsi Shehui Zeren Zhiyin [Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies]*, Sept. 25, 2006 [hereinafter *SEZ Guidelines*], available at <http://www.szse.cn/main/en/rulseandregulations/sserules/2007060410636.shtml>. For exchange indices, see *infra* the Appendix.

155. Some CSR reports are prepared with the aid of international NGOs, while others are drafted by advertising agencies and firms' public-relations departments. According to one analysis by CASS of over three hundred large publicly traded companies in China's A-share market, 68 percent of Shanghai-listed companies and 84 percent of Shenzhen-listed companies issued nonfinancial reports; however, 99 percent failed the CASS content assessment. See *Shekeyuan Baogao: 99% Shangshi Gongsi Shehui Zeren bu Jige [CASS Report: 99% of Listed Companies' CSR Substandard]*, JINGJI GUANCHANG WANG [ECON. OBSERVER] (Dec. 29, 2011, 8:27 AM), <http://www.eeo.com.cn/2011/1229/218914.shtml> (quoting a 2011 CASS study).

156. The State Council initially considered a unified CSR Guideline for SOEs, private enterprises, and foreign-invested enterprises (FIEs), but this was abandoned with guidelines only being adopted for SOEs in 2008. Interview with Governmental Affairs Liaison, Am. Chamber of Commerce, in Shanghai, China (June 7, 2011). MOFCOM attempted in 2008 to draft national guidelines for FIEs, but the project was abandoned in the wake of the financial crisis. *Id.* The All-China Federation of Industry

guidelines,<sup>157</sup> and national industry and trade associations, which retain close ties to the state—including CNTAC, the CEC, the China Industrial Association, the China Social Work Association, the Chinese Association of Small and Medium Enterprises, and the China International Contractors Association, among others—have created CSR reporting guidelines for their members to facilitate CSR learning and best practices.<sup>158</sup>

### 3. Partnering

Although NGOs and other civil society organizations have become important globally and locally as drivers of CSR and as partners with business in designing, implementing, and monitoring CSR programs, state agencies have primarily engaged with international NGOs and other international institutions in the development and implementation of CSR. Early cooperative projects began with the United Kingdom's Department of International Development in the late 1990s and early 2000s. In 2007, the World Trade Organization (WTO) Department of MOFCOM established three CSR initiatives in cooperation with the German, Swedish, and Dutch governments, respectively, to promote CSR at the national and subnational levels.<sup>159</sup> Although each has a different focus, collectively, they represent central-level partnerships to provide CSR training and consulting, develop CSR indicators, and share best practices.<sup>160</sup> The objectives of the Sino-German partnership, in particular, are to “develo[p] and implement[t] CSR policies, strategies and guidelines via public private partnerships, industry associations and other intermediaries.”<sup>161</sup> As noted above, government officials also engage with international efforts to facilitate multistakeholder dialogue and raise awareness of CSR issues.<sup>162</sup>

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and Commerce began a draft for private enterprises in 2010, but with little support from the business community. *Id.*

157. CASSCSR, [www.cass-csr.org/index.php?option=com\\_content&module=28&sortid=32](http://www.cass-csr.org/index.php?option=com_content&module=28&sortid=32) (last visited Feb. 13, 2013). These were based largely on the internationally adopted GRI standards. Interview with Daniel Taras, *supra* note 136.

158. *E.g.*, ZHONGGUO DUIWAI CHENGBAO GONGCHENG SHANGHUI [CHINA INT'L CONTRACTORS ASS'N], ZHONGGUO DUIWAI CHENGBAO GONGCHENG HANGYE SHEHUI ZEREN ZHIYIN [CSR GUIDELINES FOR INTERNATIONAL CONTRACTORS] (2010); ZHONGGUO GONGYE XIEHUI [CHINA INDUS. ASS'N], ZHONGGUO GONGYE QIYE JI GONGYE XIEHUI SHEHUI ZEREN ZHINAN [CHINA INDUSTRIAL ENTERPRISES AND INDUSTRIAL ASSOCIATION CSR GUIDELINES] (2008), available at [www.csr-china.net](http://www.csr-china.net); see also GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 172–74 (describing these efforts).

159. See OECD, *supra* note 124, at 45 (discussing the UK collaboration). On the MOFCOM collaborations, see *supra* note 14 and accompanying text.

160. See, *e.g.*, GIZ 2010 REPORT, *supra* note 14.

161. See *id.*

162. See OECD, *supra* note 124, at 5–6 (describing the 2007 China-OECD responsible business project).



Beyond intergovernmental collaboration, engagement between the state and the business community around CSR has largely been undertaken through state-affiliated civil society organizations and trade associations. At the national level, these include the China Association for NGO Cooperation (CANGO), the Chinese Enterprise Confederation/China Enterprise Directors' Association (CEC/CEDA), the China Business Council for Sustainable Development (CBCSD), and the All-China Federation of Industry and Commerce, as well as industry-specific national organizations; all of these have branches at the subnational level.<sup>163</sup> Although some of these organizations are now formally independent of the state, all retain personnel in leadership with strong state ties.<sup>164</sup> They create forums for leading companies to share best practices and are active in capacity building around CSR.<sup>165</sup>

#### 4. Mandating

In contrast to most Western governments, China has demonstrated a greater reliance on mandatory CSR requirements at the national level, particularly for listed firms, banks, and other financial institutions. Companies intending to list on China's stock exchanges must complete supplemental environmental inspections, those listed on the Shanghai Stock Exchange are required to provide certain environmental disclosures, and China's Code of Corporate Governance for Listed Companies requires firms to respect the legal

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163. See GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 172–74 (identifying the work of several of these organizations involved in the CSR space). On one of CANGO's CSR initiatives, see *Zhongguo Minzuhui Qiye Shehui Zeren Wangzhan Xiangmu Gongxu Pingtai Jieshao* [Introducing the CANGO CSR Portal Project], CHINA ASS'N NGO COOPERATION (Nov. 2, 2009), [http://www.cango.org/newweb/Shownews\\_page.asp?ArticleID=964](http://www.cango.org/newweb/Shownews_page.asp?ArticleID=964).

164. See Jonathan Unger & Anita Chan, *Associations in a Bind: The Emergence of Political Corporatism*, in ASSOCIATIONS AND THE CHINESE STATE: CONTESTED SPACES 48, 48–68 (Jonathan Unger ed., 2008) [hereinafter CONTESTED SPACES] (discussing corporatism); Andrew Watson, *Civil Society in a Transitional State: The Rise of Associations in China*, in CONTESTED SPACES, *supra*, at 14, 22–32 (discussing the institutional position of these organizations). Some industry associations still operate under the oversight of particular state agencies, such as MOFCOM and SASAC. Interview with Daniel Taras, *supra* note 136. But see Scott Kennedy, *The Price of Competition: The Failed Government Effort To Use Associations To Organize China's Market Economy*, in CONTESTED SPACES, *supra*, at 149, 149–74 (emphasizing the independence of these associations).

165. For example, the CBCSD was founded in 2000 through the initiative of key leaders at Sinopec and other leading SOEs, as well as the government. It counts major Western multinationals among its founding members and is promoting a number of innovative programs to aid its members in promoting CSR concepts throughout their own business networks and “create a platform for dialogue between international organizations, government, [and domestic] and foreign business.” Interview with Employee, China Bus. Council for Sustainable Dev. [CBCSD], in Beijing, China (June 28, 2011).

rights of creditors, employees, and other stakeholders, although the Code lacks clear enforcement mechanisms.<sup>166</sup> CSR guidelines for banks and other financial institutions issued by the CBRC encourage policies that uphold stakeholder-oriented principles and require major banks to issue CSR reports.<sup>167</sup>

As of 2008, all listed Chinese firms and nonlisted “large- and medium-sized enterprises” have been required to implement enterprise risk management systems as well as internal controls based in part on Sarbanes–Oxley.<sup>168</sup> Interestingly, the implementing guidelines for “China SOX” not only include provisions on legal compliance and financial reporting, but also require firms to take account of stakeholder-related risks and comply with separate internal controls guidelines on CSR.<sup>169</sup> Large private enterprises, as well as small- and medium-sized enterprises, are encouraged to adopt these standards voluntarily.<sup>170</sup> While all of these guidelines are drafted as broad standards rather than hard prescriptives, they illustrate how CSR principles can be embedded in and extend the reach of mandatory compliance systems.

## 5. Principal–Agent Controls

One of the limits of the World Bank typology is its failure to differentiate the state’s role as regulator vis-à-vis private enterprises and its position vis-à-vis SOEs. Notwithstanding the past decades of

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166. Code of Corporate Governance for Listed Companies in China (promulgated by China Sec. Regulatory Comm’n State Econ. & Trade Comm’n, Jan. 7, 2002) 1 ZHENGJIANFA ch. 6 (2002); Guojia Huanjing Baohu Zongju [State Env’tl. Prot. Agency], *Guanyu dui Shenqing Shangshide Qiye he Shenqing Zairongzi de Shangshi Qiye Jinxing Huanjing Baohu Hecha de Tongzhi* [Notice Regarding Environmental Protection Inspection of Companies Prior to Initial and Follow-On Public Offerings], No. 101, June 16, 2003; SSE CSR Notice, *supra* note 154 (mandating environmental disclosures).

167. See *Zhongguo Yinjianhui Bangongting Guanyu Jiaqiang Yinhangye Jinrong Jigou Shehui Zeren de Yijian* [Opinions of the General Office of China Banking Regulatory Commission on Strengthening the Social Responsibility of Banking Financial Institutions], No. 252, Dec. 5, 2007, available at <http://lawinfochina.com>; see also Michael A. Levine, *China’s CSR Expectations Mature*, CHINA BUS. REV. Nov.–Dec. 2008, at 52 (discussing its implementation).

168. See Ministry of Finance, China Sec. Regulatory Comm’n [CSRC], Nat’l Audit Office, *Qiye Neibu Kongzhi Jiben Guifan* [Basic Internal Control Norms for Enterprises], No. 7, art. 2 (promulgated May 22, 2008, effective July 1, 2009). For further analysis of these measures, see Virginia Harper Ho, *Corporate Governance as Risk Regulation in China: A Comparative View of Risk Oversight, Risk Management, and Accountability*, 4 EUR. J. RISK REG. 463, 463–65 (2012).

169. See Ministry of Finance, CSRC, Nat’l Audit Office, CBRC & China Ins. Regulatory Comm’n, *Guanyu Yinfu Qiye Neibu Kongzhi Peitao Zhiyinde Tongzhi* [Notice on the Issuance of Guidelines for the Application, Evaluation, and Auditing of Enterprise Internal Controls], No. 11, Apr. 15, 2010 (including within the scope of CSR internal control: production safety, product and service quality, environmental protection, resource conservation, employment promotion, and employee protection).

170. Basic Internal Control Norms for Enterprises, *supra* note 168, art. 2.

state-sector reforms and the growth of private enterprises, the state sector continues to dominate the Chinese economy.<sup>171</sup> SOEs are leaders in outbound investment and are seen as an optimal starting point for CSR policies given their size, scale, economic impact, and influence on other firms.<sup>172</sup> Some SOE executives have been personally at the forefront of CSR initiatives, in part because of their early exposure to international standards.<sup>173</sup> The state sector is significant in many European countries as well, and governments there have used their position as controlling shareholder of state enterprises to encourage responsible business practice.<sup>174</sup>

In China, the state exercises direct and indirect control over SOEs, not only as controlling shareholder, but also through personnel management, cross-shareholdings, and direct bureaucratic oversight by the SASAC. Because of SASAC's direct regulatory and supervisory authority and the various methods of state direct and indirect control, voluntary CSR measures are effectively mandatory for SOEs if they enjoy sufficient policy support.<sup>175</sup> These include the 2006 Enterprise Risk Management Guidelines for State Enterprises Under Central State Control, which covers strategic, operational, and legal risk oversight functions that align with CSR.<sup>176</sup> In 2008, SASAC also introduced CSR guidelines for centrally managed SOEs (*yangqi* 央企) that urge companies to "integrate CSR into corporate governance, development strategy, and each stage of the business."<sup>177</sup> These

171. According to some estimates, over 30 percent of the shares of all Chinese-listed companies are directly state-owned, and as many as 84 percent of all listed companies are controlled directly or indirectly by the state. CHAO XI, CORPORATE GOVERNANCE AND LEGAL REFORM IN CHINA 24–25, 49–51 (2009). On the preferential policies toward SOEs throughout the reform period, see generally YASHENG HUANG, CAPITALISM WITH CHINESE CHARACTERISTICS: ENTREPRENEURSHIP AND THE STATE (2008).

172. See OECD, *supra* note 124, ¶ 17 (describing OECD initiatives to raise awareness of CSR among Chinese SOEs for these reasons); Interview with Employee, Global Compact China Liaison Office, in Beijing, China (June 29, 2011).

173. Interview with Employee, CBCSD, in Beijing, China (June 28, 2011); Telephone Interview with former Representative, GRI, in Beijing, China (June 29, 2011) (referencing the key role of the Chief Executive Officer of COSCO, a leading centrally managed SOE, in driving CSR reporting there and by other SOEs).

174. LOZANO, ALBAREDA & YSA, *supra* note 3, at 86–87 (describing Sweden's policy directive on CSR promotion for SOEs and related requirements). On the size of the state sector in OECD member states, see OECD, CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES: A SURVEY OF OECD COUNTRIES 24–36 (2005).

175. On SOE governance, see XI, *supra* note 171, at 22–35, 51–61.

176. The 2006 ERM Guidelines apply only to the approximately 130 SOEs directly controlled by the central government. The list of these firms is available at *Guoqi Minglü* (《国企名录》) [*Directory of State-Owned Enterprises*], ZHONGGUO GUOZIWANG (中国国资网), <http://www.guozhi.org/Gzwsite/cce.htm> (last visited Jan. 18, 2013).

177. State-Owned Assets Supervision & Admin. Comm'n, *Guanyu Yinfa "Guanyu Zhongyang Qiye Lüxing Shehui Zeren de Zhidao Yijian" de Tongzhi* (关于印发《关于中央企业履行社会责任的指导意见》的通知) [*Notice Regarding the Distribution of*

guidelines are framed in voluntary terms, encouraging directors to issue CSR reports and to consider nonshareholder impacts embodied in regulatory law in order to carry out the firm's social obligations and to avoid legal liability.<sup>178</sup> Voluntary CSR reporting under the 2008 guidelines may become mandatory in the coming year.<sup>179</sup> Table 1 of the Appendix modifies the World Bank typology to separately take these mechanisms into account.

### C. Subnational CSR Initiatives

Because of the lack of a national CSR policy or coordination, subnational government programs in China represent a key source of policy innovation. The following discussion surveys their role in advancing CSR. Examples are reported on Table 1 in the Appendix and more comprehensively below.<sup>180</sup>

#### 1. Endorsing

Governments at all levels have been active in raising awareness of CSR principles. Six provincial-level governments sponsor CSR award programs, and Shanghai, Shandong, and Zhejiang provinces have issued formal policy statements publicly endorsing CSR goals and urging companies to adopt responsible business practices.<sup>181</sup> Provincial and local governments, including Shanghai, Shenzhen, and several cities in Shandong and Zhejiang provinces, issue CSR

the *Guiding Opinion on Implementing CSR in Centrally Managed Enterprises*], art. 17 (2008) [hereinafter *SASAC CSR Notice*], available at <http://www.sasac.gov.cn/n1180/n20240/n7291323/11899524.html>.

178. *Id.* arts. 1, 8, 18–19.

179. Email correspondence from Steven Chan, Dir. of Gov't Relations & CSR Dep't, Am. Chamber of Commerce, in Shanghai, (Oct. 10, 2012) (on file with author).

180. For the methodology and sources relied on in this subpart, see *supra* note 14. The measures reported here are intended to be as comprehensive as possible as of October 2012. If not otherwise referenced in the text, citations for all entries reported in the Tables are on file with the author.

181. See, e.g., *Zhejiangsheng Jingji he Xinxihua Weiyuanhui Guanyu Tuidong Zhejiangshengji Jingxin Lingyu Xiehui Jiji Kaizhan Shehui Zeren Jianshe de Ruogan Yijian* (浙江省经济和信息化委员会关于推动浙江省级经信领域协会积极开展社会责任建设的若干意见) [*Zhejiang Provincial Economic and Information Committee Opinion on Urging Provincial-Level Associations Related to Economic & Information Committees to Vigorously Promote CSR*], No. 536, Sept. 3, 2012 (providing guidance on implementing CSR), available at <http://www.zjjxw.gov.cn/zwgk/tzgg/wjtz/2012/09/24/2012092400009.shtml>; *Zhejiangsheng Renmin Zhengfu Guanyu Tuidong Qiye Jiji Luxing Qiye Shehui Zerende ruogan Yijian* (浙江省人民政府关于推动企业积极履行社会责任的若干意见) [*Some Opinions of the People's Government of Zhejiang Province on Promoting Enterprises to Vigorously Fulfill Social Responsibilities*], No. 19, Feb. 28, 2008 [hereinafter *Zhejiang CSR Opinion 2008*] (same), available at [http://www.nbcredit.org/show\\_news.php?id=645](http://www.nbcredit.org/show_news.php?id=645); see also GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 109–19 (referencing policy guidelines in Shenzhen, Shanghai, and Changzhou, and in Zhejiang Province).

progress reports for their jurisdictions or highlight CSR leaders.<sup>182</sup> Many of these same governments host conferences and other events to promote CSR within the business community,<sup>183</sup> and some are actively promoting corporate philanthropy as well.<sup>184</sup>

*Table 2.1: Subnational Governments Endorsing CSR*

<i>Endorsing: Tools and Instruments</i>	<i>Provincial Level*</i>	<i>Local Level</i>
Public procurement CSR standards		Shenzhen
Issues a government CSR report	Zhejiang, Shanghai	Shenzhen; Shanghai Pudong Dist.; Yiwu (Zhejiang); Weihai (Shandong)
Has adopted formal CSR policy or strategy	Zhejiang, Shanghai, Shandong	Shenzhen; Nanjing, Changzhou, Wuxi (Jiangsu); Xiangfan (Hubei); Yantai, Weihai (Shandong); Hangzhou (Zhejiang)
Rewards CSR leaders/blacklists CSR laggards	Zhejiang, Tianjin, Fujian, Chongqing, Shandong, Shanghai	Shenzhen, Guangzhou (Guangdong); Shanghai Pudong; Hangzhou, Ningbo (Zhejiang); Changzhou, Wuxi, Nanjing (Jiangsu); Yantai, Weihai (Shandong)
Sponsors CSR conferences and public campaigns to promote CSR	Shandong, Guangdong, Zhejiang, Hubei	Various

\*Includes the provincial-level cities directly administered under the central government: Beijing, Tianjin, Shanghai, and Chongqing.

182. See Li Lei, *Shanghai Qiye Shehui Zeren Baogao Shoufa* (上海企业社会责任报告首发) [Shanghai Issues First CSR Report], HEXUN NEWS (May 15, 2012), <http://stock.hexun.com/2012-05-15/141404737.html>; cf. Michael A. Levine, *China's CSR Expectations Mature*, 35 CHINA BUS. REV. 50, 50–53 (2008) (discussing the CSR measures of governmental entities, stock exchanges, and NGOs).

183. See GOVERNMENTS & CSR 2010, *supra* note 12, at 11 (citing examples from Shandong, Zhejiang, and Hubei provinces).

184. See *Huzhou Encourages the Private Sector To Implement Social Responsibility Through Guangcai Program*, HUZHOU ONLINE NEWS (Aug. 31, 2009), <http://csr2.mofcom.gov.cn> (discussing state efforts to spur contributions by private entrepreneurs).

## 2. Facilitating.

Many governments endorse and incentivize legal compliance and “beyond compliance” by creating specific institutions to promote CSR, introducing local CSR guideline and audit programs, directing capacity building through firm CSR training and research, and providing financial incentives. These incentive structures are directly entwined with alternative enforcement strategies in use by many administrative agencies at the local level and merge voluntary commitments with existing legal requirements.

Under China’s Administrative Penalties Law (APL), enacted in 1996, enforcement authorities are subject to procedural limits that are intended to prevent abuse of official discretion.<sup>185</sup> Under the APL, administrative penalties can only be levied if a firm refuses to remedy the violation upon notice.<sup>186</sup> Because enforcement authorities cannot always threaten serious penalties even with policy backing,<sup>187</sup> many regulatory agencies regularly use a range of compliance-oriented tools to incentivize compliance and allocate scarce enforcement resources. These strategies promote responsible business practice up to and beyond compliance, and so overlap with state-sponsored CSR programs.

For example, the MEP’s green finance programs are implemented at the provincial and local levels via voluntary programs that offer tax incentives and direct subsidies to motivate firms’ environmental compliance.<sup>188</sup> Environmental information disclosure programs, introduced in 2007 and widely implemented by environmental protection bureaus (EPBs) across China, publicly blacklist polluters and also publish the names and compliance ratings of top performers.<sup>189</sup> Similar “naming and shaming” strategies are also widely used by local labor bureaus and quality control

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185. See Zhonghua Renmin Gonghe Guo Xingzheng Chufa Fa (中华人民共和国行政处罚法) [Law of the People’s Republic of China on Administrative Penalty], art. 3 (promulgated by the Nat’l People’s Cong., Mar. 17, 1996, effective Oct. 1, 1996) [hereinafter APL], translation available at [www.cecc.gov/pages/newLaws/adminPunishmentENG.php](http://www.cecc.gov/pages/newLaws/adminPunishmentENG.php).

186. Even for “serious” violations where immediate fines can be levied, penalties must be reduced if corrective action is taken. See *id.* arts. 23, 27.

187. In fact, regulatory scholars have found that tough strategies can backfire both where firms are well-intentioned, and where they are ambivalent about the legitimacy and reasonableness of regulations. See BARDACH & KAGAN, *supra* note 1, at 39–43.

188. Examples are widely reported by the Sino-Swedish CSR Project. See *Provincial and Local Initiatives*, SINO-SWEDISH CORPORATE SOCIAL RESP. COOPERATION, <http://csr2.mofcom.gov.cn/article/supplydemandofchina/demand/> (last visited Feb. 7, 2013).

189. See Wanxin Li, *Self-Motivated Versus Forced Disclosure of Environmental Information in China: A Comparative Case Study of the Pilot Disclosure Programmes*, 206 CHINA Q. 331 (2011) (discussing these programs).

inspectors.<sup>190</sup> Like many Western regulatory agencies, some authorities grant enforcement waivers to firms that have consistently attained an exemplary compliance standard, relieving them from standard inspections and reporting obligations for a period of time.<sup>191</sup> Other local governments deny violators access to preferential benefits or subsidies in lieu of direct penalties.<sup>192</sup>

Local CSR guideline and audit programs are the centerpiece of many subnational governments' CSR-facilitation efforts and have been adopted by governments in four provinces, as well as in Tianjin and Shanghai.<sup>193</sup> Some have been developed with external technical assistance from MOFCOM or international experts, but many are the product of policy entrepreneurs within the provincial or local government.<sup>194</sup> They are generally modeled on international CSR reporting and audit guidelines, such as the GRI reporting framework,<sup>195</sup> and local governments, like their counterparts in the United Kingdom, see these guidelines as a way to move companies gradually toward higher international standards.<sup>196</sup>

Local audit programs have typically been run by a CSR working body set up under the direction of the local Party committee (*shihwei* 市委) and local government, often within a government-affiliated trade association or trade union office. For example, the Hangzhou

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190. See Zhou Wenting, *Company Blacklist for Quality Problems*, CHINA DAILY, Jan. 12, 2012, [http://www.chinadaily.com.cn/china/2012-01/12/content\\_14425766.htm](http://www.chinadaily.com.cn/china/2012-01/12/content_14425766.htm) (discussing the "quality credit" system established in 2011 by the General Administration of Quality Supervision, Inspection and Quarantine); Interview with Dist. Food Safety Inspector, in Guangzhou, China (June 13, 2012).

191. Changzhou's CSR award program was initiated in 2006 and focuses on labor compliance; winners enjoy a three-year waiver of standard labor, workplace safety, and health inspections. See GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 113–16. Since 2008, labor bureaus in Ningbo, Zhejiang, have prioritized enforcement on firms that earn a "C" or "D" on inspections and granting regulatory waivers to firms that earn high marks of "A" for labor compliance for three years in a row. See *id.* at 117. In Guangzhou, labor bureaus use a stoplight system with "red," "yellow," and "green" categories and concentrate their enforcement resources on "red" and "yellow" firms. See Interview with Dist. Labor Inspector & Arbitrator, in Guangzhou, China. (Jan. 11, 2009).

192. See Interview with Employee, City Admin. of Indus. Commerce (June 4, 2011) (discussing environmental enforcement by township and village governments in Guangdong).

193. See *infra* Table 2.2. Tianjin and Shanghai are both provincial-level cities, but the Tianjin program was, as of this writing, only adopted at the district level. Shanghai, however, was the first provincial-level government to adopt such a program.

194. See Interview with Daniel Taras, *supra* note 136.

195. *Id.* The GRI Sustainability Reporting Framework is available at *Reporting Framework Overview*, GLOBAL REPORTING INITIATIVE, <https://www.globalreporting.org/reporting/reporting-framework-overview/Pages/default.aspx> (last visited Feb. 7, 2013).

196. On the United Kingdom, see *Environmental Management Systems*, INST. OF ENVTL. MGMT. & ASSESSMENT (Oct. 13, 2008, 8:43 AM), [http://www.iema.net/ems/local\\_publicauthinfo](http://www.iema.net/ems/local_publicauthinfo) ("A new British Standard, BS 8555 allows phased implementation of an EMS leading to full certification to ISO 14001 or registration for EMAS.").

City Trade Union spearheaded the establishment of the Hangzhou CSR Leaders' Working Group, which included seventy officials and Hangzhou's mayor.<sup>197</sup> Together, the participants represent twenty-two government units, including the courts. The core working body includes the heads of eight key departments, such as the local EPB and the municipal administration of industry and commerce. The working group engaged academics and other consultants to develop the guidelines and audit system and coordinates multiple local agencies during the audit process.<sup>198</sup>

CSR audit systems vary to some extent, but are generally composed of anywhere from sixty to two hundred discrete measures that form a point-based matrix covering an entire range of stakeholders—employees, consumers, business partners, the government, and disadvantaged populations.<sup>199</sup> They are intended to “guide companies to better emphasize legal compliance and business integrity.”<sup>200</sup> Many audit guidelines are striking both for their sophistication and for their inclusion of basic legal compliance and core business practice. For example, under Shanghai Pudong's audit matrix, which is a model for many other governments, basic legal compliance, such as paying taxes or implementing labor contracts per Chinese labor law, allows a company to achieve a minimum standard in each area, but serious violations, such as employing child labor or experiencing an occupational fatality in the relevant period, automatically disqualify a firm.<sup>201</sup> Corporate philanthropy or a firm's adoption of international CSR standards, such as SA8000, also earn the firm extra points toward local CSR certification, but no extra points are earned based on the amount of charitable contributions.

197. Notice on the Establishment of the Hangzhou CSR Leaders' Working Group, No. 38 (Mar. 22, 2010) (on file with author). Like Hangzhou, Changzhou's CSR office brings together seven different departments but is spearheaded by the trade union. GOVERNMENTS & CSR 2010, *supra* note 12, at 8. Shanghai Pudong's CSR coordination office was formed under the district economic committee. Pudong Xinqu Tuijin Qiye Luxing Shehui Zeren de Ruogan Yijian (Xiuding Gao) (浦东新区推进企业履行社会责任的若干意见 (修订稿)) [Pudong New District Opinion on the Promotion of CSR (Revised Version)], art. 2 (promulgated by Joint Conference of the Pudong New Area Office for the Establishment of CSR, June 3, 2011) [hereinafter Pudong New District Opinion], available at [http://csr.pudong.gov.cn/csr\\_bjz\\_file/2010-06-09/Detail\\_319398.htm](http://csr.pudong.gov.cn/csr_bjz_file/2010-06-09/Detail_319398.htm).

198. Interview with Dir., Hangzhou City Labor Union Legal Affairs Office, in Hangzhou, China (June 22, 2011) [hereinafter Hangzhou CSR Interview]. This is a commonly adopted structure. See GOVERNMENTS & CSR 2010, *supra* note 12, at 8–9.

199. See, e.g., HANGZHOU SHI, QIYE SHEHUI ZEREN PINGJIA TIXI (杭州市企业社会责任评价体系) [HANGZHOU CSR AUDIT SYSTEM] (2010), reprinted in HANGZHOU RIBAO [HANGZHOU DAILY] (discussing Hangzhou's CSR auditing system, which awards points based on firms' CSR performance in market responsibility, environmental responsibility, employment responsibility, and five aspects of social responsibility).

200. *Zhejiang CSR Opinion 2008*, *supra* note 181, art. 4 (translation by author).

201. See Shanghai CSR Standard, Nov. 25, 2008, together with related application documents, available at <http://usercenter/pudong/gov/cn> (outlining requirements of social responsibility).



State policy plays a role as well; for example, establishing a trade union is required to achieve a minimum score for labor issues, even though it is not required by Chinese labor law. Similarly, engaging in collective labor negotiations, which is also encouraged but not mandated, justifies additional points.<sup>202</sup>

Firms voluntarily apply to participate in a two- or three-stage process that, depending on the jurisdiction, includes a self-audit, a review by all relevant regulatory authorities of the company's compliance record, and, in some jurisdictions, an independent third-party audit as well.<sup>203</sup> Because of concerns about the legitimacy of administrative agency audits and resource constraints, most local CSR guideline and audit programs rely entirely or in part on third-party auditors that the public will perceive to be independent of government and familiar with international standards.<sup>204</sup> Many governments have also adopted pre-award public-notice procedures,<sup>205</sup> which reduce the likelihood that firms earning CSR awards or certifications will turn out to be the culprits in a compliance-related scandal. In established programs, passage is far from automatic—in 2012, only 200 of the 1500 firms in Shanghai's Pudong district that applied for CSR certification passed.<sup>206</sup>

Governments that have adopted explicit CSR guideline or award programs use the same types of incentives as enforcement agencies, such as regulatory waivers, publicity, access to preferential financing, expedited permitting, and preference in public procurement;<sup>207</sup> other financial incentives are identical to those that have long been used by local governments to attract investors.<sup>208</sup>

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202. *Id.*

203. Most governments currently require all three; Wenzhou, in Zhejiang province, dispenses with the regulatory review entirely and relies exclusively on the third-party auditor. GIZ 2010 REPORT, *supra* note 14, at 30; Interview with Gen. Sec'y, Shanghai Pudong CSR Office, in Shanghai, China (June 20, 2012) [hereinafter Pudong CSR Interview]. The third-party auditor is generally selected by the government's CSR committee or by the firm from an approved list that includes international auditors. *Id.* The cost of most audits for first-time applicants is borne by the local government. *Id.*; sources cited *supra* note 198.

204. Pudong CSR Interview, *supra* note 203.

205. *Id.*

206. *200 Enterprises in Pudong Up to Shanghai's CSR Standard*, JIEFANG DAILY, July 16, 2012, translation available at <http://www.csr-china.net/en/second.aspx?nodeid=39dc8010-662b-44e2-aeb3-24957bcf92b6&page=contentpage&contentid=033b86df-26c6-4654-be88-37df3e2280aa>.

207. See, e.g., Pudong New District Opinion, *supra* note 197, arts. 5–16 (discussing incentives offered by Pudong New District); see also GIZ 2010 REPORT, *supra* note 14 (describing incentives offered by various governments); *supra* note 191 (discussing compliance incentives adopted by Changzhou, Ningbo, and Guanzhou).

208. These include utility fee waivers, tax breaks, and preferential customs clearance. GIZ 2010 REPORT, *supra* note 14.

Table 2.2: Subnational Governments Facilitating CSR

Facilitating: Tools and Instruments	Provincial Level*	Local Level
Established an official CSR office	Zhejiang, Shandong	Changsha (Hunan); Shanghai Pudong; Changzhou, Wuxi (Jiangsu); Weihai (Shandong); Shenzhen; Hangzhou, Ningbo (Zhejiang)
Grant funding for technology upgrades to meet environmental targets and/or create compliance systems	Widely adopted at the provincial and local levels, including Shanghai, Heilongjiang, Fujian, Qinghai, and Tianjin	
Tax incentives, subsidies, and other cooperative enforcement incentives for environmental or labor law compliance	Widely adopted at the provincial and local levels	
CSR training	Hebei, Jiangsu, Liaoning, Zhejiang, Shandong	Shenzhen; Changzhou (Jiangsu); Yiwu (Zhejiang); Weihai (Shandong)
Government CSR guidelines and audit programs	Shanghai, Shandong, Jiangsu, Shanxi	Tianjin Binhai; Yiwu, Hangzhou, Wenzhou, Taizhou, Ningbo (Zhejiang); Changsha (Hunan); Changzhou, Wuxi, Nanjing (Jiangsu); Dongying, Yantai, Yucheng, Weihai (Shandong)

\*Includes the provincial-level cities directly administered under the central government: Beijing, Tianjin, Shanghai, and Chongqing.

### 3. Partnering

Governments at the forefront of CSR in China increasingly frame their goals in terms of a partnership with business and new relationships with civil society actors. For example, Zhejiang Province's 2008 *Opinion on Promoting Enterprises to Vigorously Fulfill Social Responsibilities* stresses that "government guides and enterprises play a leading role."<sup>209</sup> Shanghai Pudong's CSR strategy envisions a "four-party responsibility system" in which "government

209. *Zhejiang CSR Opinion 2008*, *supra* note 181, art. 3.

guides, business voluntarily [adopts], industry self-regulates, and the public oversees.”<sup>210</sup> Nonetheless, most public-private partnerships are focused on projects rather than policy, and governments have not yet directly involved local organizations in CSR working groups.

In recent years, the Sino-German/MOFCOM CSR initiative has focused on developing public-private partnerships between local governments and firms to promote sustainability, CSR reporting, and firm self-regulation.<sup>211</sup> Between 2008 and 2012, the project sponsored one-year CSR training programs for certain firms identified by local governments in Hebei and Zhejiang provinces in order to increase local firm interest in CSR.<sup>212</sup> A number of governments, including the Shandong and Guangdong provincial governments and Shanghai Pudong’s district government, have initiated various research projects and conferences around CSR, some of which are conducted in cooperation with local trade associations and academic institutions. Others directly solicit corporate contributions to development or charitable projects sponsored by state-approved organizations.<sup>213</sup>

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210. Pudong Xinqu Jiakuai Tuijin Jianli Qiye Shehui Zeren Tixi Sannian Xingdong Gangyao (2011–2013 nian) (浦东新区加快推进建立企业社会责任体系三年行动纲要 (2011–2013年)) [Pudong New District Accelerates Promotion of CSR: Three Year Action Plan (2011-2013)] (promulgated by the Pudong CSR Comm., June 2011), reprinted in OFFICE OF PUDONG CSR-SYS.-SETTING JOINT CONFERENCE, PUDONG XINQU QIYE SHEHUI ZEREN DABIAO PINGGU CAILIAO (浦东新区企业社会责任达标评估材料) [PUDONG NEW AREA CORPORATE SOCIAL RESPONSIBILITY ATTAINMENT ASSESSMENT DATA] 2 (2011) [hereinafter PUDONG CSR ASSESSMENT DATA] (on file with author) (“zhengfu yindao, hangye zilü, qiye ziyuan, shehui jiandu”).

211. See *Public-Private Partnership (PPP)*, SINO-GERMAN CORP. SOC. RESP. PROJECT, [http://www.chinacsproject.org/Highlights/PPP\\_EN.asp](http://www.chinacsproject.org/Highlights/PPP_EN.asp) (last visited Feb. 7, 2013).

212. See *id.* (discussing several of these programs); Interview with Daniel Taras, *supra* note 136.

213. Interview with Local Official, City Admin. of Indus. & Commerce, in Guangdong Province, China (June 4, 2011).

*Table 2.3: Subnational Governments Partnering Around CSR*

<i>Partnering: Tools and Instruments</i>	<i>Provincial Level*</i>	<i>Local Level</i>
CSR training and other capacity building	Hebei, Zhejiang, Guangdong	Yiwu, Wenzhou (Zhejiang)
Collaborative research and information dissemination	Shandong, Guangdong	Shanghai Pudong
Integration of trade associations in CSR steering committees		Shanghai Pudong; Wuxi (Jiangsu)
NGO collaboration around pollution reduction	Guangdong	Tianjin Binhai
Facilitating corporate philanthropy	Various	

\*Includes the provincial-level cities directly administered under the central government: Beijing, Tianjin, Shanghai, and Chongqing.

#### 4. Mandating

In a number of jurisdictions, the introduction of state-backed CSR has explicitly been matched by enhanced enforcement of environmental, labor, and consumer-protection laws.<sup>214</sup> Most Chinese sources on state sponsorship of CSR tend to highlight core legislation as primary evidence of state commitments.<sup>215</sup> However, few subnational governments are experimenting with mandatory CSR requirements. Exceptions include Shenzhen's public procurement requirements, which incorporate CSR standards;<sup>216</sup> Shandong's rules that include CSR within the quality inspection bureau's brand evaluation system;<sup>217</sup> and a few cities that are including all local enterprises in their CSR audit systems.<sup>218</sup>

214. See GOVERNMENT PROMOTION OF CSR, *supra* note 12, at 109–11, 113–17 (citing as examples Shenzhen, Ningbo, and Changzhou).

215. See, e.g., GOVERNMENTS & CSR 2010, *supra* note 12.

216. See GIZ 2010 REPORT, *supra* note 14, at 43 (discussing the public procurement rules). Other jurisdictions, such as Shanghai Pudong, offer public procurement preferences as an incentive to facilitate CSR performance. See Pudong New District Opinion, *supra* note 197, art. 13.

217. These were introduced in 2009. See Brohier, *supra* note 14, at 22 tbl.3 (indicating that in 2009, the Shandong Provincial Quality Inspection Department “[s]tarted including CSR in its brand evaluation system”).

218. See, e.g., China Env't News, *Weihai Includes CSR in Year-End Performance Rating*, SINO-SWEDISH CORP. SOC. RESP. (CSR) COOPERATION (Mar. 19, 2011, 11:12 AM), <http://csr2.mofcom.gov.cn/aarticle/supplydemandofchina/demand/201005/20100506905752.html> (describing Weihai's mandatory evaluation system). Certain companies in Yiwu, Zhejiang, are also required to undergo CSR audits. See GIZ 2010 REPORT, *supra* note 14, at 26.

### D. A Synopsis

The above survey indicates that many national agencies and subnational governments are pursuing explicit policy initiatives to promote CSR. Not surprisingly, most programs focus on environmental protection or sustainability, while others emphasize labor issues, consumer protection, or philanthropy; guidelines and audit programs naturally span multiple areas of existing regulation. Many encompass not only legal compliance, but also what might otherwise be viewed as basic business practice; for example, providing good customer service, improving product quality, and implementing contract management systems.<sup>219</sup> Human rights standards, however, are often expressly excised from China-specific CSR standards and programs.<sup>220</sup>

In addition, state promotion of CSR does not follow a uniform model at the national or subnational levels. As in the United States, the leading central ministries—the MEP and MOFCOM—are those whose core mission is already closely linked to CSR.<sup>221</sup> At the subnational level, many provincial and local governments are active only in certain policy domains or utilize only select tools, while others, particularly in the Shandong and Zhejiang provinces, adopt a range of strategies, representing a deeper commitment to CSR.

One interesting conclusion that emerges from publicly reported CSR initiatives is that, with the exception of programs focused on corporate philanthropy and economic development, both voluntary and mandatory state-backed CSR programs are directed at moving companies toward legal compliance while rewarding companies who do more. A further conclusion is that CSR efforts by both national and subnational government generally focus on facilitating CSR practices through voluntary programs and a mix of traditional and cooperative regulatory incentives, particularly for private enterprises. This emphasis on voluntary measures is well supported by prior studies on regulatory compliance incentives in China.<sup>222</sup> Mandatory initiatives

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219. See, e.g., *SASAC CSR Notice*, *supra* note 177, art. 8 (regarding business integrity and respect for law and contract); *id.* art. 9 (regarding appropriate allocation of resources, lowering operating costs, and improving management and governance structures); *id.* arts. 10, 12 (regarding improving product quality and innovation); *SEZ Guidelines*, *supra* note 154, art. 20 (urging honesty toward suppliers and customers); *Shandong Sheng Shou Hetong Zhong Xinyong Qiye Rending Guanli Banfa* (山东省守合同中信用企业认定管理办法) [*Shandong Measures on Designation of Enterprises as "Respecting Contracts and Emphasizing Integrity"*], SDACR, May 14, 2011, available at <http://www.sd-acr.com/web/sd-acr/news-1305337527953.html>.

220. See Pudong CSR Interview, *supra* note 203; see also Lin, *supra* note 9, at 66.

221. See GAO REPORT, *supra* note 23, at 20 (reporting as of 2007 that the U.S. Department of Commerce and the EPA were the most active CSR supporters).

222. For example, one recent study comparing voluntary and mandatory pilot environmental disclosure programs in Jiangsu and Inner Mongolia found that the

tend to be directed toward firms over which the state exercises stronger control, due to their scale, sector, or ownership structure. Thus, the most stringent requirements and guidelines have been introduced first for SOEs under central government control, then for other SOEs, and then, via securities regulation and stock exchange rules, for listed companies. Similarly, under central leadership, CSR directives and guidelines have proliferated for banks and other financial institutions ahead of other sectors.

These developments raise fundamental questions about the motivation of state sponsorship of CSR in China, particularly at the local level—in short, why would local governments that balk at tough enforcement push companies “beyond compliance”? A first response is simply that they’re not. Many of the governments that are promoting CSR are also beginning to toughen enforcement, in part because of shifting development strategies.<sup>223</sup> At the same time, the flexibility of CSR concepts allows governments whose regulatory enforcement practices are inconsistent to emphasize aspects of CSR that are easily attainable or to focus on rewarding compliant enterprises rather than altering enforcement priorities. Answering the question of government motivations empirically presents difficulties, and individual officials’ motivations for supporting a local government role in CSR (or not) inevitably vary. However, based on interviews with representatives of international organizations, local government agencies, and trade associations, several key drivers of government CSR activity consistently emerge. Interestingly, many are identical to those identified in prior studies of state-backed CSR in the European Union and in other emerging markets.<sup>224</sup>

As discussed above, central economic development policies now directly support and motivate the proliferation of local government CSR programs. At the subnational level, local officials also have personal incentives to prioritize legal compliance and CSR goals, as performance standards for local leaders increasingly include targets for sustainable development; developing a CSR program can be seen as innovative, distinguishing local leadership when they are evaluated for advancement.<sup>225</sup> Local officials can also face penalties if

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success of a mandatory disclosure program was hindered by its dependence on local leaders’ commitment and resources, while voluntary programs driven by environmental NGOs produced observable effects on company practice and public perception. See Li, *supra* note 189, at 334.

223. See Hangzhou CSR Interview, *supra* note 198; Pudong CSR Interview, *supra* note 203; text accompanying *supra* note 214. On environmental enforcement, see generally Benjamin van Rooij & Carlos Wing-Hung Lo, *Fragile Convergence: Understanding Variation in the Enforcement of China’s Industrial Pollution Law*, 32 L. & POLY 14 (2010).

224. See text accompanying *supra* notes 43–44 (listing drivers of government CSR policies).

225. Interview with Representative, Guangdong Civil Affairs Bureau, in Guangzhou, China (June 4, 2011). On performance evaluation, see generally Alex L.

social unrest occurs on their watch, making grassroots pressure an important driver of CSR public policies.<sup>226</sup> In fact, as in the United Kingdom, many local governments, including Hangzhou and Ningbo in Zhejiang province, adopted local CSR policies as a response to local labor crises and environmental pressures.<sup>227</sup>

Beyond these internal drivers, local governments also look to CSR programs to out-compete other local jurisdictions for high-tech or high-value-added investment projects.<sup>228</sup> Others, like their Western counterparts, see CSR as a tool to improve the international competitiveness of local companies.<sup>229</sup> As this logic goes, international investors and consumers will have greater confidence in local suppliers and greater assurance of a level playing field for investment if local companies are being held to higher compliance standards or have been passed by credible assurance audits.

Not surprisingly, then, regional economic and political characteristics are shaping CSR policies in unique ways. Most local guidelines and multifaceted CSR programs are being developed in centers of foreign investment, export-oriented industry, or private entrepreneurship. Shanghai, for example, is a hub for foreign direct investment; Shandong, Zhejiang, and Jiangsu provinces, also CSR leaders, are dominated by private enterprises that have historically been well-known for entrepreneurship.<sup>230</sup> Nearly all local governments developing CSR guidelines are located in special development zones (*kai fa qu* 开发区) or comprehensive experimental reform zones (*zong he pei tao gaige shidian* 综合配套改革试点) designated by the State Council. Although government promotion of

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Wang, *The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China*, 37 HARV. ENVTL. L. REV. (forthcoming 2013); see also, e.g., Press Release, Xinhua, Zhejiang Jiang Huanjing Anquan Baozhang Naru Zhengfu Zeren Kaohe [Zhejiang To Include Environmental Protection in Government Responsibility Evaluation] (Feb. 15, 2011).

226. See Hon S. Chan & Jie Gao, *Performance Measurement in Chinese Local Governments*, 41 CHINESE L. & GOV'T. 4, 8 (2008) (noting that the political goals of maintaining a stable and harmonious society are key measures in performance evaluation of local officials); Jie Gao, *Governing by Goals and Numbers: A Case Study in the Use of Performance Measurement To Build State Capacity in China*, 29 PUB. ADMIN. DEV. 21, 29 (2009) (same).

227. See GIZ 2010 REPORT, *supra* note 14, at 34; Hangzhou CSR Interview, *supra* note 198.

228. See GIZ 2010 REPORT, *supra* note 14, at 1 (discussing intergovernmental competitiveness).

229. See, e.g., Pudong CSR Interview, *supra* note 203. For example, representatives of the German government CSR initiative observe that the local government in Wenzhou, Zhejiang province, is "very proactive [about CSR]. . . . They want to create a 'Wenzhou' brand, to have Wenzhou known as a center for responsible business." Interview with Daniel Taras, *supra* note 136. On Western experience, see Aaronson & Reeves, *supra* note 58, at 50–52.

230. An interesting exception is Guangdong, where local governments have taken a less active role in guiding CSR activities, perhaps because of its continued reliance on low-cost manufacturing.

CSR is not limited to the developed eastern coastal provinces, these trends suggest that local economic development is an important precondition for governments to become early CSR adopters.

Early empirical evidence by Chinese scholars suggests that state-backed policies are having some influence, at least in raising awareness of CSR issues in certain sectors.<sup>231</sup> However, many subnational programs remain preliminary and relatively unknown, even among key firms and government stakeholders.<sup>232</sup> Since most of the initiatives described here are less than five years old, further empirical research is needed to assess their outcomes and impacts. What this preliminary overview does suggest is that the role of the state in advancing CSR in China is much more central than in either the European relational model or a market-led approach.

#### IV. A STATE-CENTRIC MODEL OF CSR

The dominant paradigms for understanding the role of the state in promoting CSR are the market-based model adopted by the United States, which assumes a near-absence of government in the CSR space, and the relational model, which has been used to describe CSR policies in Europe and assumes an active role for governments in promoting CSR.<sup>233</sup> Both envision a fairly clear divide between public and private sectors and a strong role for market forces, civil society, and self-regulation. In both models, governments generally take an indirect mediating or reinforcing role. In post-reform China, a very different pattern has emerged—a state-centric model of CSR.

Table 3 illustrates these approaches as ideal types, with each row representing a point on a spectrum from left to right. For example, the U.S. approach is largely a market-driven model, but as Part II noted, some U.S. governments also adopt relational strategies, engaging with private actors around sustainability or other CSR goals. Within China as well, provinces with a strong private-enterprise base and independent business organizations, such as

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231. For example, one recent survey of bank managers in Guangdong province found high levels of awareness (over 80 percent) of CSR-related rules and guidelines for financial institutions. See, e.g., Wang Hongyi, *Guangdong Bank Survey Analysis* (June 2012) (unpublished report on file with author). A high percentage trace their office's CSR commitment to government initiatives. See *id.* (reporting that 59.8 percent of those surveyed identify the CBRC as having the greatest influence on their CSR commitment).

232. For example, several officials, lawyers, and even firm managers responsible for CSR that I interviewed in cities that have adopted local CSR guidelines and audit systems had no idea that the guidelines were being implemented, or in some cases, that they existed at all.

233. See generally *infra* Part II.B.



Zhejiang, might develop more relational approaches to CSR.<sup>234</sup> Also included is a third distinct model: for lack of a better term, the “socialist model” of CSR, which reflects the contribution of state enterprises to stakeholder welfare under a planned economy. Although particular economic or political systems are not necessary elements of the three models introduced here, governments with similar institutional contexts may be more likely to adopt similar approaches toward CSR.<sup>235</sup>

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234. My research did not identify any examples of CSR engagement in these areas, nor does it presume a natural evolution from one model to another.

235. While I make no attempt here to confirm this hypothesis, it is supported in part by much of the research on path dependency in corporate law and policy. See, e.g., Lucian A. Bebchuk & Mark Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, in CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE 74–77 (Jeffrey N. Gordon & Mark R. Roe eds., 2004).

Table 3: State-Centric CSR in Comparative Perspective

Market-Driven Model ← Relational Model — State-Centric Model → Socialist Model				
<i>Adopter</i>	← United States → ← European Union → ← China (post-2006) → ← Pre-Reform China →			
<i>Instruments</i>	<i>Market-Based</i> Social labeling Consumer and investor monitoring Self-regulation (e.g. corporate & industry codes of conduct) Voluntary disclosures Voluntary assurance systems (e.g. ISO 14001)			
		<i>State-Based</i> Endorsing (e.g. information dissemination, CSR awards) Facilitating (e.g. developing CSR guidelines, incentives) Partnering (e.g. public-private CSR partnerships, facilitating dialogue) Mandating (e.g. mandatory CSR reporting)	<i>State-Based</i> Managerial and bureaucratic control SOEs as economic, social, and political actors ( <i>qiye ban shehui</i> ).	
<i>Institutional Context</i>	Separate public and private sectors Robust civil society  Limited state role Leading business and civil society role	Separate public and private sectors Robust civil society  Some state promotion of CSR Leading business & civil society role	Embedded public and private sectors Weak civil society  Some state promotion of CSR Weak business & civil society role	No separation between public and private sectors No independent civil society No independent business strategizing or goal State social welfare policy advanced by firms
<i>Potential State Roles in CSR</i>	<i>Regulator/Passive Supporter</i>	<i>Regulator/Active Supporter/Partner</i>		<i>Regulator/Owner/Manager</i>

In Table 3, the market-driven model represents the most limited role for the state in advancing CSR, and the socialist model represents the most extensive. In a centrally planned economy, the enterprise’s responsibility to its employees, suppliers, local communities, and other stakeholders is integrated with the economic goals set by the state plan, and economic efficiency may ultimately be less important than these broader interests from the state’s perspective.<sup>236</sup> For firms within the state bureaucracy,<sup>237</sup> the state

236. For a synopsis of state enterprise management during the reform period, see XI, *supra* note 171, at 8–18.

237. During the 1980s, a growing proportion of economic activity in China was in fact carried out by township-village enterprises and private enterprises even before

stands in both a principal-agent and regulator-regulatee relationship to the firm and exercises total control over management and all operational decisions. State enterprises give the state a source of funds and personnel to deal with pressing social problems, but any externalities of firm operations can only be addressed by the state itself. With the advent of market reforms in the late 1980s and early 1990s, China largely abandoned this model, although some of its governance elements persist with respect to state enterprises.<sup>238</sup>

In a state-centric CSR model, national and subnational government actors are not only regulators—they are also firms' most important stakeholders and hold the key to essential business relationships. Not surprisingly, internal responsibility for promoting and coordinating CSR programs in many Chinese firms is allocated to government relations departments.<sup>239</sup> Close institutional, relational, and bureaucratic ties between the state and the business community give governments multiple avenues of influence and control in the CSR space, beyond the state's direct role in legislation, enforcement, and explicit policymaking.<sup>240</sup> These linkages are ubiquitous and often opaque.<sup>241</sup>

However, in contrast to the socialist model, nonstate actors and market forces shape firm incentives in a way that is largely absent in a command economy.<sup>242</sup> In China, for example, international consumer and NGO pressure has historically played the most direct role in influencing firm adoption of codes of conduct and other CSR standards.<sup>243</sup> With the exception of state enterprises, governments in the state-centric model do not rely on direct managerial or bureaucratic control to promote CSR (or any other economic or social goals).

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their existence was formally legalized. On this history, see generally HUANG, *supra* note 171; KELLEE TSAI, *CAPITALISM WITHOUT DEMOCRACY: THE PRIVATE SECTOR IN CONTEMPORARY CHINA* (2007).

238. The state sector still remains generally subject to bureaucratic controls; however, as a result of state sector reforms, all state firms must respond to market forces that push toward or against the state's social welfare goals. See generally CHAO XI, *CORPORATE GOVERNANCE AND LEGAL REFORM IN CHINA* (2009). Therefore, modern SOEs no longer represent a pure form of the socialist command approach to CSR.

239. Interview with former government affairs department employee, domestic firm, in Guangzhou, China (June 1, 2012); Interview with Commc'ns Manager, foreign-invested firm, in Shanghai, China (June 20, 2012).

240. On the basic institutional structures that facilitate these dynamics, see TONY SAICH, *GOVERNANCE AND POLITICS OF CHINA* 142–78 (3d ed. 2011).

241. See, e.g., *Bo Xilai's Clan Links*, *BUS. WK.*, Apr. 23, 2012 (tracing the business and personal connections of the disgraced Bo Xilai and Gu Kulai).

242. On nonstate drivers of firm CSR practice in China, see Lin, *supra* note 9, at 89–99. While the three models introduced here do not generally presume a certain underlying economic or political system, the respective roles of the state and of enterprises in the socialist model are, in a pure form, only possible within a planned economy.

243. See *THEORY AND PRACTICE OF CSR*, *supra* note 118, at 53–59 (discussing these drivers of firm CSR practice); Chan, *supra* note 122 (same).

The state-centric and relational models appear to have much in common. Governments in a state-centric model may adopt many of the same tools and instruments to advance CSR as governments following a relational approach, and for many of the same reasons. In particular, both may embrace “new governance” forms because they see harnessing the influence of international standard-setting organizations, economic institutions, trading partners, internal management, and civil society as important mechanisms of informal social control.<sup>244</sup> At the same time, state agencies in a relational approach may, like those in a state-centric model, encourage, coordinate, and even drive CSR strategies that involve these third parties.<sup>245</sup>

The critical difference is that in the state-centric model, the state is unwilling to cede control over CSR initiatives and policymaking to other actors and is not an impartial partner with business or mediator of firm–stakeholder engagement. In China, a state-centric approach means that the Party and government officials guide both regulatory priorities and CSR policy and that organizations without state ties have few avenues to influence either of these or firm behavior. Accordingly, state promotion of CSR in the state-centric model is not a complement to, but to some extent a substitute for, voluntary firm activity, independent civil society efforts, or market demand. Indeed, several observers interviewed for this study emphasized that the government was doing too much too fast, crowding out other stakeholders who lack an independent voice.<sup>246</sup>

The distinction between the relational and state-centric approaches is most apparent with respect to “intermediary organizations”—the (semi)public actors that assist government in developing CSR public policies and serve as an interface between governments, business, and civil society or the public.<sup>247</sup> Prior studies have found that intermediary organizations are essential to the success of state-backed CSR.<sup>248</sup> In the West, governments have enlisted business organizations or NGOs to fill this role, or have themselves created new intermediary institutions, as the United

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244. Gunningham, *supra* note 62, at 115.

245. See, e.g., LOZANO, ALBAREDA & YSA, *supra* note 3, at 116 (“[T]he weight of the three social actors (i.e. government, business, and civil society) and the relationship between them depend greatly on the historical context of each country. . . . [I]t is often the governments who drive and foster the inclusion of these actors.”).

246. Interview with Consultant, BSR, in Beijing, China (June 27, 2011); Interview with CSR Manager, foreign-invested firm, in Guangzhou, China (June 29, 2012).

247. See LOZANO, ALBAREDA & YSA, *supra* note 3, at 164–65 (describing the role of intermediary organizations).

248. See *id.*

Kingdom, Germany, and Denmark have done.<sup>249</sup> However, in a relational model, outcomes or agendas may be shaped equally by other participants, even when the state plays a leading role in establishing intermediary organizations and facilitating dialogue.<sup>250</sup>

In China, numerous actors can also influence the policy process.<sup>251</sup> However, with the exception of various international organizations, intermediary organizations leading in the CSR space, such as the CSR committees established by many local governments, are not neutral mediators but are embedded within the party-state apparatus. Indeed, CSR is to be carried out under Party leadership, and Party-affiliated mass organizations, such as labor unions and the All-China Women's Federation branches, have been encouraged to make CSR promotion part of their mission.<sup>252</sup> Although some governments have made engagement with business and civil society a key goal, these partners generally do not set the scope and objectives of that engagement.<sup>253</sup> The limited number of domestic trade associations and civil society organizations that governments have engaged with to create or promote CSR initiatives are positioned to do so because they too maintain strong ties to the party-state, or are in fact "government NGOs" or official industry organizations. China's homegrown civil society organizations find that their range of movement is bounded by the state through controls on their establishment and operations, and they lack the influence necessary to push firms to embrace CSR.<sup>254</sup>

A comparison of Figure 2, created by the CSR Research Center of the Chinese Academy of Social Sciences, with the three-way relational model introduced in Figure 1 above, emphasizes most clearly the distinctions between a state-centric and a relational approach. Figure 2 represents the typical structure of local

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249. See, e.g., *id.* at 108–09, 165–75 (discussing examples from Germany, Italy, and Denmark, among others); Moon, *supra* note 3 (discussing the UK and Irish governments' experience).

250. See Albareda et al., *supra* note 3, at 350 (describing the role of the state as a neutral mediator).

251. Case studies illustrate this complexity. See, e.g., Young Nam Cho, *The Politics of Lawmaking in Chinese Local People's Congresses*, 187 CHINA Q. 592, 593 (2006) (discussing labor and consumer-protection legislation); Kennedy, *supra* note 164 (outlining industry opposition to state-directed cartels).

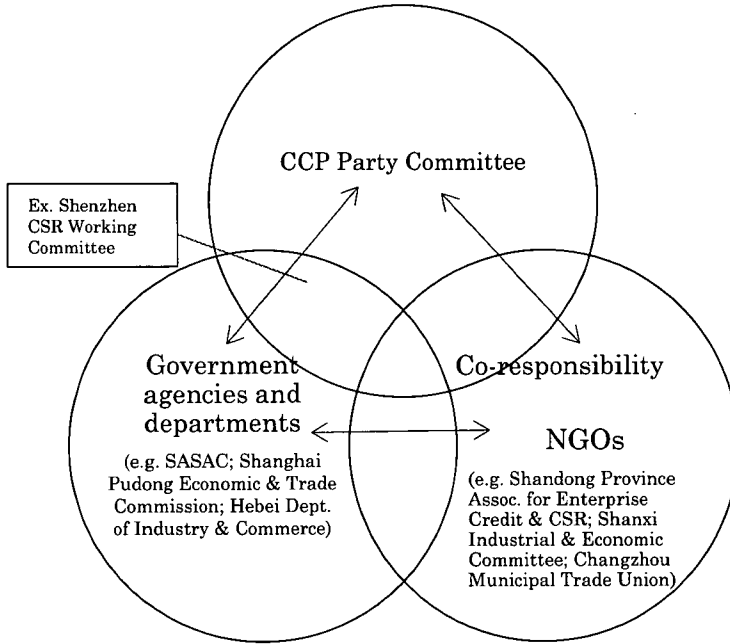
252. See, e.g., SASAC CSR Notice, *supra* note 177, ¶ 20 (describing the leadership and CSR mission of party institutions).

253. Pudong CSR Interview, *supra* note 203.

254. See generally Andrew Watson, *Civil Society in a Transitional State: The Rise of Associations in China*, in CONTESTED SPACES, *supra* note 164 (discussing these limits). Scholars of civil society routinely observe that there is a direct relationship between an organization's ties to the state and its capacity to accomplish its social mission. See, e.g., Joseph Y.S. Cheng, Kinglun Ngok & Wenjia Zhuang, *The Survival and Development Space for China's Labor NGOs: Informal Politics and Its Uncertainty*, 50 ASIAN SURV. 1082, 1083 (2010); Watson, *supra* note 164.

government CSR policy promotion bodies.<sup>255</sup> Most striking is that the relationships that are critical to advancing CSR are those within the party-state. All of the civil society organizations referenced in Figure 2 are also state-affiliated. The state–firm dimension is notably missing, implying that the defining relationships in CSR are internal to the state.

Figure 2: State-Centric Relational Governance



Source: GOVERNMENTS & CSR 2010, *supra* note 12, at 9.

In China, then, a state-centric approach is not only the natural outgrowth of the Chinese political and institutional structure, but also an inevitable outcome of the party-state's influence on all three sides of the relational triangle—as market player, as intermediary, as sponsor or patron of civil society and business organizations, and as controlling shareholder of state enterprises. Beyond China, a state-centric CSR model could conceivably emerge in countries with greater separation between the state, firms, and civil society actors, assuming governments retain direct control over CSR policymaking and influence over firms and civil society.<sup>256</sup> Indeed, if, as in China, the state maintains a monopoly on political power and civil society

255. This structure was confirmed by numerous interviewees in this study. See, e.g., Hangzhou CSR Interview, *supra* note 198.

256. Within the OECD, France's highly regulatory approach to CSR represents the closest example. See LOZANO, ALBAREDA & YSA, *supra* note 3, at 119–26.

pressures are weak, CSR is unlikely to advance without government involvement.

## V. IMPLICATIONS FOR NORM CREATION AND LEGAL IMPLEMENTATION

As this Article has demonstrated thus far, the question of the state's role in advancing CSR is not *whether* governments will address this new policy arena but why, how, and with what effect. Parts II through IV have addressed the initial questions of why and how governments are approaching CSR and have placed China's efforts in comparative context. This Part considers how state sponsorship of CSR intersects with positive law and how the success (or failure) of these programs is likely to influence norm creation and legal compliance in China.

It is important to emphasize at the outset that both represent something of an uphill battle in China, as they are at odds with the entire thirty-year history of its enterprise reform. Since the start of reform, the close link between law and state policy, the pragmatic experimentalism of Deng Xiaoping and his successors, and tensions between central and local governments meant that law has been neither transparent, predictable, nor uniformly enforced.<sup>257</sup> Legal and policy barriers to the existence of private enterprise during the 1980s forced entrepreneurs to engage in adaptive and informal coping strategies to survive. Because the complicity of local officials in ignoring legal barriers was necessary, this context created enormous opportunities for patronage and rent seeking to flourish in a business culture already grounded on relational ties.<sup>258</sup> Throughout the reform period, growth-based economic targets fueled the hyper-competitiveness of the Chinese market, pushing firms to cut costs regardless of the consequences and local governments to turn a blind eye to noncompliance. This context helps explain the fundamental shifts that companies and governments must make to understand, much less embrace, corporate accountability, CSR, and legal compliance itself.

### A. Regulatory Convergence and Networked Incentives

To be sure, evasion and creative compliance, that is, following the letter of the law but not its spirit, are common responses to

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257. See generally IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA (Jianfu Chen et al. eds., 2000) (analyzing a variety of problems involved in implementing and enforcing laws and regulatory reform).

258. See HUANG, *supra* note 171, at 224. See generally TSAI, *supra* note 237 (discussing the foundations of adaptive strategies).

regulation worldwide.<sup>259</sup> In fact, research has shown that even in the West, companies' incentives to comply with law are influenced equally (and often more powerfully) by market forces, cultural norms, and companies' internal constraints.<sup>260</sup> Accordingly, regulatory scholars find that individuals and firms exhibit higher levels of voluntary legal compliance, conformity with informal norms, and willingness to cooperate with regulatory authorities when they are subject to a "networked" regulatory regime in which multiple incentive structures are convergent and mutually reinforcing.<sup>261</sup> State-backed CSR has the potential to contribute to this type of regime because it brings together formal and informal governance tools, law and policy, and public and private governance structures across diverse regulatory arenas.

However, as Neil Gunningham has noted, none of these accountability tools create independent, unidirectional, and unambiguous pressures toward firm compliance, as the CSR and regulatory literatures have often claimed.<sup>262</sup> In fact, he argues, they gain force through mutual interaction and are often negotiated and contested.<sup>263</sup> In order to capture this complexity, Gunningham conceives of a firm as possessing a collective license to operate that includes (i) its market license to operate as a profitable business, which is negotiated with shareholders, creditors, consumers, and other financial stakeholders; (ii) its legal license, which is negotiated with relevant authorities as well as citizens and NGOs; and (iii) a social license conferred by consumers, the voting public, and other stakeholders.<sup>264</sup> Consistent with standard contractual theories of the firm, this collective license is the product of the negotiated interactions between the firm and its stakeholders, and their

259. See, e.g., TSAI, *supra* note 237, at 45–54 (describing how entrepreneurs co-opted legal forms to survive before private firm ownership was formally permitted).

260. See AYRES & BRAITHWAITE, *supra* note 1, at 20–35 (discussing compliance incentives).

261. See *id.* at 35–40 (developing the well-known tiered enforcement pyramid); see also CORPORATE LAWBREAKING AND INTERACTIVE COMPLIANCE 143–65 (Jay A. Sigler & Joseph E. Murphy eds., 1991) (advocating the integration of cooperative enforcement tools); Richard M. Locke, Fei Qin & Alberto Brause, *Does Monitoring Improve Labor Standards? Lessons from Nike*, 61 INDUS. & LAB. REL. REV. 3 (2007) (finding a correlation between effective national laws and improved compliance with codes of conduct). See generally J. LISTER, CORPORATE SOCIAL RESPONSIBILITY AND THE STATE (2011) (exploring the intersection of multiple enforcement regimes related to sustainable forestry); van Rooij & Lo, *supra* note 223 (discussing overlapping strategies in pollution enforcement in China).

262. See generally Neil Gunningham, *Corporate Environmental Responsibility: Law and the Limits of Voluntarism*, in THE NEW CORPORATE ACCOUNTABILITY 476, 480 (McBarnet et al. eds., 2007). By "unidirectional," Gunningham refers to expectations that law and other pressures on firms will push them toward voluntary CSR practices. *Id.* Gunningham's definition of CSR is limited to "voluntary and unenforceable action beyond what is required by law." *Id.* at 477.

263. *Id.* at 480.

264. *Id.* at 480–82.



competing interests create tensions between the three licenses that must be balanced by the firm.<sup>265</sup>

### 1. State-Centric CSR and the Collective License to Operate

Gunningham's analytical framework offers a useful starting point for understanding the potential effect of state CSR policies on firm compliance and on law itself. As he explains, the legal license (i.e., regulatory requirements) can expand the social license (i.e., CSR's normative dimensions) and *vice versa*, with the economic license often setting a floor on the firm's response to these pressures.<sup>266</sup> State-centric CSR initiatives in China offer ready examples of the dynamics he describes, with the added gloss that for firms there, the state is a relevant stakeholder in all three licenses, not just the regulatory license.

At the outset, the regulatory and social licenses intersect in some fairly obvious ways.<sup>267</sup> For example, if serious regulatory violations trigger a public outcry or labor protests, this compromise of the firms' social license puts pressure on governments to tighten monitoring and enforcement or enact new regulations.<sup>268</sup> State promotion of voluntary firm CSR practices may reduce this risk.<sup>269</sup> Government-backed CSR audit programs, like most corporate and industry codes of conduct, merge the two licenses since they include basic compliance as a minimum requirement. So do mandatory CSR measures, such as listed company sustainability reporting or sustainability measures in internal controls, which embed soft CSR dimensions in hard regulation. In Shanghai, local agency enforcement priorities—also part of the legal license—are directly factored into the CSR audit review process, as well as into the weights assigned to different compliance elements. Therefore, legal compliance directly influences whether firms enjoy the reputational benefits of government CSR certification—in other words, an enhanced social license.<sup>270</sup>

Less obviously, both mandatory and voluntary CSR measures represent a legal expansion of the social license. For example, CSR disclosure rules give the public and other social stakeholders access to information that can increase public expectations toward the firm,

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265. *Id.* As he acknowledges, additional interactions are also possible; a more complex treatment is beyond the scope of this Article.

266. *Id.* at 483–93.

267. There are many other possibilities, some highlighted in Gunningham's work. *Id.* at 483–87.

268. *Id.* at 483. Media is a powerful force in the contemporary Chinese legal system. See generally Benjamin Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1 (2005).

269. See McBarnet, *supra* note 2, at 28–29 (addressing the related critique of CSR as a substitute for law).

270. Pudong CSR Interview, *supra* note 203.

even though independent audits are not currently required and the quality of CSR reports is therefore highly variable.<sup>271</sup> Governments' endorsement of CSR can empower the public to more actively monitor corporate social impacts and challenge compliance violations even when enforcement is otherwise weak.<sup>272</sup> Indirectly, a firm's support for the local government's CSR audit program, charitable cause, or other CSR initiative not only strengthens the firm's legal license by fostering positive relationships with regulators but also creates reputational benefits that enhance the firm's social license; good government relations also broaden the firm's access to customers and business partners, strengthening its economic license.

China's CSR programs also illustrate how the firm's social license impacts its legal license. From an enforcement standpoint, voluntary participation in most government CSR audit programs entitles participants to a short-term inspection waiver from various enforcement agencies (the regulatory license) and to various financial benefits (the economic license).<sup>273</sup> If a firm's social license has been breached—for example, if the firm has lost consumer litigation or been the subject of a media report highlighting compliance violations, the firm may also be ineligible for CSR certification and the opportunity to earn these rewards.<sup>274</sup> In some jurisdictions, low ratings on a local government CSR audit might place a firm on a blacklist that triggers more frequent regulatory inspections by administrative agencies and disqualifies it from certain state-funded incentives.<sup>275</sup>

One of the potential advantages of state-centric CSR for legal (and policy) implementation is that the state can influence all dimensions of the firm's collective license, and in China, the state also has many more avenues to do so than governments elsewhere. For example, China's emphasis on mandatory rules for public-sector enterprises, state agencies, and listed firms (most of which are state controlled)<sup>276</sup> is an effective way to endorse CSR and lead by example

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271. Mandating independent auditing of sustainability reports may not resolve the problem, given the deep questions that have emerged about accounting fraud and audit failures impacting the financial reports of many Chinese firms in recent years. See *Chinese Accounting Earns Tough Stance*, WALL ST. J., Aug. 5, 2012, at C12 (discussing ongoing investigations by the Securities and Exchange Commission and the Public Company Accounting Oversight Board).

272. This is in fact an explicit goal of many state-backed CSR programs. See, e.g., *Shanghai Municipal Local Standards of CSR*, Nov. 11, 2009, [http://csr.pudong.gov.cn/csr\\_bjz\\_csras/List/list\\_0.htm](http://csr.pudong.gov.cn/csr_bjz_csras/List/list_0.htm) (mandating that enterprises evaluate CSR implementation on a regular basis and disclose the results to employees and the public).

273. See *supra* notes 191, 207–208 and accompanying text.

274. See, e.g., *Shanghai Municipal Local Standards of CSR*, *supra* note 272.

275. See *id.*

276. See XI, *supra* note 171, at 24–25, 49–51 (estimating that as many as 80 to 90 percent of all listed companies are directly or indirectly controlled by the state).

in sectors where ensuring compliance presents fewer challenges.<sup>277</sup> Government-sponsored CSR policy guidelines are generally drafted in broad terms, but can establish standards that better convey the “spirit” of the law. Rather than developing new CSR codes and guidelines, governments at the provincial level and above could work to standardize local CSR guidelines. In other words, governments might engage in “meta-regulation,” that is, the regulation of “self-regulation.”<sup>278</sup> Governments in China could also use their influence to expand avenues for firm stakeholder and civil society engagement. State-centric CSR therefore has great potential to promote regulatory convergence and broaden the network of incentives companies face.

## 2. State-Centric CSR and Filling Governance Gaps

The fact that state-centric CSR is embedded in positive law and backed by the state is, however, precisely why it is unlikely to address underlying deficiencies in the implementation of existing laws and regulations. Most critically, the viability of state-centric voluntary tools depends upon the capacity and will of state agencies and government officials. Although most scholars see the ability to overcome governance gaps as a key motivator of state CSR policy,<sup>279</sup> state-centric CSR is inherently subject to the same constraints that weaken traditional regulation.<sup>280</sup>

It is no coincidence that leading CSR adopters are governments located along China’s more affluent eastern coast. Those regions are more likely to have a significant number of companies that are financially able to bear the increased operating costs that compliance requires and to have governments with the fiscal capacity to support CSR programs. For governments, developing and administering a local CSR audit program, toughening enforcement, and offering other financial incentives all require significant financial resources and discretion over available funds.<sup>281</sup> For example, many participants in

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277. See also UN GLOBAL COMPACT & BERTELSMANN STIFTUNG, *supra* note 43, at 17–18 (observing that mandatory rules are particularly appropriate when the state itself is a market actor).

278. PARKER, *supra* note 33, at 245–91.

279. See UN GLOBAL COMPACT & BERTELSMANN STIFTUNG, *supra* note 43, at 11.

280. See Lesley K. McAllister, Benjamin van Rooij & Robert A. Kagan, *Reorienting Regulation: Pollution Enforcement in Industrializing Countries*, 32 LAW & POL’Y 1, 7–9 (2010) (observing that the “novel approaches to regulation, like traditional regulatory approaches, ultimately depend on reliable monitoring data and other facets of state enforcement to back them up”). Although not investigating state-backed CSR specifically, recent empirical studies in weak regulatory environments confirm that state enforcement is essential to the success of alternative regulatory strategies, such as government-sponsored self-regulatory programs, voluntary guidelines, and market-based incentives capacity, and other aspects of state enforcement to back them up. See, e.g., van Rooij & Lo, *supra* note 223 (surveying voluntary regulation in China).

281. Subnational governments with developed CSR programs, such as Wenzhou, Wuxi, Yantai, and Pudong, all have dedicated discretionary funds available to offer

local government audit programs are already CSR leaders or have been selected as pilot participants by local government program sponsors.<sup>282</sup> For these firms, offering financial incentives or regulatory waivers reduces the resources governments can spend to improve enforcement among noncompliant firms, while achieving little marginal benefit. On the other hand, governments that offer financial rewards to noncompliant firms who reach compliance standards are using state resources to subsidize the cost of compliance. Both strategies are difficult to expand broadly with limited government resources.<sup>283</sup>

At present, the “adaptive informal institutions” that ground Chinese business culture sit uneasily with increasingly tough legal rules and rising public expectations of business and of governments. However, changing established business culture requires a simultaneous transformation of bureaucratic culture. Neither is certain and both are likely to proceed slowly, if at all. Although CSR initiatives themselves may stimulate this change, many depend on the innovation of individual officials who often serve in a single post for only a few years.<sup>284</sup> There is also a risk that state-driven CSR programs might push too fast, creating pressure for firms or governments to show false progress on measures that are for the most part likely to bear fruit primarily in the long term.<sup>285</sup> CSR-related legislation also falls prey to the same deficiencies as existing legislation in China, which is often vague, contradictory, and lacking clear enforcement mechanisms.<sup>286</sup>

Finally, the underlying challenge of legal implementation in China is the negotiated nature of law itself. State-centric CSR explicitly expands the potential scope of that negotiation but cannot alter its underlying dynamics. As the work of Gunningham and others suggest, whether state-centric CSR ultimately supports or undermines law depends on the convergence of incentives for firms, and in a state-centric model, for governments as well.

incentives to firms and cover administrative costs of CSR programs. van Rooij & Lo, *supra* note 223; Interview with Gao Baoyu, *supra* note 142; Pudong CSR Interview, *supra* note 203 (reporting that start-up costs for a CSR guideline and audit program can cost local governments 2 to 3 million RMB).

282. One of the challenges encountered by the Hangzhou program was the discovery that the “leading” CSR performers were large firms who were already exceeding compliance targets. Hangzhou CSR Interview, *supra* note 198.

283. As one interviewee put it, “You can’t really rely on cash [to incentivize CSR] when there are more than 8,000 small- and medium-sized enterprises in Wenzhou.” Interview with Gao Baoyu, *supra* note 142.

284. Interview with Governmental Affairs Liaison, Am. Chamber of Commerce, in Shanghai, China (June 7, 2011).

285. Many thanks to the CSR director of a major European multinational in China for raising this issue. Interview with CSR Manager, *supra* note 246.

286. For examples, see Lin, *supra* note 9, at 65.

### B. Communicative Impact and the Legitimacy of Law

Perhaps one of the most critical ways, then, in which state-sponsored CSR influences the implementation of law is through its inherent communicative effect.<sup>287</sup> Like formal regulation, state-backed CSR instruments signal the government's endorsement of CSR practices, which can have a stronger indirect effect on the social norms that undergird respect for law than the direct effects of the regulation or policy itself.<sup>288</sup> However, prior empirical studies of voluntary regulatory measures confirm that the legitimacy of CSR, and by extension of the laws it rests on, depend on the consistency of the message and the legitimacy of the state itself as a CSR supporter.<sup>289</sup> Under a state-centric CSR model, the single most important determinant of its success is therefore *government responsibility*.<sup>290</sup>

In this regard, China faces the same chicken and egg problem that many European governments faced in the early 2000s when they first adopted CSR public policies. At that time, many looked to state-backed CSR, somewhat paradoxically, as a way to bolster the legitimacy of the state in the face of a perceived governance crisis in which both governments and major firms played a role.<sup>291</sup> In the Chinese context, corruption, unchecked local abuses of power, weak government responses to corporate scandals, and state crackdowns on public protest when violations of law are uncovered all undermine the legitimacy of the state as an advocate of CSR. Although predictable regulatory enforcement need not be a prerequisite to state-backed CSR, a gap between the two sends firms inconsistent messages, undermining compliance incentives.

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287. On the communicative effect of law and public policy, see Richard Pildes, *The Unintended Cultural Consequences of Public Policy: A Comment on the Symposium*, 89 MICH. L. REV. 936, 937 (1991); Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2024 (1996).

288. Pildes, *supra* note 287, at 937 (1991); Sunstein, *supra* note 287, at 2024. Prior studies suggest that market forces and voluntary measures can produce greater respect for the norms underlying mandatory rules. See, e.g., Lisa M. Fairfax, *The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms*, 31 J. CORP. L. 675, 698 (2006) (asserting that corporate rhetoric is important in shaping corporate norms of behavior).

289. See Daniel Fiorino, *Green Clubs: A New Tool for Government?*, in VOLUNTARY PROGRAMS, *supra* note 61, at 209, 228 (observing that voluntary programs' success depends critically on the underlying legitimacy of the state sponsor, the reputation of program participants, and the state's ability to prevent shirking once participants are admitted or acknowledged as CSR achievers).

290. The need to move toward concepts of responsible *organizations*, not just responsible business, has been recognized by many governments. See, e.g., ISO, *supra* note 24, at 2.

291. See, e.g., Albareda et al., *supra* note 3, at 349 (explaining the origin of CSR policies in Britain as a crisis in governance); Moon, *supra* note 3, at 5–11 (analyzing drivers of CSR in the United Kingdom).

China's current CSR programs have a strong potential for positive communicative effect, particularly in endorsing a broad definition of CSR that reinforces legal compliance and extends across firms' operations. Recent empirical studies of Chinese business leaders and the broader public confirm that both tend to define CSR as "ad hoc public philanthropy," "strategic philanthropy," and "ethical business practices."<sup>292</sup> Public surveys also find widespread skepticism of firms' true commitment to CSR.<sup>293</sup> Some governments perpetuate this narrow view by soliciting charitable contributions and rewarding firms for philanthropy regardless of their business practices. Nonetheless, all local-level CSR guidelines adopted by Chinese governments at present prioritize basic legal compliance over philanthropic contributions, and their comprehensive approach to CSR is echoed in the regulatory measures that incorporate CSR.<sup>294</sup>

However, some subnational CSR guidelines introduce what David and Louise Trubek term a "rivalry" with formal law and legislation that might actually undermine compliance.<sup>295</sup> For instance, in some cases, the guidelines explicitly *permit* firms to deviate from legal requirements as an *incentive* to participation in the CSR guideline/audit program. For example, in recent years many employers have paid social insurance fees for as few as one-third of their employees, although legally, all employees must be covered. Under the Wenzhou CSR audit guidelines, a passing rate is awarded

292. Tang & Li, *supra* note 121, at 199; see also Wendy Chapple & Jeremy Moon, *Corporate Social Responsibility (CSR) in Asia: A Seven-Country Study of CSR Web Site Reporting*, 44 *BUS. & SOC'Y* 415, 418 (2005) (analyzing the content of firm websites); Ans Kolk, Pan Hong & Willemijn van Dolen, *Corporate Social Responsibility in China: An Analysis of Domestic and Foreign Retailers' Sustainability Dimensions*, 19 *BUS. STRATEGY & ENV'T* 289, 290–98 (2010) (same); Shangkun Xu & Rudai Yang, *Indigenous Characteristics of Chinese Corporate Social Responsibility Conceptual Paradigm*, 93 *J. BUS. ETHICS* 321, 326–27 (2010) (identifying common CSR definitions as including "Social donation/charity" and "Economic responsibility").

293. See, e.g., Chen Xudong, *CSR in China: Consciousness and Challenges—A Study Based on Zhejiang Province*, Conference Paper Presented at the Conference on U.S.–China Business Cooperation in the 21st Century: Opportunities and Challenges for Entrepreneurs (Apr. 15–17, 2009) (on file with author) (finding a large gap between enterprises and the public in perceived corporate CSR performance).

294. See, e.g., *SASAC CSR Notice*, *supra* note 177, ¶ 17 (encouraging SOEs to embed CSR within corporate governance, operations, and development strategy). Although not necessarily representative of their jurisdictions, all officials interviewed in Shanghai and Zhejiang in this study supported this view; interviewees in Guangdong less consistently so. This broad view of CSR explicitly rejects the dominant approach toward CSR common in many developing countries. See Visser, *supra* note 104, at 489 (proposing a new CSR pyramid for developing countries in which economic responsibilities and philanthropy form the lower levels of the pyramid with legal responsibilities and then ethical responsibilities at its peak).

295. See Trubek & Trubek, *supra* note 7, at 543 (explaining that within a co-regulatory mix, "rivalry" occurs when "new governance" forms work in opposition to law).

to companies who cover only 85 percent of the workforce.<sup>296</sup> In Hangzhou, governments are considering easing the social insurance requirement as a financial subsidy to reward top performers on the CSR audits, even though 100 percent contribution is currently required to attain a top “A” designation.<sup>297</sup> By explicitly endorsing a lower standard than the law requires, these governments’ CSR programs send mixed messages to participating firms, signaling that CSR programs are in fact a situs for negotiated legal compliance.

### C. *The Limits of State-Centric CSR*

Many questions remain about the ability and commitment of both central and local governments to promote legal compliance and advance CSR. What is clear is that CSR must be considered as part and parcel of the legal environment for business and that law’s legitimacy will itself be either enhanced or undermined by firms’ responses to state-backed CSR. Although particular solutions to these challenges are beyond the scope of this Article, the following are some of the key issues that governments in China must take into account.

1. *Government Awareness and Government Legal Compliance.* Because the state has constrained the space for public participation and civil society leadership in CSR, receptivity of business leaders to the concept will depend on raising government leaders’ awareness of CSR and its connection to existing law. A number of subnational governments are working with international organizations to train officials on CSR concepts and strategies.<sup>298</sup> However, the messages of local and national leaders, and even different agencies working in the CSR policy space within the same jurisdiction, are not always aligned,<sup>299</sup> nor do they yet uniformly support legal compliance as a foundation of CSR. CSR coordinating units that engage leaders of multiple agencies might contribute to a more consistent message, as will efforts to hold officials accountable for adherence to law within their scope of responsibility.<sup>300</sup> Policymakers in China are currently

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296. Interview with Gao Baoyu, *supra* note 142. This is in contrast to the standard practice of paying insurance for only 30 percent of the workforce. The implementation of China’s Social Insurance Law, which took effect in July 2011, may alter this policy.

297. Hangzhou CSR Interview, *supra* note 198.

298. Interview with Daniel Taras, *supra* note 136 (discussing training programs in Zhejiang and Jiangsu provinces).

299. OECD, *supra* note 124; Interview with Gao Baoyu, *supra* note 142.

300. An indication of the scale of noncompliance within government is that China’s 2011 Action Plan for Intellectual Property Protection commits to ensure that state agencies purchase only copyrighted software for official use. STATE INTELLECTUAL PROP. OFFICE OF THE P.R.C., OFFICE OF THE INTER-MINISTERIAL JOINT MEETING FOR IMPLEMENTATION OF THE NATIONAL INTELLECTUAL PROPERTY STRATEGY, CHINA’S ACTION PLAN ON INTELLECTUAL PROPERTY PROTECTION 2011 ¶ 27 (Apr. 25, 2011), available at [www.lawinfochina.com](http://www.lawinfochina.com).

considering addressing this issue by extending firm-focused CSR guideline and audit programs to evaluate *government* performance in select localities,<sup>301</sup> and opportunities are expanding for local governments to share experiences in CSR policy implementation with each other.

2. *Greenwashing and Negotiated Compliance.* As developed countries have found, state-sponsored CSR programs can be perceived as government greenwashing or an opportunity for capture by regulated firms.<sup>302</sup> Therefore, transparency and equal access to incentives are key as CSR pilot programs mature to prevent state-backed incentives from becoming another space for negotiated compliance; neither is yet a hallmark of the current Chinese business environment.

3. *Borrowed Legitimacy and Risk Shifting.* Local governments that are promoting CSR are well aware of their own legitimacy deficit and of the risk they face if government-endorsed CSR leaders turn out to be the culprits in a compliance-related scandal.<sup>303</sup> Many currently “borrow legitimacy” by contracting with third-party auditors and international NGO partnerships to implement CSR programs. Although contracting out can shift some of the risk of failure to third parties, the legitimacy of the state as a legislator, regulator, and enforcer will inevitably affect firms’ perceptions of these programs.

4. *Bottom-up Demand and Civic Engagement.* Governments across China are increasingly confronted by vocal grassroots movements demanding a response to illegal or irresponsible business practices. However, as Chinese scholars have also noted, state-centric CSR weakens the potentially reinforcing and balancing role of stakeholders and of market forces by limiting the space for independent civil society and voluntary firm initiative.<sup>304</sup> Unless governments are willing to broaden the space for other actors to engage firms around CSR, prospects for state-backed CSR to serve as a catalyst for basic legal compliance will remain limited.

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301. If adopted, these standards would potentially extend to all of China’s development zones (*kai faqu*). Pudong CSR Interview, *supra* note 203. The MOFCOM Sino-Dutch project is also developing an indicator tool in partnership with GRI to assess firm and government CSR progress. See *Indicator Evaluation System, CHINA CORP. SOC. RESP. MONITORING & EVALUATION SYS.*, [http://www.siccr.org/en/Column\\_List.aspx?columnID=32](http://www.siccr.org/en/Column_List.aspx?columnID=32).

302. The risk of capture has been noted in the CSR literature. See, e.g., McAllister et al., *supra* note 280, at 2.

303. Coglianesi and Nash note that this risk is endemic to all government-sponsored voluntary programs. See Coglianesi & Nash, *supra* note 61, at 30 (drawing on club theory to explain the phenomenon).

304. See Zhou Linbin & He Chaodan, *Shilun “Chaoyue Falu” de Qiye Shehui Zeren [Considering CSR “Beyond the Law”]*, in *STUDIES ON CORPORATE SOCIAL RESPONSIBILITY*, *supra* note 130, at 103, 119.



5. *Sustainable Development, Not State Predation.* While state capture by powerful firms remains a concern, the opposite challenge is that the state's dominance in the CSR space allows it to effectively tax firms in the name of CSR, for example, by pressuring them to contribute to state-backed development programs or maintain unjustifiably high employment levels.<sup>305</sup> These self-serving uses of CSR policy undermine the business case for CSR and may even impair some firms' survival. This suggests a need for governments to reconsider the proper boundary between firm and state responsibility and strictly limit the government's role in some aspects of CSR, such as direct corporate philanthropy.

### VIII. CONCLUSION

Recent efforts of China's central-level ministries, subnational governments, and state-backed organizations to advance CSR demonstrate how state sponsorship of CSR can complement economic and legal development, particularly as emerging markets mature. To be sure, governments in China have been motivated to promote CSR by a complex mix of policy goals, as well as by the initiative of individual officials and business leaders. Nonetheless, state sponsorship of CSR is creating new incentives for firms to meet and exceed minimum legal standards. State-centric CSR must therefore be understood as part of the broader regulatory environment and as part of a toolkit of cooperative strategies to reward compliance leaders.

However, in contrast to governments that have followed a market-led or relational approach, China's state-centric approach to CSR does not signal any change in the underlying relationships between the state, business, and civil society. Despite the independent initiative of many firms, civil society organizations, and individuals, much of the impetus toward CSR in China at present depends, directly or indirectly, on the support of state agencies, Party policy, and local government innovation. Far from a "regulatory reconfiguration,"<sup>306</sup> then, China's recent experience supports the findings of prior comparative work that state backing for CSR is largely a function of the local institutional context.

Because the state's influence in the Chinese context extends beyond a regulatory, policymaking, or even intermediary role, state-

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305. Such issues were raised repeatedly by interviewees in this study. See, e.g., *Zhejiang CSR Opinion 2008*, *supra* note 181, at III ("[Governments should] avoid adding unreasonable burdens to enterprises in the name of fulfilling social responsibilities.").

306. Gunningham, *supra* note 62, at 126 (describing transitions in western economies toward a mix of nonstate law and complementary traditional regulation).

centric CSR has great potential to influence corporate behavior when government commitment and resources lend support. As a focus of local innovation and intergovernmental learning, state-backed CSR also has the potential to influence future regulatory reform at the national level.<sup>307</sup> However, the preliminary evidence on the institutions, goals, and incentives of state CSR programs presented here suggests that they cannot replace traditional regulatory enforcement, nor can they substitute for independent firm commitment.

State-centric CSR is very much at an experimental stage. Key questions remain about its intersection with civil society efforts to promote greater corporate accountability. Future research might also usefully explore its actual impact on firm compliance incentives. For example, since only the successful participants in state-backed voluntary programs are publicly disclosed, little is known about the effects of CSR incentives on CSR laggards. Research is also needed to investigate the extent of CSR policy diffusion and convergence among subnational governments and understand the experience of governments in less economically developed provinces. The potential positive and negative effects of state relational ties on firm CSR practice and legal compliance must also be examined. Ultimately, the question of whether state promotion of CSR can drive new understandings of corporate accountability in China as it has elsewhere will depend on whether the state itself—at all levels—can demonstrate its own commitment to the letter and spirit of the law.

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307. See generally Heilmann, *supra* note 18 (analyzing the role of local innovation in national-level reform).

## VII. APPENDIX

*Table 1: Government CSR Roles and Instruments*

Government Roles	Examples/Instruments	PRC National CSR Initiatives	Selected PRC Subnational CSR Initiatives*
<b>SOFT</b>			
<b>Endorsing/Raising Awareness</b>	<p>Identify and promote companies leading in CSR; CSR awards</p> <p>Promote CSR through websites, publications, and public surveys</p> <p>Undertake public surveys and communication campaigns</p> <p>Include CSR measures within public procurement requirements and state fiscal policy</p> <p>Advocate CSR as part of international trade and investment policy</p> <p>Endorse fair-trade labeling systems and international CSR initiatives, such as the Global Compact and the GRI</p>	<p>Ministry of Civil Affairs China Charity Awards</p> <p>Shanghai Stock Exchange &amp; China Securities Index Co., Ltd. Social Responsibility Index; Tianjin TED Co. &amp; Shenzhen Stock Exchange TEDA Environmental Index</p> <p>SASAC/CASS China Top 100 CSR Research Reports</p> <p>MOFCOM Sino-Swedish, Sino-Dutch CSR information dissemination projects</p>	<p>CSR awards &amp; public announcement of CSR leaders: Zhejiang, Fujian, Hebei and Shandong Provinces; Tianjin, Chongqing, Shanghai; Changzhou, Wuxi, Nanjing (Jiangsu); Hangzhou, Ningbo (Zhejiang); Weihai (Shandong); Shenzhen, Guangzhou (Guangdong), among others</p> <p>Guangdong International CSR Research Center publications and conferences</p>
<b>Facilitating</b>	<p>Offer CSR services and support to CSR initiatives by companies or civil society partners</p> <p>Form institutions to develop and implement CSR policy</p> <p>Encourage sharing of CSR "best practices"</p> <p>Develop CSR guidelines, monitoring and audit programs</p> <p>Provide technical assistance and training</p> <p>Offer incentives for voluntary CSR reporting, CSR performance, and adoption of international CSR standards</p> <p>Capacity building</p> <p>Promote standardization of CSR management models, standards, reports, indicators and auditing systems,</p>	<p>SASAC Centrally Administered SOEs CSR Committee (2010)</p> <p>Shanghai Exchange Notice on Strengthening Listed Companies' Assumption of Social Responsibility (2008)</p> <p>Shenzhen Stock Exchange CSR Guidelines for Listed Companies (2006)</p> <p>CASS 2.0 &amp; 3.0 CSR Guidelines</p>	<p>CSR training courses: Hebei, Jiangsu, Liaoning, Shandong, and Zhejiang Provinces</p> <p>Shanxi Province Industrial Enterprise CSR Guide</p> <p>Official CSR policy/oversight offices: Changsha (Hunan); Zhejiang; Shandong; Hangzhou, Ningbo (Zhejiang); Shanghai Pudong; Changzhou, Wuxi (Jiangsu); Weihai (Shandong); Shenzhen</p> <p>CSR audit and guideline programs: Jiangsu; Shanghai; Shandong; Tianjin</p>

Government Roles	Examples/Instruments	PRC National CSR Initiatives	Selected PRC Subnational CSR Initiatives*
	<p>including standards for socially responsible investment and product labeling</p> <p>Enact enabling legislation to promote socially responsible investment, environmental standards, fair trade, sustainable consumption, work-life balance, equal opportunities, employee volunteering, employee conditions, and corporate transparency</p> <p>Finance CSR research and innovation programs</p>		<p>Binhai; Changsha (Hunan); Yiwu, Hangzhou, Wenzhou, Taizhou, Ningbo (Zhejiang); Changzhou, Wuxi, Nanjing (Jiangsu); Dongying, Yantai, Yucheng, Weihai (Shandong)</p> <p>Grant funding/technical assistance for technology upgrades to meet environmental targets and/or create compliance systems (widely adopted)</p> <p>Changzhou CSR Standard (CSA8000) (2004)</p>
<b>Partnering</b>	<p>Facilitate business networks around CSR</p> <p>Establish public-private partnerships with business and/or civil society organizations</p>	<p>China-OECD Project on Chinese and OECD Government Approaches to Encouraging Responsible Business Conduct</p> <p>MOFCOM/ Sino-German (GIZ) public-private partnership program</p>	<p>Hebei Provincial Government Training Center of Business &amp; Trade &amp; Ludong University CSR Pilot &amp; Promotion Program (2005)</p> <p>Hebei &amp; Zhejiang Province CSR management training under MOFCOM Sino-German CSR Project (2008-2010)</p> <p>Shandong Province Assoc. for Enterprise Credit &amp; CSR (SDACR) research and audit initiative</p> <p>Guangdong Poverty Alleviation Day</p> <p>Guangdong Environmental Responsibility Alliance (2012)</p>

Government Roles	Examples/Instruments	PRC National CSR Initiatives	Selected PRC Subnational CSR Initiatives*
<b>Mandating</b>	<p>Requiring mandatory CSR reports or similar disclosures</p> <p>Include CSR within the company law</p> <p>Include CSR measures within public procurement requirements and state fiscal policy</p> <p>Establishing minimum compliance standards and enforcement mechanisms</p> <p>Implement international agreements and guidelines through national legislation and binding standards</p> <p>Standardize or require CSR management models, reports, indicators, and auditing systems, including standards for socially responsible investment and product labeling</p> <p>Mandate disclosures regarding socially responsible investment</p>	<p>Code of Corporate Governance for Listed Companies (CSRC) (2001)</p> <p>CRBC (2007) Recommendations on Strengthening Large Commercial Banks' Social Responsibilities, CSR reporting</p> <p>MEP, CBRC, PBOC, CSRC green finance, green credit, and green listing policies (2007)</p> <p>Shanghai Stock Exchange Guidelines on Listed Companies' Environmental Information Disclosure (2008)</p> <p>Ministry of Finance, CSRC, National Audit Office, Basic Internal Control Norms for Enterprises (2008, 2011)</p>	<p>Mandatory CSR Guideline and Audit Program: Weihai (Shandong)</p> <p>Shandong Quality Inspection brand evaluation system</p>
<b>Principal-Agent</b>	<p>Mandatory and voluntary tools implemented through board and managerial control (see above)</p>	<p>SASAC 2006 Enterprise Risk Management Guidelines for State Enterprises (SOEs) Under Central State Control</p> <p>SASAC Guidelines to SOEs Directly Under the Central Government on Fulfilling Corporate Social Responsibilities (2008)</p>	
<b>HARD</b>			

Framework adapted from: FOX, WARD & HOWARD, *supra* note 4; LOZANO ALBAREDA & YSA, *supra* note 3, at 34–35, 46–49. Full references for all table content sources are on file with the author.

\*For more comprehensive information on subnational initiatives, see *supra* Tables 2.1–.3, and accompanying text.