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

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Chun Zhou
Zhejiang University
Wei Zhang
Singapore Management University
Dan W. Puchniak
Singapore Management University and ECGI

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Abstract

Shareholder activism in China remains largely unexplored, despite the country having the world's second largest economy. Using unique hand-collected data, we reveal that shareholder activism in China is thriving, with 156 major campaigns identified from 2007 to 2023, over two-thirds occurring in the last five years.

Contrary to Western assumptions, our empirical analysis finds no statistically significant difference in activist campaign success rates between state-owned enterprises (SOEs) and privately-owned enterprises (POEs). Private shareholders have successfully conducted activist campaigns against powerful state-owned "national champions" in over half of the cases. Conversely, over half of the campaigns by state-owned activists failed when targeting POEs.

Our regression analyses, coding activist shareholders and target companies based on political power suggest China has developed a rules-based market for shareholder activism with no evidence of systemic political interference, even when state actors are involved. In-depth case studies further support this conclusion, while illuminating a rare instance where political influence may have played a role in a sensitive case involving a national champion.

This overlooked rise of rules-based shareholder activism in China challenges prevailing Western narratives and provides new insights into Chinese corporate governance. Our findings suggest shareholder activism is emerging as an important force shaping governance practices in the world's second largest shareholder market. This research is particularly timely and important as the influence of the Chinese Communist Party over Chinese corporate governance has become a major issue in the United States and one of global significance.

Chun Zhou
Lecturer
Zhejiang University
51 Zhijiang Road
Hangzhou, Zhejiang 310008, China
e-mail: zhouchun@zju.edu.cn

Wei Zhang
Associate Professor of Law
Singapore Management University
81 Victoria Street
Singapore 188065,
phone: +65 68085357
e-mail: weizhang@smu.edu.sg

Dan W. Puchniak*
Professor of Law
Yong Pung How School of Law, Singapore Management University
81 Victoria St
Singapore 188065, Singapore
e-mail: danwpuchniak@smu.edu.sg

*Corresponding Author

THE OVERLOOKED REALITY OF SHAREHOLDER ACTIVISM IN CHINA: DEFYING WESTERN EXPECTATIONS

ZHOU CHUN, ZHANG WEI, AND DAN W. PUCHNIAK*

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1 JULY 2025

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INTRODUCTION

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

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

Surprisingly, 78% of activist campaigns against national champions were brought by private activist shareholders (PASs)—57% of which succeeded.[6] One such activist campaign involved retail investors organizing on a social media platform called "Snowball" [雪球] to

[1] Daisuke Wakabayashi, Chang Che & Claire Fu, *In Xi's China, The Business of Business is State-Controlled*, N.Y. TIMES (Oct. 17, 2022), available at https://www.nytimes.com/2022/10/17/business/china-xi-jinping-business-economy.html [https://perma.cc/DV3K-WKEQ].

[2] Huileng Tan, *Xi just fired China's top markets regulator. It shows his focus is still on control above all else.*, BUS. INSIDER (Feb. 8, 2024), available at https://www.businessinsider.com/china-economy-markets-xi-jinping-fires-markets-regulator-control-reforms-2024-2 [https://perma.cc/J2S3-RP7M].

[3] Wakabayashi et al., *supra* note 1.

[4] *See infra* Table 6 and accompanying text.

[5] Li-Wen Lin & Curtis J. Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697, 699 (2013).

[6] *See infra* Table 6.

publicly object to the dividend policy of a powerful national champion.[7] Led by an anonymous online investor who went by the colorful handle "Legend of the Red Scarf" (perhaps China's answer to "Roaring Kitty") the campaign forced the hand of the target's management to adopt a generous dividend payment policy after it had refused to pay dividends for over a decade—conjuring up images of WallStreetBets meets China.[8]

The other side of the rules-based market coin is evident in our empirical findings that there is no statistically significant difference in the success rate for state-controlled activist shareholders (SASs) and private activist shareholders (PASs), regardless of the political status of their targets.[9] Again, contrary to Western conventional wisdom, over 50% of activist campaigns launched by an ostensibly powerful state-controlled activist investor—that is, a national, rather than local, SAS—failed when the target was a POE.[10] Our in-depth review of shareholder activist cases even revealed a POE using aggressive and illegal tactics to defeat the campaign of an SAS and the SAS responding to such tactics by following due process to challenge the sharp practices of the POE in court.[11] This case study reinforces the picture revealed by our empirical findings that China has developed a rules-based market for shareholder activism.

Another interesting feature of shareholder activism in China that our empirical and case study analyses illuminate are cases involving activist campaigns where state-controlled entities are both the activist shareholder and target company.[12] The details of these cases suggest that shareholder activism in China may also serve as an important corporate governance mechanism among government entities to promote good corporate governance, improve efficiency, and weed out corruption.[13] We also uncovered cases in which SASs from different provinces compete as activists to influence target companies akin to what one would expect to find between private parties—providing further evidence of a rules-based market for shareholder activism in China that promotes government and corporate governance efficiencies.[14]

Taken together, our empirical evidence, including our regression analyses in which we coded shareholder activists and target companies based on their level of political power,[15] suggests that shareholder activism in China is largely driven by rules-based market forces—the opposite of conventional wisdom about the rising influence of the Chinese Communist Party (CCP) in Chinese corporate governance in the President Xi era.[16] This meteoric rise of

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[7] Snowball (*xueqiu*) [雪球] is a financial platform in China established in 2010, which offers information publishing, brokerage services, and real-time transaction data on global securities listed on major Stock Exchanges including the Shanghai Stock Exchange (SSE), Hong Kong (SEHK), New York Stock Exchange (NYSE), NASDAQ and other markets. Importantly in the context of this article, it also serves as an online chat platform through which retail investors exchanged information, which led to a successful activist campaign against a national champion, see the China COSCO Shipping Holding Co. case in Part III(A). In the United States, retail investors (in)famously rose to prominence in the GameStop saga by organizing on a subreddit called "WallStreetBets." For a thorough legal analysis of the GameStop Saga, *see* Jill E. Fisch, *GameStop and the Reemergence of the Retail Investor*, 102 B.U. L. REV. 1799 (2022).

[8] *See infra* Part III(A).

[9] *See infra* Table 6 and accompanying text.

[10] *See infra* Table 6.

[11] *See infra* Part III(B).

[12] *See infra* Table 3.

[13] *See* Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channeling in the Market Within the State*, 35 COLUM. J. ASIAN. L. 74, 84 (2023) (arguing that state-owned institutional investors serve as a check on the power of the state as the controlling shareholder in SOEs).

[14] *See infra* Part IV.

[15] See *infra* Table 4 and accompanying text for our measurement of political influence.

[16] *Xi Jinping's Grip on Chinese Enterprise Gets Uncomfortably Tight: Welcome to the Era of Party-State Capitalism*, ECONOMIST (Nov. 26, 2023), https://www.economist.com/business/2023/11/26/xi-jinpings-grip-on-chinese-enterprise-gets-uncomfortably-tight [https://perma.cc/B84Q-KP9B] (hereinafter *Xi Jinping's Grip on*

shareholder activism in China since 2019 dovetails with regulatory changes in Chinese corporate governance that increased the incentives for shareholder activism—further suggesting the importance of rules-based market forces.[17]

This conclusion is bolstered by empirical evidence that other aspects of shareholder activism in China conform to what one would expect in a rules-based market for shareholder activism driven largely by financial incentives. Shareholder activists that hold a larger percentage of the target company's shares have a statistically significant higher chance of succeeding in an activist campaign.[18] Moreover, an analysis of the success rate of shareholder activism campaigns reveals that targets of successful activist campaigns had a return on investment (ROA) over 50 percentage points lower on average than those in unsuccessful campaigns.[19] Again, ironically, this wave of shareholder activism has occurred at the precise time when both popular media and leading academics suggest that China, under the tightening grip of President Xi, has been decidedly moving in the opposite direction—ostensibly enhancing the CCP's involvement in corporate governance and thwarting the rule of law.[20]

The fact that much of what goes on in shareholder activism is unobservable is a universal characteristic that exists in markets globally and confounds empirical research on this topic.[21] It is possible that there are unobservable cases in China in which politics prevents shareholder activism from arising in the first place—but if this were the case it would still not explain away our observable empirical evidence of the recent wave of shareholder activism in China. It is also possible that a high-level empirical analysis may fail to detect idiosyncratic individual cases in which politics played a definitive role in a shareholder activist campaign.

To interrogate this possibility, we undertook an in-depth case study analysis to find any evidence of political influence playing a significant role in individual cases of shareholder

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Chinese Enterprise Gets Uncomfortably Tight); Eric Girardin & Zhenya Liu, DEMYSTIFYING CHINA'S STOCK MARKET: THE HIDDEN LOGIC BEHIND THE PUZZLES (SPRINGER INTL' PUBL'G, 2019); Hudson Lockett & Cheng Leng, *How Xi Jinping is Taking Control of China's Stock Market*, FIN. TIMES (Sept. 22, 2023), https://www.ft.com/content/f9c864c1-6cd4-405e-aa4b-d0b5e2ec6535 [https://perma.cc/2NXF-ZF29]; *see also* Tamar Groswald Ozery, *Corporate Governance under State Capitalism, in Law and Political Economy in China: The Role of Law in Corporate Governance and Market Growth* 149–50 (CAMBRIDGE UNIV. PRESS, 2023) [hereinafter Tamar Groswald Ozery, *Corporate Governance under State Capitalism*].

[17] See *infra* Part IV.

[18] See *infra* Table 8.

[19] As seen in Table 7 below, however, this result was statistically insignificant.

[20] For examples of popular media accounts, see *Xi Jinping's Grip on Chinese Enterprise Gets Uncomfortably Tight*; Wakabayashi et al., *supra* note 1. For examples of academic articles, see Joris Mueller, Jaya Wen & Cheryl Wu, *The Party and the Firm* 2 (Harv. Bus. Sch., Working Paper, 2023); Christopher Chao-hung Chen, Re-Jin Guo, & Lauren Yu-Hsin Lin, *The Effect of Political Influence on Corporate Valuation: Evidence from Party-building Reform in China*, 73 INT'L REV. L. & ECON. 1, 3 (2023) [hereinafter Christopher Chao-hung Chen, Re-Jin Guo, & Lauren Yu-Hsin Lin, *The Effect of Political Influence on Corporate Valuation*]; Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-owned Enterprises*, 47 CORNELL INT'L L.J. 631, 651 (2014) [hereinafter Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*] (noting that the political control of the SOEs by the Party-state suggests a departure from the rule of law); Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, 103 GEO. L.J. 665, 691 (2015) [hereinafter Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*] ("The party's ultimate authority throughout the economic system undermines the rule of law and respect for contracts.").

[21] In discussions about the impact of hedge fund activism in the U.S., for instance, one prominent unobservable is its alleged deterrent impact on those companies that experience no such activism. *See* John C. Coffee & Darius Palia, *The Wolf at the Door: The Impact of Hedge Fund Activism on Corporate Governance*, 41 J. CORP. L. 545, 553, 576 (2016). *See also*, Stuart L. Gillan & Laura T. Starks, *Corporate Governance, Corporate Ownership, and the Role of Institutional Investors: A Global Perspective*, 13 J. APPLIED FIN. 4, 11 (2003) (noting that in the context of the U.S., a problem with monitoring the effectiveness of activism arises as to how considerable "activism is conducted 'behind the scenes' through private negotiations where there is no external observation of the event.").

activism.[22] It is noteworthy that we did not find a single case in which a local state-controlled shareholder activist even attempted to launch a campaign against a national champion—suggesting that the political hierarchy between local state entities that are shareholders and national champions may serve to quell such campaigns.[23] It is also noteworthy that the nature of the campaigns in which SOEs—particularly national champions—are the targets may be permitted (or even promoted) by the government where they dovetail with a government policy to strengthen minority shareholder rights in China.[24] Also, we uncovered a single case involving a national champion in which politics may provide an explanation for an unanticipated outcome.[25] Overall, however, our case study analyses further confirm our empirical findings that the recent wave of shareholder activism in China appears to be primarily driven by rules-based market forces.

Finally, it is worth noting that at the end of 2023, China's Company Law underwent a significant amendment, with the new Company Law taking effect on July 1, 2024. The 2024 Company Law, the second significant amendment since the enactment of China's first Company Law in 1993, has the empowerment of minority shareholders as one of its key focuses.[26] Among the changes, the threshold for shareholder proposals in listed companies has been lowered to 1% from 3%, and shareholders are explicitly granted broad inspection rights, with the scope of inspection extending even to wholly-owned subsidiaries.[27] Additionally, shareholders are now allowed to initiate double derivative suits.[28] This portends that the recent wave of shareholder activism in China is likely to grow.

The remainder of this article will proceed as follows. Part II provides an overview of the leading literature on shareholder activism to establish a context for understanding the emergence of shareholder activism in China—a significant corporate governance development that has been largely overlooked. It also reviews the leading literature on China's unique system of corporate governance to explain how shareholder activism fits within this system. Part III outlines our methodology and presents our empirical findings suggesting that China largely has a rules-based market for shareholder activism. Part IV analyzes selected cases of shareholder activism to provide further context for our empirical findings and to understand what the empirical evidence may fail to capture. Part V concludes by identifying avenues for further research and suggesting what the future may hold for shareholder activism in China.

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[22] *Supra* note 11.
[23] *Supra* note 12.
[24] China COSCO Shipping Holding Co. case, wherein the individual shareholders challenged the dividend policy of the company and advocated for cash dividend, serves as an illustration. See the accompanying text in Part III. Cash dividends are regarded as a crucial measure in safeguarding shareholder rights. The CSRC has adopted a "quasi-mandatory" dividend policy since 2008 and has intensified its advocacy for cash dividend more prominently recently. *See* Cheng Dan (程丹), 2021 Nian A-gu Gongsi Xianjin Fenhong Yuan Zonge Chao 1.5 Wanyi (2021 年 A 股公司现金分红预案总额超 1.5 万亿 [*A-Share Company 2021 Total Cash Dividend Proposal Exceeds 1.5 Trillion*], Zhengquan Shibao (证券时报) [Securities Times] (June 1, 2022), https://www.stcn.com/article/detail/640630.html.
[25] See *infra* Part III(C), the FAW Case.
[26] NAT'L PEOPLE'S CONG., Improve Modern Enterprise and Promote High-quality Development (完善中国特色现代企业制度推动经济高质量发展) [Perfect the Modern Enterprise System with Chinese Characteristics and Promote High-quality Economic Development], http://www.npc.gov.cn/c2/c30834/202401/t20240104_434091.html, [https://perma.cc/Y588-8K8F] (last visited May 3, 2024).
[27] PRC Company Law (as amended in 2023, effective on July 1, 2024), arts. 115, 110.
[28] PRC Company Law (as amended in 2023, effective on July 1, 2024), art. 189.

I. THE DEARTH OF SCHOLARSHIP ON SHAREHOLDER ACTIVISM IN CHINA: ILLUMINATING THE BLACK BOX

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

Traditionally, the conventional wisdom in the leading corporate law and governance literature suggested that shareholder activism was "effective only in firms with dispersed ownership structures."[33] The rationale for this belief was that "[a]ctivists present no threat to controlled companies because they have no prospect of replacing incumbent corporate boards that are in the hands of controlling shareholders."[34] This view helps make sense of the focus in the leading international literature on shareholder activism in the United States, as it is a global outlier in terms of its extremely dispersed shareholder landscape and its high propensity of shareholder activism—particularly hedge fund activism of which 65% globally is in the United States.[35]

The United Kingdom and Japan are countries which have been focal points of shareholder activism and the leading international literature on shareholder activism in Europe and Asia respectively.[36] This dovetails with the scholarly focus on countries defined by dispersed shareholders, as the United Kingdom and Japan are the only other countries, aside from the

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[29] Lazard, Annual Review of Shareholder Activism 2023, (Jan. 8, 2024), https://www.lazard.com/research-insights/annual-review-of-shareholder-activism-2023 [https://perma.cc/SY6V-HJYS].

[30] Wolf-Georg Ringe, *Investor-led Sustainability in Corporate Governance* 2 (Eur. Corp. Governance Inst., Law Working Paper No. 615, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3958960; Brian Cheffins & John Armour, *The Past, Present and Future of Shareholder Activism by Hedge Funds*, 37 J. CORP. L. 52, 75 (2011); Brando Maria Cremona & Maria Lucia Passador, *Shareholder Activism Today Did Barbarians Storm the Gate?*, 20 UC DAVID BUS. L.J. (2020); Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes* 1 (Eur. Corp. Governance Inst., Law Working Paper No. 368, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3036357; Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*, in THE OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE 387–88 Jeffrey N. Gordon & Wolf-Georg Ringe eds., OXFORD UNIV. PRESS (2018) [hereinafter Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*]; Yu-Hsin Lin, *When Activists Meet Controlling Shareholders in the Shadow of the Law: A Case Study of Hong Kong*, 14 ASIAN J. COMP. L. 1, 3 (2019).

[31] For a few exceptions, see *infra* note 54.

[32] For an overview of facts demonstrating China's economic superpower status, the meteoric development of its equity markets, and the impact of Chinese companies globally, see Dan W. Puchniak, *No Need for Asia to be Woke: Contextualizing Anglo America's 'Discovery' of Corporate Purpose*, 4 RED, 14, 14–15 (2022); Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 13, at 77.

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

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

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

[36] Dionysia Katelouzou, *supra* note 33, at 835–36; Marco Becht, Julian Franks, Colin Mayer & Stefano Rossi, *Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes U.K. Focus Fund*, 23 THE REV. FIN. STUD. 3093, 3095 (2010); Yu-Hsin Lin, *supra* note 30, at 1–6. John Buchanan, Dominic Heesang Chai & Simon Deakin, *Hedge Fund Activism in Japan: The Limits of Shareholder Primacy* (CAMBRIDGE UNIV. PRESS, 2012); Hiroyuki Watanabe, *Activist Paradise Japan?*, REV. TRIMESTRIELLE DE DR. FIN. (CORP. FIN. & CAP. MKTS. L. REV., RTDF), No. 1, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4774825.

United States, where the vast majority of listed companies have dispersed shareholders and there has been relatively high levels of shareholder activism.[37] This traditional focus on shareholder activism in countries defined by dispersed shareholders may partly explain the dearth of scholarly attention on shareholder activism in China as most of its listed companies historically—and currently—are dominated by controlling shareholders.[38]

However, it is increasingly recognized that most major economies have a mix of dispersed companies and controlled companies.[39] The difference is mainly in the ratio of such companies in each country—with the United States, United Kingdom, and Japan standing out for having a significantly higher percentage of dispersed companies than most other countries.[40] Even in this context, the rise of tech giants with controlling shareholders, such as Alphabet, Amazon, Meta, Microsoft, and Tesla, has focused increasing attention on the potential role of shareholder activism in controlled companies in the United States.[41] Concurrently, the rise of shareholder activism in Asia and Continental Europe has shined a spotlight on shareholder activism in controlled companies.[42] The increase of shareholder activism in these regions has also highlighted the prospect of shareholder activism in companies with controlling minority shareholders. It has also highlighted the prospect of shareholder activism for companies with dispersed shareholders in countries where controlled companies predominate.[43]

As such, it is now widely accepted that shareholder activism can improve corporate governance in countries where most companies have controlling shareholders.[44] This is because shareholder activism can serve to mitigate shareholder-manager agency costs in the minority of companies that are dispersed in such countries and reduce the minority-majority agency problem in controlled companies that predominate in such countries.[45] In controlled companies, shareholder activists can leverage the legal rights that are commonly provided to minority shareholders to advance campaigns that incentivize controlling shareholders to

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[37] Yu-Hsin Lin, *supra* note 30, at 10. Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 511, 523–25 (Jennifer G. Hill & Randall S. Thomas eds., EDWARD ELGAR PUBL'G, 2015) [hereinafter Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia*]

[38] Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 13, at 118; Yu-Hsin Lin, *supra* note 30, at 3–4 (2019) (in contrast to the U.S., in most Asian jurisdictions, companies are controlled by families or the state, where there are fewer instances of shareholder activism).

[39] Wolf-Georg Ringe, *Adaptive Advocacy: The Reinvention of Shareholder Activism,* Eur. Corp. Governance Inst., Law Working Paper No. 835/2025 (2025), pt. 2.1 (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5196390. Adriana De La Cruz, et al., *Owners of the World's Listed Companies,* 15 - 19 ((Org. for Econ. Co-operation & Dev., 2019).

[40] Dan W. Puchniak, *The False Hope of Stewardship in the Context of Controlling Shareholders: Making Sense Out of the Global Transplant of a Legal Misfit*, 72 AM. J. COMPAR. L. 109, 162 (2024) [hereinafter *The False Hope of Stewardship*]; Dan W. Puchniak & Umakanth Varottil, *Climate-Related Shareholder Activism as Corporate Democracy: A Call to Reform "Acting in Concert" Rules*, 50 J. CORP. L. 617, 652 (2025); Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia*, *supra* note 37, at 524.

[41] Kobi Kastiel, *Against All Odds: Hedge Fund Activism in Controlled Companies*, 1 COLUM. J. BUS. L. 60, 66 (2016); Ringe, *supra* note 39.

[42] Yu-Hsin Lin, *supra* note 30, at 6 (on Asia); Wolf-Georg Ringe, *Shareholder Activism: A Renaissance*, *supra* note 30, at 397–98; Ringe, *supra* note 39.

[43] Yu-Hsin Lin, *supra* note 30, at 3 (on Asia) ("That does not mean, however, that activism cannot work in firms with controlling shareholders, particularly when controlling shareholders do not own a majority of shares but control the firm through other means, such as pyramidal structures, cross-shareholding, or friendly outside investors. The existing literature has shown that activism can work even in firms with controlling shareholders."); Ringe, *supra* note 30, at 397, (on Europe and globally); *see also* Dionysia Katelouzou, *supra* note 33, at 799-800.

[44] *See* Ringe, *supra* note 30, at 390–94; Kastiel, *supra* note 41; Lin, *supra* note 30.

[45] Kastiel, *supra* note 41, at 93; Lin, *supra* note 30, at 31; Puchniak, *The False Hope of Stewardship*, *supra* note 40, at 157–58.

maximize shareholder value and to reduce the extraction of private benefits of control.[46] This suggests the potential importance of shareholder activism in countries with a predominance of controlled companies, which provide for strong minority shareholder protections in their company law.

China fits this description perfectly. It is well-known that most listed companies in China have a controlling shareholder and that a growing minority of companies have relatively dispersed shareholders.[47] What is less appreciated is the extent to which China has built a robust regulatory regime to advance minority shareholders' rights. The Chinese government often emphasizes the importance of building a high-quality and credible regulatory environment for protecting minority shareholders to advance its equity market.[48] Moreover, as one of us has explained elsewhere, over the past several decades, the Chinese government has built a regulatory architecture to facilitate the growth of institutional investors which "on a day-to-day basis, increasingly appear to work as an effective mechanism to improve corporate governance"—sometimes by engaging in shareholder activism.[49]

The Chinese company law empowers minority shareholders through mechanisms like cumulative voting, majority of minority approvals, derivative actions, and a low threshold (reduced from 3% to 1% in the revised version of the Company's Act which took effect on July 1, 2024) [50] for advancing shareholder proposals. [51] This robust regulatory framework amplifies these proposals' impact, effectively promoting shareholder activism. [52] China's strong protections for minority shareholders have led an expert to conclude that China has "one of the most robust shareholder-empowering corporate statutes in the world."[53] Thus, China has all the elements of a country with a predominance of controlling shareholders that should attract scholarly attention due to the potential for shareholder activism to play a meaningful role in its

[46] Kastiel, *supra* note 41, at 93; Lin, *supra* note 30, at 31;Ringe, *supra* note 39.

[47] Data from China Stock Market & Accounting Research Database (CSMAR) shows the proportion of listed companies whose biggest shareholder holds less than 30% shares has risen to 51.16%, up from 46.02% in 2012, Zhou Chun, Survey Data on Shareholding Concentration in Chinese Listed Companies, 2012–2023 (unpublished data) (on file with author).

[48] Cheng, *Xi highlights favourable legal environment for reform, development, stability*, XINHUA NET (Feb. 25, 2019), http://www.xinhuanet.com/english/2019-02/25/c_137849867.htm [https://perma.cc/36S5-V42W].

[49] Lin Lin & Dan W. Puchniak, *supra* note 13, at 114 -19, 134.

[50] PRC Company Law (as amended in 2023, effective July 1, 2024), art. 110, art 115.

[51] Shangshi Gongsi Zhili Zhunze (上市公司治理准则) [Code of Corporate Governance for Listed Companies] [CCG] (promulgated by the PRC Securities Regulation Commission, revised Sep. 30, 2018, effective Sep. 30, 2018), art. 17 (cumulative voting), art. 74 (related-party transaction); Zhonghua Renmin Gongheguo Gongsi Fa (中华人民共和国公司法) [Company Law of the People's Republic of China] (promulgated by the Standing Committee of the National People Congress, Oct. 26, 2018, effective Oct. 26, 2018), art. 151 (derivative suit), art. 102 (3% proposal right) [hereinafter PRC Company Law 2018]; *see* Zhonghua Renmin Gongheguo Gongsi Fa] (中华人民共和国公司法(2023 修订) [Company Law of the People's Republic of China (2023 Revision)] (promulgated by the Standing Committee of the National People's Congress, Dec. 29, 2023, effective July 1, 2024), art. 115 [hereinafter PRC Company Law 2023] (stating that the threshold has further lowered to 1% in the latest amendment of PRC Company Law); *see infra* Part III (providing a detailed discussion of the regulatory regime that amplifies the power of shareholder proposals for advancing shareholder activism in China). *See* Dionysia Katelouzou, *supra* note 33, at 818, 824-29 (finding that stronger shareholder rights, such a cumulative voting, in a country's company law are likely to promote more shareholder activism). Ringe, *supra* note 39, at Part 2.2.

[52] *See* Dionysia Katelouzou, *supra* note 33, at 818, 824-29 (finding that stronger shareholder rights in a country's company law, such a cumulative voting, are likely to promote more shareholder activism).

[53] Tamar Groswald Ozery, *Corporate Governance under State Capitalism*, *supra* note 16, at 134.

system of corporate governance. Yet, the burgeoning discourse on shareholder activism around the world largely fails to consider shareholder activism in China at all.[54]

A skeptic may suggest that China has not been included in the comparative discourse on shareholder activism because there has been no shareholder activism in China.[55] However, our hand-collected data in Part III suggests the opposite.[56] China has had a history of shareholder activism dating back almost two decades.[57] Moreover, in the last five years, the number of shareholder activism campaigns has skyrocketed, with these campaigns occurring in several of China's most prominent companies.[58] As explained in Part IV, there was even an insurgent campaign by retail investors against a powerful government controlled national champion, which is one of the world's largest shipping companies—a storyline perfectly suited for comparative shareholder activism scholarship.[59]

Although it is impossible to know precisely why more attention has not been paid to shareholder activism in China, the idea of shareholder activism—especially activism by private investors against SOEs—does not fit within the common narrative that "political influence" defines China's corporate governance environment.[60] As our empirical evidence in Part III demonstrates, shareholder activism in China often appears to occur in the same way that

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[54] The literature includes only the following sources. Pangyue Cheng, *Institutional Investors in China: Problems and Prospects*, 2022 COLUM. BUS. L. REV. 664, 668-70 (2022); Lin Lin & Dan W. Puchniak, *supra* note 13; CHAO XI, *Shareholder Voting and Engagement in China*, *in* THE CAMBRIDGE HANDBOOK OF SHAREHOLDER ENGAGEMENT AND VOTING 21, 37–43 (Harpreet Kaur, Chao Xi, Christoph Van der Elst & Anne Lafarre eds., 2022); *see generally* Chao Xi, *Institutional Shareholder Activism in China: Law and Practice (Part 1)*, 17 INT'L CO. & COMMERCIAL L. REV. 251 (2006); Lin Lin, *Shareholder Engagement in East Asia*, *in* BOARD-SHAREHOLDER DIALOGUE: POLICY DEBATE, LEGAL CONSTRAINTS AND BEST PRACTICES 426 (Luca Enriques & Giovanni Strampelli eds., 2024). It is also noteworthy that a well cited article published in 2015 which examined hedge found activism around the world found no cases of shareholder activism in China despite its extensive review of hedge fund activism globally. Dionysia Katelouzou, *supra* note 33, at 833.

[55] *See* Fuxiu Jiang & Kenneth A, Kim, *Corporate Governance in China: A Modern Perspective*, 32 J. CORP. FIN. 190, 211 (2015) (showing that institutional investors in China seldom take active actions in listed companies).

[56] *See infra* Part III.

[57] Even before the split-share reform, activist campaigns like Guosen's acquisition of Vanke had already emerged in 1994. *See* Liu Feng (刘峰) & Wei Minghai (魏明海), *Gongsi Kongzhiquan Shichang Wenti: Jun'an yu Wanke Zhizheng de Zai Tantao* (公司控制权市场问题：君安与万科之争的再探讨) [*Corporate Control Market Issues: Revisiting the Dispute Between Jun'an and Wanke*], 管理世界[MGMT. WORLD] No.5, 2001.

[58] *See infra* Table 1 and the accompanying text.

[59] *See infra* Part III.A.

[60] The popular media is replete with such claims. *See, e.g.*, Emily Feng, *Xi Jinping Reminds China's State Companies of Who's the Boss,* N.Y. TIMES (Oct. 13, 2016), https://www.nytimes.com/2016/10/14/world/asia/china-soe-state-owned-enterprises.html [https://perma.cc/J9VV-T7A8]. Even the more nuanced academic literature suggests that politics is often the defining force in Chinese corporate governance. For example, Ozery emphasized the politicization of Chinese corporate governance, suggesting that politics would provide a robust monitoring and enforcement infrastructure, serving as a viable alternative to formal rules. *See* Tamar Groswald Ozery, *The Politicization of Corporate Governance: A Viable Alternative*, 70 AM. J. COMP. L. 43, 93 (2022) [hereinafter, *The Politicization of Corporate Governance*]. Wang Jiangyu delves into the political logic behind State-owned Enterprises, illustrating how the party-state manages the SOEs. Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-owned Enterprises*, *supra* note 20, at 651. Milhaupt emphasizes that the CCP's control over both SOEs and POEs has blurred the lines of ownership, positing that political influence is more significant than shareholder ownership (at 669) and stating that the CCP's monopoly on political power disincentivizes the creation of a level playing field for all entrepreneurs since the CCP does not need to account for the possibility where it is not in power hence "the party's ultimate authority throughout the economic system undermines the rule of law." Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 20, at 691; *see also* Fuxiu Jiang & Kenneth A. Kim, *supra* note 55, at 211; Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channelling in the Market Within the State*, *supra* note 13, at 119–29.

shareholder activism occurs in rules-based market systems of corporate governance in other countries—regardless of whether the activist or the target is a private party or the state.

There is a tendency among Chinese corporate governance scholars to emphasize the role of the government's—or often the CCP's—political influence over Chinese corporate governance.[61] Two leading Chinese corporate governance scholars in their article entitled "China's Corporate Social Credit System: The Dawn of Surveillance State Capitalism?" have found that "the line between law and politics in China is blurred by the omnipresence of the CCP in all institutions and facets of society."[62] Another group of leading Chinese corporate governance scholars has recently undertaken a detailed empirical analysis which attempts to develop a more accurate measure for the degree to which the CCP wields its political influence over Chinese corporate governance.[63] Other prominent Chinese corporate governance scholars explain how China's efforts to bring private sector standards into the governance of SOEs have "backfired" due to political power infecting corporate law doctrine applied to privately owned firms.[64] There is even "…an extreme case, [in which] some researchers argue that *no* Chinese firms, irrespective of their official ownership structure, can be considered truly autonomous and independent from the state."[65]

Specifically with regard to minority shareholder protections, experts suggest that political power may be definitive in understanding the use and effectiveness of such rights in listed SOEs.[66] A prominent Chinese corporate governance scholar describes small and medium-sized shareholders in state-owned holding companies as "passive and politically disempowered."[67] This leading scholar claims that even if shareholders exercise their legal rights, government

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[61] *See e.g.*, Joris Mueller, Jaya Wen & Cheryl Wu, *supra* note 20, at 2; Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 20, at 3; Jiangyu Wang & Tan Cheng-Han, *Mixed Ownership Reform and Corporate Governance in China's State-Owned Enterprises*, 53 VAND. L. REV. 1055, 1060 (2021); Lauren Yu-Hsin Lin & Curtis J. Milhaupt, *Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance*, 50 J. LEGAL STUD. 187, 194 (2021) [hereinafter *Party Building or Noisy Signaling?*]; John Zhuang Liu & Angela Huyue Zhang, *Ownership and Political Control: Evidence from Charter Amendments*, 60 INT'L REV. L. & ECON. 1, 2 (2019); Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*, *supra* note 20, at 637; Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 20, at 677 ("The Chinese state does exert significant political control over senior executives of large SOEs.").

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

[63] Chen, Guo, & Lin, *supra* note 20, at 2.

[64] Donald Clarke, *Blowback: How China's Efforts to Bring Private-Sector Standards into the Public Sector Backfired*, *in Regulating the Visible Hand? The Institutional Implications of Chinese State Capitalism,* 29 (Benjamin L. Liebman & Curtis J. Milhaupt eds., OXFORD UNIV. PRESS, 2015).

[65] This is Christopher Chao-hung Chen, Re-Jin Guo, and Lauren Yu-Hsin Lin's recent characterization of the well cited 2015 research of Curtis J. Milhaupt & Wentong Zheng. Christopher Chao-hung Chen, Re-Jin Guo & Lauren Yu-Hsin Lin, *supra* note 20, at (citing Milhaupt & Zheng, *supra* note 20, at 668). It should be noted that although Chen et al. see Milhaupt and Zheng as outliers in their extreme view of the limited importance of the government's shareholding as a determinant of political influence, they generally support the conclusion that politics influences POEs—which is broadly congruent with Milhaupt and Zheng. However, they also provide strong empirical support for the importance of the government's level of shareholding as being a significant feature that determines the level of political influence in companies in China (i.e., that the classification of a company as an SOE and POE is a strong and important determinant of the level of political influence in China). *Id.* As explained, in Part III.C below, this is overwhelmingly supported by recent leading literature on Chinese corporate governance. *See infra* Part III.C.

[66] Jiangyu Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises, supra* note 20, 47 CORNELL INT'L L.J. 663, 668 (2014).

[67] Nicolas C. Howson, *Protecting the State from Itself? Regulatory Interventions in Corporate Governance and The Financing of China's State Capitalism*, *in Regulating the Visible Hand? The Institutional Implications of Chinese State Capitalism* 29, 53 (Benjamin L. Liebman and Curtis J. Milhaupt eds., OXFORD UNIV. PRESS, 2015).

officials may simply refuse to acknowledge them due to political considerations.[68] A recent analysis of institutional investors in China argues that private institutional investors as minority shareholders are likely to remain passive in state-owned enterprises due to political pressure and other reasons.[69] The clear suggestion is that political influence is significant, potentially even determinative, in the expression of minority shareholder rights in Chinese corporate governance.

Obviously, scholarship examining the influence of the CCP in Chinese corporate governance has significant value. However, just as one who only has a hammer will start seeing every problem as a nail, pundits who view Chinese corporate governance through a political lens risk seeing everything as political.[70] As illustrated above, even more nuanced academic analyses have tended to focus primarily on understanding the political influence in Chinese corporate governance,[71] which may blind researchers to the mundane corporate governance reality that has developed in the world's second-largest shareholder market: China's over 200 million shareholders increasingly use their robust shareholder rights to challenge management when they believe that the company's management is not acting in their economic interests.[72] In other major shareholder markets, this is taken for granted—there is no need to even state that shareholder activism is based on "market forces" or is "rules-based" because this is simply assumed.

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

Our empirical evidence in Part III, which suggests that the success or failure of activist campaigns is largely unaffected by the relative political power of the activist or the target, does not fit within the conventional narrative about Chinese corporate governance.[73] Our evidence of a rules-based market for shareholder activism in China, however, illuminates the often-overlooked reality that over the past several decades China has moved towards a more rules-

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[68] Nicolas C. Howson, *Corporate Law in the Shanghai People's Courts, 1992-2008: Judicial Autonomy in a Contemporary Authoritarian State*, 5 E. ASIA L. REV. 303, 405-06 (2010).

[69] Pangyue Cheng, *supra* note 54, at 664. However, for an alternative view, see Lin & Puchniak, *supra* note 13, at 114-119.

[70] *Xi Jinping's Grip on Chinese Enterprise Gets Uncomfortably Tight*, *supra* note 16; Wakabayashi, Che & Fu, *supra* note 3.

[71] *See e.g.*, Chen, Guo & Lin, *supra* note 20, at 1; Wang & Cheng-Han, *supra* note 61, at 1060; Lin & Milhaupt, *Party Building or Noisy Signaling?*, *supra* note 61, at 189; Liu & Zhang, *supra* note 61, at 3; Wang, *The Political Logic of Corporate Governance in China's State-Owned Enterprises*, *supra* note 20, at 635; Milhaupt & Zheng, *supra* note 20, at 691; Groswald Ozery, *supra* note 60, at 43-44.

[72] *Linglinghou Yi Rushi! A Gu Touzizhe Zhanghushu Chao Erdianyi Yihu, Jin Sicheng Touzizhe Zongshen Guhai Chao Shinian* ("00 后"已入市！A 股投资者账户数超 2.1 亿户，近四成投资者纵身股海超 10 年] [Gen Z Entering the Stock Market, Investment Accounts in A-Share Market Exceeding 210 Million, Nearly 40% Investors Having Experience in Trading Stocks for Over a Decade], Jan. 2, 2023, Xinlang Caijing (新浪财经) [Sina Finance], https://finance.sina.cn/2023-01-02/detail-imxytfsv2335189.d.html [https://perma.cc/4GJX-GCU8].

[73] Wang, *supra* note 20, at 634–35 (The conventional western narrative concerns shareholder-based control within a company and a separation of ownership and control. There is an emphasis on strong legal protection of shareholders and the independence of the board of directors. This approach typical for Anglo-American companies cannot be assumed to likewise apply to Chinese companies, particularly where SOEs are concerned.); Lin & Milhaupt, *supra* note 61, at 188–89 (There is a negative correlation between compliance with state policies and political independence. Insofar as SOEs are "expected to expressly give the party's leadership and party committees formal legal status inside the company," SOEs might "sacrifice profits for the pursuit of political or policy goals.").

based legal system, where the black-letter law is enforced with greater rigor and afforded more political respect.[74] This approach is congruent with the CCP's aforementioned focus on establishing a high-quality and credible equity market with robust protections for minority shareholders.[75] It also dovetails with the rise of Chinese companies as global leaders in many important industries suggesting that empowering economically motivated minority shareholders to challenge management may be an overlooked driver of China's economic success—rather than these companies perversely succeeding despite the "omnipresence of the CCP in all institutions and facets of society".[76]

To be clear, we are *not* claiming that political power plays absolutely no role in China's market for shareholder activism. As one of us claims elsewhere, a more rules-based approach towards corporate governance itself can benefit the Chinese government politically.[77] Indeed, our empirical evidence in Part III suggests that the political hierarchy between local governments and the national government may explain the absence of activist campaigns by local SASs against national SOEs. In Part IV, we also illuminate a case in which even though a private activist shareholder "succeeded" in its campaign against a national champion, the national champion essentially disregarded the result.[78] We must acknowledge the possibility that the political power of the national champion could have been the reason that it essentially flouted the law in this case. However, it is noteworthy that this was the only such case in which we observed such a result—suggesting that political power rarely plays a role in shareholder activism in China.[79] This is congruent with the empirical evidence based on 156 cases of shareholder activism in China examined in Part III—suggesting that China has an increasingly vibrant rules-based market for shareholder activism, in which the political power of the activist shareholder or target company is largely irrelevant. It is to this empirical evidence that we now turn.

II. EMPIRICAL FINDINGS

A. *Defining Shareholder Activism in China*

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

Based on the existing literature, shareholder activism refers to the actions taken by "investors who, dissatisfied with some aspect of a company's management or operation, try to

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[74] Taisu Zhang & Tom Ginsburg, *China's Turn Towards Law*, 59 VA. J. INT'L L. 279, 317 (2019); Jiang & Kim, *supra* note 55, at 210.
[75] Cheng, *supra* note 48.
[76] Lin & Milhaupt, *supra* note 62, at 837.
[77] Wei Zhang, *Learning from Your Rival? A Surprising Convergence of Chinese and American Corporate and Securities Laws*, 9 UC IRVINE J. INT'L TRANSNAT'L & COMP. L. 1, 2–3 (forthcoming), available at: https://perma.cc/SL8V-XPFC [hereinafter *Learning from Your Rival?*].
[78] In the FAW Car Case, the shareholders rejected the management proposal to extend the fulfilment period of the controlling shareholder's reorganization promise by three more years. Nevertheless, the reorganization was not completed within the original timeframe of three years.
[79] This is congruent with the research of Lin and Puchniak, which concludes that "[e]qually as important as recognizing the CCP's ability to use institutional investors as a powerful mechanism for policy channeling, is the observation that the CCP appears to use this power only in a selective and targeted manner" and that "on a day-to-day basis [institutional investors] were driven by free-market forces, and not policy channeling". Lin & Puchniak, *supra* note 13, at 130.

bring about change within the company without a change in control."[80] With this basic understanding in mind, we define shareholder activism as the observable behavior of minority shareholders to use their power to oppose a significant decision of corporate management. We elaborate on several key aspects of our definition below.

First, shareholder activists can include both financial investors and strategic investors. The main purpose of this research is to explore the potential impact of political power vis-à-vis legal rules on shareholder activism in China. In this respect, the difference between strategic activists and financial activists is insignificant. Moreover, it is standard practice for studies on institutional investors and shareholder activism in China to cover both types of investors.[81]

Second, consistent with the prevailing literature, as a starting point, we require publicly available evidence that a minority shareholder objects to a significant management decision to be considered as an activist. In referring to "management," we are describing both the management team and those who can control the management team.[82] Unless an investor is at odds with the management, the investor does not need to be active. Investors who free ride on the policies advanced by management to enhance firm value are passive in nature and, therefore, are outside of the scope of this research.[83]

Third, for an investor to fall within the scope of our definition of "shareholder activism," the investor must make efforts to change a management decision—not merely express a different opinion from management. Merely voicing a difference of opinion costs nothing and is a behavior that may be casually engaged in by almost any shareholder. Therefore, a shareholder's act of merely disagreeing with management is insufficient to amount to "shareholder activism." Without this limitation, studying shareholder activism would devolve into an analysis of shareholders merely informally disagreeing with management. Since voting is an important channel for non-controlling shareholders to exert influence on corporate decisions, voting-related behavior is a focal point of our analysis. Such behavior includes: seeking a board seat with or without a formal proxy contest (or with a threat to launch a proxy contest); making shareholder proposals to demand a change in operational, transactional or governance issues or attempting to defeat a management proposal on any of these issues; and a "majority of minority approval" where a negative vote from the minority has significant consequences on the company. In all these cases, the behavior must be part of a publicly declared campaign by the activist to oppose management, or else it will not meet our threshold for being "shareholder activism."

Minority shareholders may also engage in activism by bringing a lawsuit as part of a publicly declared activist campaign to accomplish goals such as challenging directors' decisions, gaining control of the company, replacing a director, or objecting to a major transaction.[84] These shareholder lawsuits often manifest themselves in China as lawsuits seeking injunctive relief to invalidate corporate behavior. When such litigation is part of a publicly declared shareholder activism campaign, we consider it to be "shareholder activism." Finally, as with most studies on shareholder activism, we have no access to reliable information about shareholder engagement with management behind closed doors. As such, all our

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

[81] S*ee, e.g.*, Cheng, *supra* note 54, at 664.

[82] Gur Aminadav and Elias Papaioannou, *Corporate Control Around the World*, 75 J. FIN. 1191, 1231 (2020) (treating "managers and controlling shareholders" equally); Alexander Dyck and Luigi Zingales, *Private Benefits of Control: An International Comparison*, 59 THE J. FIN. 537, 570 (2004) (highlighting management appointed by controlling shareholders).

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

[84] This is also in line with studies on shareholder activism, see Randall S. Thomas, *The Evolving Role of Institutional Investors in Corporate Governance and Corporate Litigation*, 61 VAND. L. REV. 299, 305-09 (2008).

observations of "shareholder activism" are based on publicly observable cases in which a shareholder publicly declares their intention to challenge corporate management. The specific steps taken to construct our sample of "shareholder activism" in China are in the next section.

B. *Sample Construction and Distribution of Shareholder Activism Over Time*

We searched the public filings of Chinese-listed companies from 2007 to 2023. We decided to start our sample from 2007 because in that year, China accomplished a major reform in its stock market. As part of the—"split-share reform,"—which removed non-tradable shares from the market, China fundamentally reshaped the shareholder ownership structure and increased the liquidity of shares of listed companies.[85] The split-share reform started in 2005 and was largely completed by the end of 2006. As shareholder activism relies on the free transferability of shares, one would expect to find shareholder activism in the post-reform period.

Based on our definition of shareholder activism explained in Part III.A. above, we only include in our sample shareholder actions against management that are observable from public records. We took a conservative approach in constructing our sample for how we identify cases of "shareholder activism." We required evidence of minority shareholders exercising their power, with the clear and specific objective of challenging management with respect to a significant event in the corporation. Thus, to be included in our sample as a case of "shareholder activism," the minority shareholders must make an observable public declaration that they are challenging management on a significant corporate issue, and the same minority shareholders must exercise power to challenge management.[86]

As mentioned above, China does not have a disclosure system like Schedule 13D filings in the United States, which requires active shareholders with beneficial ownership of more than 5% of shares to disclose the details of the purpose of their acquisition of shares. While the disclosure requirements make it relatively easy to identify shareholder activist campaigns in the United States, this is not the case in China.[87] Major shareholders in China—defined as those holding 5% or more of a listed company's shares—have some disclosure requirements, but they are not nearly as detailed or exhaustive. For instance, major shareholders are required to disclose their shareholding positions to the CSRC and the stock exchanges where the company is listed, but they do not have to disclose the purpose of the acquisition of shares like in 13D

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[85] Lin & Puchniak, *supra* note 13, at 108. *See also*, Michael Firth et al., *Friend or Foe? The Role of State and Mutual Fund Ownership in the Split Share Structure Reform in China*, 45 J. FIN. & QUANT. ANAL. 685, 689 (2010); Wei Huang & Tao Zhu, *Foreign Institutional Investors and Corporate Governance in Emerging Markets: Evidence of a Split-Share Structure Reform in China*, 32 J. CORP. FIN. 312, 313 (2015).

[86] Stated differently, to qualify as a case of "shareholder activism" in our sample, shareholders must normally do more than simply vote "no" in a shareholders meeting.

[87] *See*, Alon Brav, Wei Jiang, Frank Partnoy & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 J. FIN. 1729, 1736 (2008) [hereinafter *Hedge Fund Activism, Corporate Governance, and Firm Performance*]. An exception to this may be in shareholder activism involving "Wolf packs," which do not show up in 13D filings, which has promoted calls to amend 13D. Lin, *supra* note 30, at 12 n.64 ("'Wolf pack' refers to a tactic that involves several hedge funds or other activist investors targeting one company, with one activist taking a leading role and the others following. Hedge fund activists have been adopting the 'wolf pack' tactic to promote and improve corporate governance at target firms, forcing incumbent panels to examine and improve current management structures.");Thomas W. Briggs, *Corporate Governance and the New Hedge Fund Activism: An Empirical Analysis*, 32 J. CORP. L. 681, 737 (2007)*;see also*, Anita Anand & Andrew Mihalik, *Coordination and Monitoring in Changes of Control: The Controversial Role of "Wolf Packs" in Capital Markets*, 54 OSGOODE HALL L.J. 377, 385–90 (2017). Ringe, *supra* note 30, at 419 ("Related strategies for activists include the possibility of convincing proxy advisors such as ISS to support their campaigns or to team up with other activists, building a 'wolf pack.'"). Alon Brav, Amil Dasgupta & Richmond D. Mathews, *Wolf Pack Activism* 3 n.4 (Robert H. Smith School Research Paper RHS 2529230, 2018), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2529230 [https://perma.cc/DW96-HRS8].

filings. Accordingly, this disclosure cannot be used to easily identify shareholder activist campaigns in China.[88]

In contrast to the United States, China's PRC Company Law previously granted shareholders who individually or jointly held 3% of a company's shares the right to make proposals at shareholders meetings. This "3% Proposal Right," frequently utilized by shareholder activists to challenge management, was reduced to a 1% threshold in China's new Company Law effective July 1, 2024.[89] The 3% Proposal Right was decreased to 1% in China's new Company Law with effect from July 1, 2024.[90] However, shareholders are not required to make filings in any disclosure system like a Schedule 13D when they exercise their 3% Proposal Right. Moreover, major databases containing corporate and securities information in China, such as CSMAR (China Stock Market & Accounting Research), do not specifically record active shareholders or activist campaigns. Finally, shareholder activism or shareholder activist campaigns are not yet widely discussed in China.

To overcome these significant challenges, we cast a wide net to identify activists or campaigns through public information on the CNINFO [巨潮资讯网] —the CSRC's information disclosure online platform. We first searched for cases in which shareholders exercised their 3% Proposal Right in all listed companies in China. In our sample period, from January 1, 2007 to December 31, 2023, to our surprise, we found a total of 9,280 records of shareholders exercising their 3% Proposal Right. However, upon reviewing this information, we discovered that the vast majority of these cases were instances in which controlling shareholders or their affiliates, were using the 3% Proposal Right. The reason for this behavior is likely that management wanted to add items to the shareholders' meeting agenda after the board sent out the notice of the shareholders' meeting—but it could not do so directly because the board is prohibited from adding items to the agenda after it sends the notice.[91]

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

[88] The fundamental difference in Chinese and American law is that the former does not distinguish blockholders seeking active control of the company from passive blockholders. In other words, there is no two separate filing systems like Schedule 13D and Schedule 13G in the U.S.. See Zhonghua Renmin Gongheguo Zhengquan Fa (中华人民共和国证券法 (2019 年修订)) [Securities Law of the People's Republic of China (2019 Revision)] (promulgated by the Standing Committee of the National People's Congress, Dec. 28, 2019, effective Mar 1, 2020) art. 63. Thus, the purpose of disclosure of holding 5% or more shares in China tends to be general. The most often seen disclosure states that the investor increases its shareholding in confidence in the success of the company.

[89] PRC Company Law 2023, *supra* note 51, art. 115. In China, qualified shareholders are entitled to propose to nominate and remove directors and supervisors, request strategic changes, significant charter changes or dividends, etc. PRC company law considers shareholder meetings the center and final source of corporate authority. Shareholder proposals, once passed by the shareholder meeting, are not considered as recommendations but are binding on the target company. *See id.* at art. 58, art. 59, art. 67, art. 71, art. 112, art. 120.

[90] PRC Company Law 2023, supra note **Error! Bookmark not defined.**, art. 115

[91] PRC Company Law 2018, *supra* note 51, art. 102.

done to cast a wide net to identify all possible cases of shareholder activism before reviewing each case individually to ensure that they met our definition of shareholder activism described above.

In addition, during the same period, we searched on public forums like "Snowball" [雪球] and "EastMoney" [东方财富], which are dedicated to the discussion of issues involving stock market trading and corporate governance, to uncover any additional cases of shareholder activism with the same keywords. After identifying over two hundred potential shareholder activism campaigns through searches on public websites and forums, we subsequently performed follow-up searches on the CNINFO [巨潮资讯网] to identify active shareholder campaigns according to our definition. We then filtered out all potential shareholder activism campaigns by eliminating all the campaigns that did not meet our definition, either because there was insufficient publicly available information to establish a public declaration of a campaign by a minority shareholder to oppose management and/or there was no evidence of the minority shareholder following up the declaration with a publicly observable exercise of their power to challenge management with respect to a significant issue in the corporation.[92]

In total, we found and included in our China Shareholder Activist Database (CSAD) 156 activist campaigns in 123 distinct Chinese-listed companies within our 17-year sample period from January 1, 2007, to December 31, 2023.[93] Table 1 shows the distribution of these campaigns across time. Figure 1 indicates the same distribution graphically. One prominent feature observable in Table 1 and Figure 1 is that the number of activist campaigns in China has soared since 2019. In fact, over two-thirds of the campaigns happened in the last five years of our sample period.

A possible explanation for the meteoric rise of shareholder activism in China starting in 2019 is a significant regulatory development that increased the incentives for shareholders to engage in activism. In 2018, after more than 15 years, the CSRC undertook the first major amendment to China's inaugural 2002 Code of Corporate Governance for Listed Companies (CCG). The 2018 CCG, which went into effect on September 30, 2018, explicitly elevates the status and importance of shareholders' rights in Chinese corporate governance. Chapter 2 of the 2018 CCG highlights the importance of shareholders' rights by making it clear that shareholders must "be kept informed," "participate in corporate decision-making," have a responsibility to "monitor" company activities, and to pursue litigation when their rights are restricted or removed.[94] In a similar vein, Article 7 in the CCG protects the power of

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

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

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

shareholders by stipulating that shareholders' rights cannot be restricted or removed by any resolutions passed at shareholders meetings or board meetings.[95] In addition, the 2018 CCG clarified the formalities governing shareholders meetings and the process for electing directors. Moreover, the updated 2018 CCG introduces a dedicated chapter on institutional investors, which encourages them to actively engage in corporate governance,[96]—consistent with the global trend of shareholder stewardship becoming an important aspect of corporate governance around the world.[97]

Table 1

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

Figure 1

[95] *Id.*, art. 7–10.
[96] *Id.*, art. 78–80.
[97] Dionysia Katelouzou & Dan W. Puchniak, *Global Shareholder Stewardship: Complexities, Challenges, and Possibilities, in* GLOBAL SHAREHOLDER STEWARDSHIP 3–4, 34–37 (Dionysia Katelouzou & Dan W. Puchniak eds., 2022); Dan W. Puchniak, *The False Hope of Stewardship*, *supra* note 40, at 113, 126, 156–59.

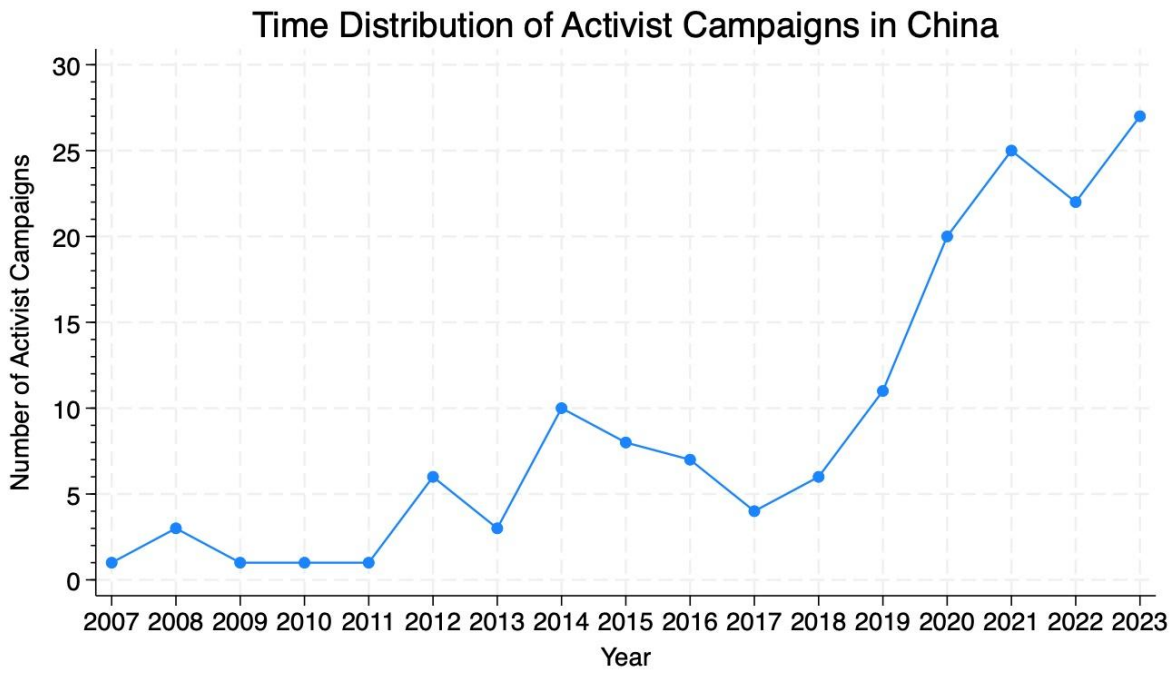


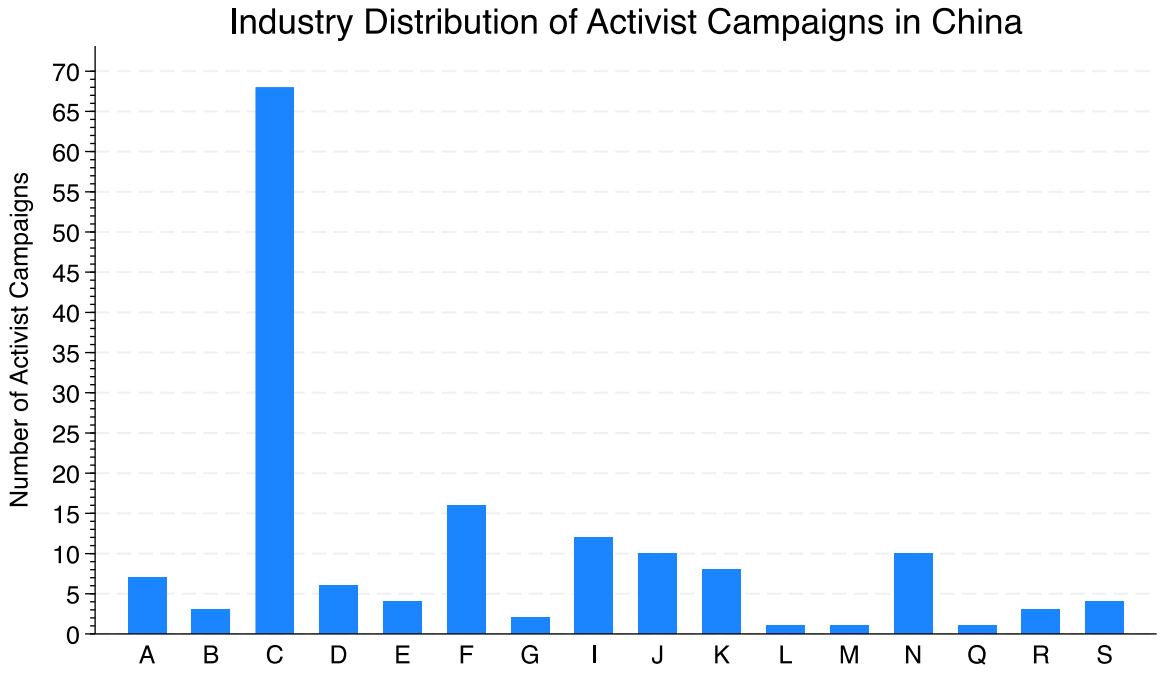
Table 2 and Figure 2 below show the distribution of target companies according to their industries. Half of the targets are in the manufacturing industry. Given the importance of manufacturing in the Chinese economy, this is unsurprising. Retail and wholesale businesses attracted the second largest number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

Table 2

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

R: Culture, sports, and entertainment	3	1.92%
S: Miscellaneous	4	2.56%
Total	156	100%

Figure 2



C. *Political Power as a Determinant of Shareholder Activism*

The influence that the CCP has over Chinese corporate governance is commonly highlighted in the popular media and has become a focal point of leading corporate law and governance research.[98] There is a significant body of influential research that suggests politics is a major determinant of a wide array of features in Chinese corporate governance.[99] More broadly, the ability of the Chinese government to influence corporate governance has become a major geopolitical issue, which is at the core of the strained US–China relationship.[100]

The most common measure in the leading literature of the level of political influence that the Chinese government has over companies is whether the government owns a percentage of the shares that provide it with effective control over the corporate governance of the

[98] *Xi Jinping's Grip on Chinese Enterprise Gets Uncomfortably Tight*, *supra* note 16; Wakabayashi, Che & Fu, *supra* note 3; *See* Christopher Chao-hung Chen, Re-Jin Guo and Lauren Yu-Hsin Lin's recent characterization of the well-cited 2015 research of Milhaupt & Zheng, *supra* note 20, at 668; Chen, Guo & Lin, *supra* note 20, at 4; Wang, *supra* note 20, at 635.

[99] *See e.g.*, Yu-Hsin Lin & Milhaupt, *supra* note 61, at 213; Groswald Ozery, *supra* note 60, at 47; Chao-hung Chen, Guo & Yu-Hsin Lin, *supra* note 20, at 2; Yu-Hsin Lin & Milhaupt, *supra* note 62, at 845–47; Wang & Cheng-Han, *supra* note 61, at 1097; Lin & Puchniak, *supra* note 13, at 79–81.

[100] Elmar Hellendoorn, *China's capital markets in the shadow of the CCP*, ATLANTIC COUNCIL (Jan. 28, 2022), https://www.atlanticcouncil.org/blogs/chinas-capital-markets-in-the-shadow-of-the-ccp/ [https://perma.cc/TR2R-E77V]; Anshu Siripurapu & Noah Berman, *The Contentious U.S.-China Trade Relationship, Council on Foreign Relations* (May 14, 2024), https://www.cfr.org/backgrounder/contentious-us-china-trade-relationship [https://perma.cc/L4KS-ML9N].

company.[101] Companies in which the government is the controlling shareholder are commonly referred to as SOEs, in which the government is widely seen to have the greatest level of political influence.[102] This is in contrast to companies in which a private party is the controlling shareholder, which are commonly referred to as POEs, in which the government is widely seen to have a lower level (or even negligible level) of political influence.[103] Although some literature has highlighted ways in which the Chinese government can wield its political influence over private companies, most recent research suggests that there is a significant difference in the level of political influence in SOEs and POEs[104]—with one recent study even suggesting that any political influence in POEs is merely superficial with no real impact on corporate governance.[105] Based on this prior research, we investigated the political power of target corporations depending on whether they are POEs or SOEs—with the former assumed to have a lower level of political power than the latter.

To ascertain the nature of target companies and activists, we employ a control-based assessment methodology consistent with China's regulatory framework.[106] Under this framework, disclosure of the ultimate controlling party needs to be traced to its ultimate end. Thus, target companies will be classified into three categories: those controlled by state-owned entities (which we identify as "SOEs"), those controlled by individual or collective natural persons (which we identify as "POEs"), and those lacking a discernible controlling entity. The third category, comprising companies lacking a controlling party (neither a controlling shareholder nor a de facto controller), represents only a small fraction of all listed companies in total.[107] We further scrutinize the ownership structure of the first largest shareholder of those companies. In shareholder campaigns targeting corporate boards and executive management,

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[101] Jiang & Kim, *supra* note 55, at 205; *See also* Chang & Yu-Hsin Lin, *Do State-Owned Enterprises Have Worse Corporate Governance? An Empirical Study of Corporate Practices in China*, 23 EUR. BUS. ORG. L. REV. 711, 713 (2022); Chao-hung Chen, Guo & Yu-Hsin Lin, *supra* note 20, at 4 (POEs and SOEs are distinct in terms of the political influence that the government wields over them. Although POEs are not politically independent, empirical evidence suggest that they are subject to less political influence than SOEs. This renders it is more difficult for the State to pursue its objectives within them).

[102] Chao-hung Chen, Guo & Yu-Hsin Lin, *supra* note 20, at 3; Yu-Hsin Lin & Milhaupt, *supra* note 61, at 188; Chang & Yu-Hsin Lin, *supra* note 101, at 713.

[103] Yu-Hsin Lin & Milhaupt, *supra* note 61, at 189-190, 205 ("Compared with SOE adoptions, POE adoptions are largely symbolic."); Liu & Zhang, *supra* note 61, at 4; Chang & Yu-Hsin Lin, *supra* note 101, at 713.

[104] Wang & Cheng-Han, *supra* note 61, at 1059 (The authors stress the importance of share ownership as a determinant of political control and suggest that SOEs and POEs should be treated as distinct in analyzing Chinese corporate governance.); Chao-hung Chen, Guo & Yu-Hsin Lin, *supra* note 20, at 4 ("In our setting, firms with strong political influence . . . while adhering to the state's party-building initiatives reinforces state capture, there is limited incremental political or governance costs due to increased party control . . . .these firms are already subject to state-dominated governance. In contrast, for a firm currently subject to less state influence . . . the costs of suboptimal governance that result from the party-building reform can be more substantial.").

[105] Mueller, Wen & Wu, *supra* note 20, at 11–12; Yu-Hsin Lin & Milhaupt, *supra* note 61, at 213 (While there might be voluntary compliance with mandatory party-building policies by POEs despite the policies not being directed at them, "POEs overwhelmingly adopted symbolic rather than substantively meaningful provisions.").

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

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

the focus also typically centers on engaging with the largest shareholder.[108] Consequently, in instances where companies lack a discernible controlling entity if the predominant shareholders are under state control, we also categorize the target as an SOE.[109]

It is commonly recognized that central-level SOEs have a higher level of political power than provincial SOEs and municipal SOEs (the latter two of which we refer to as "Local SOEs").[110] To capture this in our empirical research, we code SOEs based on whether they are "Central SOEs" or "Local SOEs." A Central SOE typically refers to a company directly or indirectly owned by the State Council or by bodies like State-owned Asset Supervision and Administration Commission (SASAC) or Ministry of Finance (MOF) delegated by the State Council. It is also widely recognized that there is competition between provincial governments that may manifest itself as competition between SOEs/SASs from different provinces.[111] As such, we code our Local SOEs based on the province in which they are incorporated.

Thus, in the CSAD, we categorize companies as Central SOEs and Local SOEs based on their ultimate ownership structures. Central SOEs are assumed to have a higher level of political power than Local SOEs. However, a considerable number of these central SOEs are not publicly listed; often only their subsidiaries are listed. These subsidiaries remain subject to the supervision of the central government and, therefore, we define Central SOEs as encompassing both officially recognized central SOEs and any listed company directly or indirectly controlled by a central SOE. Local SOEs, on the other hand, are companies directly and indirectly owned by local governments, including province-level, city-level, and district-level target companies. Based on these definitions, during our sample period, the CSAD has: 118 (76%) activist campaigns targeting privately owned companies and 38 (24%) campaigns targeting SOEs, with 9 (6%) targeting SOEs owned by the central government and 29 (19%) targeting SOEs owned by local governments.

It is noteworthy that in 2013 China undertook a comprehensive reform of its SOE regulatory regime. The aim of this reform was to shift the focus of regulation from managing

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[108] In the *Baoneng v. Vanke* seminal case, when Baoneng launched its bid to gain control of Vanke, the target company lacked an actual controller. The largest shareholder of Vanke was Huarun Resources, a "National Champion." The "National Champion" appointed three representative non-executive directors and at least one independent director to the eleven seats on the board. Thus, the largest shareholder's attitude towards the bidder became vital. Hua Sheng [华生], Wanke Moshi: Kongzhiquan Zhizheng yu Gongsi Zhili (万科模式：控制权之争与公司治理) [The Vanke Model: Control Rights Dispute and Corporate Governance], (Dongfang Chubanshe (东方出版社) [Oriental Publishing House], 2017, p.1.

[109] It is noteworthy that China's newly amended company law now includes wholly state-owned companies and state-controlled companies under the category of "state-invested companies". This marks a significant change from the previous definition in the Enterprise State-owned Assets Law. It indicates China's likely move to relax state-owned asset regulations on companies that are not fully controlled by the state. Consequently, for these companies, the state is likely to focus on exercising shareholder rights as outlined in the Company Law. This suggests that we may see an increase in campaigns from the SASs in the future. PRC Company Law, *supra* note 50, art. 168.

[110] Many Central SOEs are ministerial-level enterprises, but provincial SOEs are at most departmental-level enterprises. One of us has pointed out elsewhere the implication of political position of central financial enterprises in China's financial system. Katharina Pistor, Guo Li & Zhou Chun, *The Hybridization of China's Financial System*, in REGULATING THE VISIBLE HAND? THE INSTITUTIONAL IMPLICATIONS OF CHINESE STATE CAPITALISM 29-47 (Benjamin L. Liebman & Curtis J. Milhaupt eds., OXFORD UNIV. PRESS, 2015).

[111] Fan Junli (范军利), *Haitong Zhengquan Huanke Ji* (海通证券换壳记) [Haitong Securities Changed its Target in Backdoor Listing], Caixin (财新), June 25, 2007, https://magazine.caixin.com/2007-06-25/100077908.html [https://perma.cc/ZHV9-NAYB]. Haitong Securities originally intended to go public through backdoor listing by merging with a listed company in Northeast China, but due to intervention by the Shanghai Municipal Government, the plan was temporarily changed to a backdoor listing through a locally listed company in Shanghai, as the former would change the company's registration state.

assets to managing capital.[112] The reform essentially reallocated the corporate governance managerial monitoring function exercised through shareholder voting rights by SASAC to state-owned capital investment companies. This reform model was reportedly influenced by Singapore's Temasek Holdings model—with the aim of creating an institutional architecture that removed direct political interference from boardroom level decision making in SOEs.[113] Additionally, the mixed-ownership reforms have led to increased penetration of state ownership into the private sector, with state-owned capital operation companies and their affiliated equity funds and investment companies actively exercising shareholder rights in private enterprises.[114]

Furthermore, there has always been a significant amount of mutual investment and cross-shareholdings among state-owned enterprises, which has been driven by government policies or has been commercial in nature.[115] In addition, the Chinese government has a long history of encouraging the development of Chinese institutional investors to act as a mechanism to enhance shareholder monitoring in POEs and SOEs—something which has accelerated more recently.[116] Also, since 2015, SASAC has encouraged strategic investors to invest in state-owned holding companies to enhance managerial monitoring by encouraging such investors to become actively engaged shareholders with a focus on wealth maximization.[117] The net effect of these legal innovations and reforms has been a significant rise in "state-owned" financial or strategic shareholders. According to SASAC's regulatory regime, such investors are required to exercise their voting rights to maximize the shareholder value of the companies in which they invest.[118]

Given the proliferation of state-owned shareholders, a focus on state-owned enterprises would provide an incomplete picture of Chinese corporate governance.[119] It is now clear that a distinction must be made between state-controlled shareholders and private-controlled

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

[113] Guanyu Guli he Guifan Guoyou Qiye Touzi Xiangmu Yinru Feiguoyou Ziben de Zhidao Yijian (关于鼓励和规范国有企业投资项目引入非国有资本的指导意见) [Guiding Opinions on Encouraging and Regulating the Introduction of Non-State-owned Capital into Investment Projects of State-owned Enterprises] (promulgated by the PRC National Development and Reform Commission et al., May 21, 2017, effective Oct. 26, 2015); Guoqi Gaige Sannian Xingdong Tuidong Guozi Guoqi Lingyu Fasheng Shenke Biange (国企改革三年行动推动国资国企领域发生深刻变革) [Three-year SOE Reform Drives Deep Changes], Xuexi Shibao (学习时报) [Study Times] (Feb. 13, 2023). For an overview of Singapore's Temasek Model, see Tan Cheng-Han, Dan W. Puchniak & Umakanth Varottil, *State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform*, 28 COLUM. J. ASIAN L. 61 (2015); Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 305–10 (2017).

[114] Guowuyuan Guanyu Guoyou Qiye Fazhan Hunhe Suoyouzhi Jingji de Yijian (国务院关于国有企业发展混合所有制经济的意见) [Opinions of the State Council on Development of An Economy of Mixed-Ownership of State-Run Enterprises] (promulgated by the PRC State Council, Sep. 23, 2015, effective Sep. 24, 2015) [https://perma.cc/28LH-B32Z].

[115] Cross-holding among the firms has been discussed in financial studies, see Hongling Guo et al, *Cross-shareholding Network and Corporate Bond Financing Cost in China*, 57 THE N. AM. J. ECON. & FIN. (2021), https://www.sciencedirect.com/science/article/abs/pii/S1062940821000565 [https://perma.cc/B37L-AWH3].

[116] Lin & Puchniak, *supra* note 13, at 134–35.

[117] *Id.*

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

[119] Lin & Puchniak, *supra* note 13, at 79.

shareholders when analyzing Chinese corporate governance—particularly shareholder activism in China.[120] As such, we coded our data in the CSAD to distinguish between private activist shareholders, local state activist shareholders, and central state activist shareholders. Based on our analysis of the activist campaigns during our sample period in the CSAD, there are 106 campaigns launched by Private Activist Shareholders (PASs) and 50 by State Activist Shareholders (SASs), with 37 Local SASs and 13 Central SASs.[121]

As a side note, we include both financial and strategic investors in the CSAD. The purpose of our current research is to ascertain the potential impact of political power, legal rules, and market forces on shareholder activism in China. Although strategic activist shareholders may target companies to exploit business synergies, whereas financial activist shareholders may have purely financial motives for investment, this difference does not appear to have a bearing on our focus of interest. However, we coded the shareholder activists in the CSAD based on whether they were strategic investors or financial investors and found that 76% are financial investors, while only 24% of campaigns were launched by strategic investors.[122]

To summarize, we coded all the activist campaigns in our sample period based on three types of target companies (i.e., POEs, Local SOEs and Central SOEs) and three types of activist shareholders (i.e., PASs, Local SASs and Central SASs). In total, our taxonomy of activist campaigns in China included nine different categories of campaigns based on the possible combinations of different types of activists and targets in the CSAD. Table 3 displays the distribution of campaigns across these nine categories. While over half of the activist campaigns are between privately-owned parties, it is notable that of the 38 campaigns against SOEs, the vast majority, over 60%, were launched by PASs. In addition, 7 out of 9 campaigns against central SOEs were by PASs. A striking observation from Table 3, however, is the complete absence of any Local SASs launching even a single campaign during the entire sample period against a Central SOE—suggesting that the political hierarchy between local governments and the central government is powerful and entrenched enough to act as a deterrent against any such campaign.

Table 3

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

We also constructed a political influence score—iscore—to capture the relative political power between activists and their targets. The iscores for each campaign were coded as follows. First, we assign scores of 0, 1, and 2, respectively, to PASs/POEs, Local SASs/SOEs, and Central SASs/SOEs. Then, we calculated the difference between the activist's and target's

[120] *Id.*

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

[122] In three campaigns, we cannot identify whether the activists were financial or strategic investors.

scores as the iscore for each campaign. Thus, iscores vary between -2 and 2;—the higher the iscore, the more politically influential the activist is compared to its target. As displayed in Table 4, each category of activist campaign was coded with an iscore.

Table 4

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

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

We use ownership of activists and targets as the measurement of their political influence. Although some commentators argue that privately-owned companies could be as politically powerful as SOEs, especially when they become national champions,[123] we believe that, on average, state ownership should raise the political status of a listed company. After all, the connection between SOEs and the government is direct. Government agencies are empowered to determine the composition of the management of SOEs they oversee. Thus, in China, SOE boards are inevitably represented, if not dominated, by government officials. By contrast, government officials, including retired ones, have essentially been banned from sitting on the boards of listed POEs at least since 2013.[124] Therefore, even if we looked at the board composition of listed companies and measure their political status with the percentage of directors who were officials,[125] we might very well see the same result—SOEs are more politically powerful than POEs overall.

D. *Activist Strategies*

Next, we looked at the strategies adopted by activists. Table 5 reports the number of campaigns that adopted each strategy. As multiple strategies can be employed in one campaign,[126] the total number of strategies adopted exceeds the number of campaigns. The most often used activist strategy is to put forth shareholder proposals both for director

[123] *See* Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firms*, *supra* note 20, at 668.

[124] 中共中央组织部 [Cent. Org. Dep't of the Chinese Communist Party], 关于进一步规范党政领导干部在企业兼职（任职）问题的意见 [Opinions About Further Regulating the Office-Taking by CPC and Government Leaders and Cadres in Enterprises] (Oct. 19, 2013) (According to the opinion, government officials who choose to accept such appointments have to give up their status of officials and all their privileges thereof, which effectively bans such appointments.)

[125] *See*, *e.g.*, Hanen Khemakhem and Saidatou Dicko, *Directors' Political Connections and Compliance with Board of Directors Regulations: The Case of S&P/Tsx 300 Companies*, 24 INT'L J.BUS. & MGMT 117 (2013).

[126] According to our dataset, on average, each activist campaign used 1.34 strategies. *See supra* Table 3 and *infra* Table 5, which indicate that a total of 209 strategies were used in 156 activist campaigns.

nomination and other corporate affairs. This is unsurprising given the 3% threshold for shareholders to make proposals in China and the robust law giving such proposals potential bite. For example, shareholders are eligible to make a proposal if they hold 3% or more of the company's shares (what we define as the "3% Proposal Right"), the board of directors lacks the authority to reject shareholder proposals on any substantive basis,[127] and Chinese courts have been unwilling to endorse any advance notice requirements for shareholder proposals.[128]

The robustness of the Chinese law for using shareholder proposals as a tool for activism is further reinforced by the fact that under Chinese corporate law the board of directors has no discretion to exclude shareholder proposals and is obligated to enforce those that receive majority votes. Shareholders are eligible to submit temporary proposals to the board ten days before the shareholders' meeting (i.e., ten days after receiving notice of an annual shareholder meeting or five days after receiving notice of a special shareholders' meeting).[129] According to the PRC Company Law, since amended in 2005, the shareholders' meeting is the supreme authority of the company,[130] with the power to decide on fundamental operational matters, profit distribution, and amendments to the articles of association.[131] The board of directors, however, is responsible for executing the resolutions of the shareholders' meeting and is accountable to it. When temporary proposals put forth by shareholders have clear themes and fall within the jurisdiction of the shareholders' meeting, the board of directors must submit them to the shareholders' meeting for deliberation. Moreover, as these proposals can be submitted to the shareholders' meeting, the resolutions passed by the shareholders' meeting are binding on the board of directors and management.

It is noteworthy that shareholder proposals in China are a considerably stronger tool for shareholder activism than shareholder proposals in the United States. In the United States, the board of directors has the discretion to exclude the proposals on a substantive basis.[132] A shareholder proposal may encounter three potential outcomes: being excluded before being voted on at the shareholders' meeting; being presented at the shareholders' meeting but ultimately failing; or receiving majority support at the shareholders' meeting. However, even if a proposal receives majority support, the board is not obligated to implement it.[133] Proposals are advisory because the state corporation law gives the board of a corporation the power to make discretionary decisions about corporate affairs.[134] The board of directors may still reject a shareholder proposal with a majority vote if they deem the proposal unsuitable for

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[127] *See* PRC Company law 2018, *supra* note 51, art. 102 (further reduced to 1% in the newly amended PRC Company Law of 2024).

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

[129] Any shareholder who holds or jointly holds 3% of voting shares in a listed company is entitled to submit temporary proposal within certain days after receiving the notice of shareholder meeting.*See* PRC Company Law 2018, *supra* note 51, art. 102. In the newly amended company law, the threshold has been decreased to 1%. *Id.* art. 115.

[130] Zhonghua Renmin Gongheguo Gongsi Fa (中华人民共和国公司法) [Company Law of the People's Republic of China] (promulgated by Standing Committee of the National People Congress, Sept. 27, 2005, effective Jan. 1, 2006) 42 Standing Committee of the National People Congress (China), art. 37 [hereinafter PRC Company law 2005].

[131] YONG KANG, LU SHI & ELIZABETH D. BROWN, CHINESE CORPORATE GOVERNANCE: HISTORY AND INSTITUTIONAL FRAMEWORK iii, ix-x (2008), https://www.rand.org/content/dam/rand/pubs/technical_reports/2008/RAND_TR618.sum.pdf.

[132] SEC Shareholder Proposal Rule §240.114a-8.

[133] See 15 U.S.C. § 78n-1 (2022) (providing shareholders with a non-binding vote on executive compensation, commonly known as "say on pay").

[134] DEL. CODE Ann. tit. 8, § 141(a) (2024).

shareholder action.[135] Thus, in the United States, shareholder proposals are far less powerful as a mechanism for activist shareholders than in China.

We distinguish director election-related proposals from other activist strategies because the election of a director by an activist serves as a unique mechanism for an activist who publicly opposes management to gain a voice in the corporate governance of a company. Unlike in the United States, director election-related proposals in China are an important mechanism for exercising shareholder franchise. In China, the incumbent management cannot exclude these proposals.[136] Additionally, in China, director candidates nominated in contested elections are typically included on the same ballot. Having multiple director candidates on the same ballot in contested elections may enable activists to gain traction, particularly in companies in which directors are elected using cumulative voting.[137] As shown in Table 5, the most common strategy for shareholder activists in China is to nominate director candidates.

Table 5

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

The second most popular activist strategy is for shareholders to launch a publicly declared campaign against management in which they use their voting power to veto a management proposal that requires a majority of the minority ("MOM") vote.[138] The third most popular

[135] 17 C.F.R. § 240.14a-8(c) (2024).

[136] Rule 14a-8(c) in United States specifies that a company may exclude a proposal "if the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election." Amendment to Rule 14a–8(i)(8).

[137] *See, e.g.*, Individual Shareholders v. Shenzhen Konka. In this case, OCT Group, a Central SOE, established in 1985, held a 21.75% stake in Shenzhen Konka by May 2015. In the 2014 annual general meeting, two groups of minority shareholders nominated director candidates, challenging OCT's dominance. Despite OCT's efforts, minority shareholders succeeded in electing four directors of seven seats via cumulative voting. This victory made Shenzhen Konka the first Chinese listed company where minority shareholders overthrew a central SOE-controlled board. However, internal disagreements among minority shareholders later allowed OCT Group to regain control. For an elaborate study on this case, see Zheng Guojian et al., *Shen Kangka Zhongxiao Gudong Weiquan* (深康佳中小股东维权："庶民的胜利"抑或 "百日维新") [An Analytical Framework of Minority Shareholders Governance: The Case Study on Konka Group], 管理世界 [Mgmt. World], No. 12, 2016, at 145-58.

[138] As mentioned above, we took a conservative approach towards identifying activist campaigns. As such, we have not included in our sample those cases involving only "no votes", except in cases where they are part of a public campaign to oppose management. This means the actual number of situations where shareholders vote

strategy is where activists as part of a publicly declared campaign put forth a shareholder proposal that challenges the position of management on a significant issue within the company. Thus, it can be seen from the three most popular activist strategies that most shareholder activism in China occurs within shareholders' meetings.

It is noteworthy that we could not locate even a single activist campaign in which shareholder activists sued incumbent management for breaching their fiduciary duties.[139] The dearth of such lawsuits may suggest a lack of development of the jurisprudence surrounding fiduciary duties in China and China's more restrictive shareholder litigation regime (at least in comparison to the United States, but perhaps not in comparison to other countries).[140] In a similar vein, activists rarely pursue litigation to void corporate acts which result from procedural irregularities in a company's governance process.[141] Taken together, this empirical evidence suggests that the courts play a less significant role in shareholder activism in listed companies in China.[142] In addition, there is a low rate of shareholders exercising their inspection rights. The lack of shareholder litigation in China reduces the need for accessing corporate information, thereby making inspection rights less significant.[143] This being said, the scarcity of shareholder litigation against the management is by no means unique to China. Even in other advanced jurisdictions outside the U.S., shareholders in public companies rarely sue directors or officers for breach of fiduciary duties.[144]

Proxy solicitation is rare in China, which is likely due to the absence of a regulatory regime governing proxy contests. Launching tender offers is especially costly in China, where a substantial amount of funds must be deposited for an extended amount of time to launch an offer. The scarcity of tender offers can thus be explained by their costliness.[145]

E. *Measuring the Success and Failure of Activist Campaigns*

Next, the CSAD includes the success or failure of each campaign based on the six possible strategies indicated in Table 5. The determination of whether a particular strategy used in an

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against board proposals could be considerably larger than our sample suggests. We have taken this conservative approach because a shareholder cannot necessarily be considered an activist merely because they simply vote against a management proposal.

[139] Following Brav, Wei, Partnoy & Thomas, *supra* note 87, we did attempt to include litigations over breach of fiduciary duties as activism in this research. However, we ended up finding no such litigations at all. Consequently, it is not reported in Table 5 as an activist strategy.

[140] Dan W. Puchniak, *The Derivative Action in Asia: A Complex Reality*, 9 BERK. BUS. L.J. 435, 437 (2012). For how the U.S. uses litigation in shareholder activism more than many other countries see, Wolf-Georg Ringe, Adaptive Advocacy: The Reinvention of Shareholder Activism, Eur. Corp. Governance Inst., - Law Working Paper No. 835/2025 (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5196390, at Part 4.4.

[141] According to the current PRC Company Law, any shareholder can sue to set aside a corporate act (a board resolution or a shareholder meeting resolution) if there is a procedural defect. PRC Company Law 2005, *supra* note 130, art. 22.

[142] In contrast with U.S. shareholder activists who frequently use litigation, activists in China rarely employ this strategy—which is more similar to activists in most other countries. Katelouzou, *supra* note 33, at 827–28.

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

[144] Brian Cheffins & Bernard Black, *Outside Director Liability Across Countries,* 84 Tex L. Rev. 1385 (2006).

[145] When the consideration of a tender offer is cash, which is almost always the case in China, at least 20% of the entire consideration must be placed in an escrow account during the tender offer period, see Takeover Measures, *supra* 107, art. 36. For law and practices of tender offers in China, see Wei Zhang et al., *Mandatory Bids in China: You Can Lead a Horse to Water, but You Can't Make It Drink*, 22 EUR. BUS. ORG. L. REV. 351 (2021).

activist campaign succeeds is as follows. When a shareholder proposal is used to nominate director candidates to the board, it is deemed a "success" if at least one nominee is elected. When an activist puts forth a proposal for other matters, the proposal must be adopted at the shareholder meeting for it to be coded as a "success." When a shareholder activist votes "no" in a majority of the minority (MOM) vote, it is coded a "success" if the significant management proposal was vetoed because of the MOM vote. If an activist files a lawsuit to invalidate certain corporate acts, it is coded a "success" if the court invalidates such an act. When an activist makes her dissatisfaction about a significant management action publicly known, the activist campaign is coded as a "success" if the action was rectified after the dissatisfaction was made public. Finally, an activist's tender offer is coded as a success when the activist receives a sufficient portion of shares from public investors in response to the tender offer to take control of the target company. These standards for successful activist strategies are summarized in Table 5. When multiple strategies were employed in one campaign, it is considered successful only if each individual strategy is successful. If some strategies succeeded while others failed, then the overall campaign is coded partially successful.

In coding whether an activist is successful or unsuccessful, we limit our observations to the observable success/failure within the four corners of the activist campaign. Stated differently, we only examine the legal result of the campaign itself and do not consider the aftermath of the campaign for the purpose of coding its success/failure. For example, an activist campaign would be coded as a success if the campaign objective was to place an activist-appointed director on the board, and the activist-appointed director was successfully elected to the board. We still consider this campaign successful even if the activist-elected director were later removed or barred from attending board meetings. In such cases, which make up an extremely small percentage of the cases in our sample, we still code the original activist campaign as a success. There are two justifications for our approach. First, publicly available, post-campaign information is extremely patchy. Second, coding based on post-campaign events would render it almost impossible to deem a campaign either a success or failure as the situation in the target company continuously evolves. In significant cases in which post-campaign information is available, we consider it, not for coding success/failure, but rather to provide insights into how successful campaigns impact the corporate governance of target companies in the long-term.

Of the 156 campaigns in our sample, there are 63 successful, 10 partially successful, and 81 unsuccessful campaigns.[146] Given the small number of partially successful cases, for the purpose of determining the rate of success of activist campaigns, we treat partially successful cases as successful in our statistical analysis, unless stated otherwise. When partial successes are included, the success rate of shareholder activism in China is 47.40%. This rate is roughly on par with the success rate of 54.04% in Japan,[147] and about one third lower than the rate in the United States of 66.4%.[148]

F. *Politics or Market: Univariate Analysis*

Based on the above definition of success, we examine the relationship between parties' relative political influence and the rate of success. First, we calculate the success rate of each

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

[147] Wataru Tanaka & Gen Goto, *The Long-term Effect of Hedge Fund Activism in Japan* [日本におけるアクティビズムの長期的影響], 115, 153 (2022). [https://perma.cc/XS5S-CB7S]. Partial successes also seem to be included in successes in this study on Japanese shareholder activism. *Id.* at 151.

[148] When we exclude partial success, however, the success rate in China is almost the same as that in the U.S. Brav, Wei, Partnoy & Thomas, *supra* note 87, at 1742, https://law.duke.edu/sites/default/files/centers/gfmc/session_3/2_brav_et_al-hedge_fund_activism-2008.pdf.

type of activist campaign in Table 3. Table 6 reports the results. When partial successes are included, the highest success rate is in activist campaigns in which a private activist shareholder (PAS) targets a Central SOE. This result runs counter to Western conventional wisdom that political power is significant in shaping the contours of Chinese corporate governance.[149] Instead, it suggests that China has developed a rules-based market for shareholder activism. Interestingly, the lowest rate of success is in activist campaigns in which a central state activist shareholder (SAS) targets a Local SOE. This phenomenon also does not fit with the conception of China in which the national government can use its political power to dictate the result in cases involving Local SOEs—further suggesting the rules-based nature of shareholder activism in China.

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

Table 6

Type	Success Rate (Partial Success* Rate)	Standard Deviation of Success Rate (SD of Partial Success* Rate)	Number of Observations	Number of Success Cases (of Partial Success* Cases)
1	37.04% (44.44%)	48.59% (50%)	81	30 (36)
2	43.75% (50%)	51.23% (51.64%)	16	7 (8)
3	42.85% (57.14%)	53.45% (53.45%)	7	3 (4)
4	50% (53.57%)	50.92% (50.79%)	28	14 (15)
5	55.56% (55.56%)	52.70% (52.70%)	9	5 (5)
6	-	-	0	0
7	28.57% (42.86%)	48.80% (53.45%)	7	2 (3)
8	25% (25%)	50% (50%)	4	1 (1)
9	50% (50%)	70.71% (70.71%)	2	1 (1)
Overall	40.91% (47.40%)	49.33% (50.10%)	154**	63 (73)

* Including completely and partially successful campaigns

** Outcomes of two campaigns are pending.

[149] Mueller, Wen & Wu, *supra* note 20, at 14 [https://perma.cc/V2VA-ZPVU]; Chen, Guo & Yu-Hsin Lin, *supra* note 20; Wang & Tan, *supra* note 61, at 1060 [https://perma.cc/98DG-5ZUY]; Yu-Hsin Lin & Curtis J. Milhaupt, *supra* note 61; Wang, *supra* note 20, at 637 [https://perma.cc/G37R-DCT5]; Milhaupt & Zheng, *supra* note 20, at 677.

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

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

Prior studies generally show that the chance of being targeted by activists and the chance of activist's success are negatively correlated with the target's relative economic performance.[150] On the other hand, activists with a higher percentage of shares will have more voting power and will also be more likely to garner support from others as they have more skin in the game. Therefore, we would expect that if an activist owns a higher percentage of shares in the target or if the target has a lower ROA, the chance of the activist campaign succeeding would be greater (and vice versa). Based on the results reported in Table 7, it appears that in successful campaigns activists have a higher percentage of shareholdings, and the difference is statistically significant. At the same time, targets in successful campaigns have a lower ROA. In fact, the targets of successful activist campaigns had on average an ROA over 50 percentage points lower than those in unsuccessful campaigns. But this difference is not statistically significant.

Table 7

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

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

G. *Politics or Market: Multivariate Analysis*

[150] For chance of being targeted, see Brav, Jiang, Partnoy & Thomas, *supra* note 87. For chance of activists' success, see Lilli A. Gordon & John Pound, Information, *Ownership Structure, and Shareholder Voting: Evidence from Shareholder-sponsored Corporate Governance Proposals*, 48 J. FIN. 697, 707 (1993); Deon Strickland, Kenneth W. Wiles & Marc Zenner, *A Requiem for the USA: Is Small Shareholder Monitoring Effective?*, 40 J. FIN. ECON. 319 (1996). However, in Japan, success of activist campaigns appear to rise with targets' prior ROA, see Wataru Tanaka & Gen Goto, *Nihon ni okeru kabunushi akuthibizumu no chokiteki eikyo* (日本におけるアクティビズムの長期的影響) [The Long-term effect of shareholder activism in Japan], in Nihon Shokengyo Kyokai ((日本証券業協会) [Japan Securities Dealers' Association] ed., *JSDA Capital Market Forum (dai 2ki) ronbunshu* [*Collected Papers of the JSDA Capital Market Forum (2nd Season)*] (2020), at 115, https://www.jsda.or.jp/about/kaigi/chousa/JCMF/gototanakaronbun2.pdf.

Although the above statistical tests point towards China having a rules-based market for shareholder activism, univariate tests cannot tell whether the observed correlation between variables is due to certain confounding factors. As such, we undertook a multivariate logistic regression analysis by using two different measures of the political power in activist campaigns. First, we use the iscore to capture each party's relative political power in each activist campaign. Second, we include state-owned activists and state-owned targets, both of which are dummy variables, in the regressions as an alternative measurement of the parties' relative political influence. We control industry fixed effects and year fixed effects to tease out the impact on activism results due to industry-, as well as time-, specific factors. The standard errors of the estimations are clustered at the industry level. Table 8 below reports the results using various empirical models.

Table 8: Multivariate Logit Regression

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

Note: Standard errors clustered at the industry level are in parentheses.
*, **, and *** indicate significance at 10%, 5% and 1% levels respectively.
One outlier, a successful campaign with an ROA of -2961%, was dropped.

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

Several leading academics have highlighted the importance of President Xi's 2015 party-building initiatives as a conduit for introducing political influence into the governance of corporations in China.[151] As such, to test whether these party-building initiatives had an impact

[151] Some well-known studies on this topic are Liu & Zhang, *supra* note 61, at 3; Yu-Hsin Lin & Milhaupt, *supra* note 61, at 187; Chen, Guo & Yu-Hsin Lin, *supra* note 20, at 3.

on shareholder activism in China, we created a dummy variable equal to 1 for campaigns occurring after 2015 and conducted standard interaction tests to ascertain the impact of the party-building agenda on outcomes of activist campaigns. Model I and Model II in Table 9 show the results of the regressions.

Conversely, as explained above, the 2018 CCG was implemented to further champion shareholder rights and to align China more closely with prevailing practices in Anglo-American jurisdictions.[152] If corporate governance in China follows a rules-based market paradigm, then we would expect that market-driven forces would increase after the implementation of the 2018 CCG. Therefore, we constructed a dummy variable equal to 1 to capture any post-CCG changes in activist campaigns and examine their interaction effects with factors representing market forces. Model III and Model IV in Table 9 report the results of these interaction effects.

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

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

Note: Standard errors clustered at the industry level are in parentheses.
*, **, and *** indicate significance at 10%, 5% and 1% levels respectively.

[152] Zhang, *supra* note 77, at 2 n.2.

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

In Table 9, we see no increase in the influence of political power following the 2015 party-building initiatives. If anything, after the party-building initiatives, political status seems to work against both state-owned activist shareholders and state-owned target companies as far as the outcomes of activism are concerned. This further calls into question the political influence theory in Chinese corporate governance. On the other hand, there is some empirical evidence that supports the rules-based market theory. After the amendment of the 2018 CCG, a target's lower ROA in the quarter prior to an activist campaign is more likely to be associated with success in an activist campaign, compared to the period before the CCG amendment.[153] Of course, given the substantial overlap of the post-party-building-initiatives and post-Code-change periods, we cannot deny the possibility that it was the party-building initiatives that contributed to the market-oriented outcomes of shareholder activism in China. However, reasonable minds may disagree on this point.

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

H. *Addressing Concerns Raised by Possible Selection Bias*

One possible shortcoming of the CSAD is that it only includes activist campaigns that are actually launched—without taking account of the potential selection bias that may arise due to the type of targets or activists. Since 75% of targets in the CSAD are POEs, one may suspect that SOEs are often avoided by activists due to their political clout making them more formidable targets. This raises the possibility that perhaps only when severe problems arise in SOEs will activists dare to target them. If this were the case, SOEs in our sample may be of worse governance quality or operational performance than POEs as a whole—creating the possibility that our empirical results showing no statistically significant difference in success rates between SOEs and POEs actually masks the impact of political power.

However, our empirical evidence does not support this conclusion. First, there is no significant difference between the ROAs of SOE and POE targets in the CSAD.[154] Second, the proportion of SOEs (25%) and POEs (75%) that are targets in the CSAD is almost the same as the proportion of SOEs (26%) and POEs (74%) among all domestically listed A-share companies.[155] Moreover, the proportion of Central SOEs (6%) and Local SOEs (19%) is almost the same as the proportion of Central SOEs (7%) and Local SOEs (19%) among all domestically listed A-share companies.[156] Third, if SOEs were seen as more formidable targets

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

[154] If anything, the POEs seem to perform worse on average (with an ROA of -0.7% vs. SOEs' 0.8%). This is at odds with the alleged selection bias in our data which should have pointed to a lower ROA of SOEs.

[155] Among all domestically listed A-share companies are 1,008 listed SOEs (i.e., companies either controlled or significantly influenced by local state-owned capital). Shanghai State-owned Capital Research Institute, "Annual Report on Listed Local State-owned Enterprises in China (2024)", document in possession of the author. This report used a broad definition of listed companies controlled or significantly influenced by local governments. In other words, the percentage of local SOEs can be overestimated when we use this definition.

[156] According to the Central SASAC, by the end of 2023, 383 A-share listed companies were controlled by central state-owned capital. 国务院国有资产监督管理委员会 [State-owned Assets Supervision and Administration Commission of the State Council], 2023 年央企经济运行情况新闻发布会 [2023 Central SOEs

than POEs due to their political power, one would expect that activists would only proceed in campaigns against SOEs if they held a larger block of shares than in campaigns against POEs. However, our data shows the opposite, with activists in the CSAD holding a higher percentage of shares in POEs than SOEs (13.4% vs. 10.4% and the difference between the two percentages is statistically significant at the 10% level).

Finally, some may suspect that selection can be driven by different incentives held by different types of activists. For example, SASs might be less selective in choosing their targets because for them, launching an activist campaign may be a key performance indicator for their government position; whereas PASs may be driven purely by economic gain. Again, there is no suggestion in our data that supports this channel of selection. No statistically significant difference exists in either percentage of shareholding or ROA between the targets of SASs and PASs.

III. Case Studies of Shareholder Activism in China

Our empirical findings above present a challenge to the conventional Western view that the CCP wields its power in all aspects of Chinese corporate governance. These findings suggest that shareholder activism in China has largely occurred in a rules-based system driven by market forces. They also suggest that the more nuanced academic literature on the political influence of the CCP on Chinese corporate governance has overlooked the importance of shareholder activism—a significant force driving Chinese corporate governance.

To gain a more accurate understanding of this significant, overlooked development in Chinese corporate governance, we drilled down beyond the empirical analysis by reviewing the facts in the 156 cases of shareholder activism in the CSAD. There are two reasons why we thought highlighting the facts in several significant cases of shareholder activism in China may add value to our research. First, we sought to identify individual cases in which a detailed review of the facts may suggest that the CCP used its political power to shape the outcomes of an activist campaign. These cases may not be observable in the empirical analysis. Second, very few of the 156 cases in the CSAD are reported in English. Accordingly, we thought it would be beneficial for comparative scholarship and future research to provide additional information about a few significant cases of shareholder activism in China, which to the best of our knowledge have not been widely reported in English.

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

A conventional Western view of China suggests that bottom-up activism is not tolerated by the CCP—especially ground level activism that challenges powerful, state-controlled

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Economic Operation Release] (Jan. 24, 2024), http://www.sasac.gov.cn/n2588020/n2877938/n2879597/n2879599/c29885932/content.html. Within a total of 5,346 domestically listed companies, the proportion of domestically listed A-share companies controlled by central and local state-owned capital was 26% in total, or 7% and 19% respectively. These proportions are consistent with our findings, where among the 156 campaigns we identified, 9 involved central SOEs and 29 were targeted at local SOEs, which represents, respectively, 6% and 19%, or roughly a quarter in total. 中国上市公司协会 [China Association for Public Companies, (CAPCO)], 中上协统计月报（2023 年 12 月） [CAPCO Statistical Monthly Report, December 2023] (Aug. 5, 2024), https://www.capco.org.cn/sjfb/dytj/index.html [https://perma.cc/8CYT-4Q6X].

entities.[157] From this perspective, one may expect that retail investors would be unable to launch a successful shareholder activist campaign against "national champions"— as they are the most politically powerful Central SOEs, which are at the core of the Chinese economy.

Our first selected case contradicts this prevailing narrative. China COSCO Shipping Holding Corporation (COSCO Holding), is a subsidiary of COSCO Shipping Group, which is a quintessential national champion with enormous economic, political and geopolitical importance for China. The COSCO Shipping Group is the largest dry bulk carrier in China and one of the largest dry bulk shipping operators in the world.[158] It is also China's largest liner carrier and one of China's best-known brands.[159] The COSCO Shipping Group has been integral in China's controversial BRI and firms within the group were sanctioned by the United States government several years ago for breaching the United States sanctions against Iran.[160] More recently, the COSCO Shipping Group has collaborated with some of China's tech giants to develop blockchain technology for the shipping industry.[161] In this respect, the COSCO Shipping Group is among the most politically important and economically powerful companies in China.

Based on a conventional Western perspective, it would seem unthinkable that retail investors would organize online to conduct a successful shareholder activist campaign against a core company within the COSCO Shipping Group—but, as has been widely reported in China, this is precisely what happened. Less than a year after "Roaring Kitty" became (in)famous in the United States for launching a retail investor revolution on an online forum called Wallstreetbets, an anonymous investor, nicknamed "Legend of the Red Scarf" (LRS), used the online forum "Snowball" [雪球] to launch a shareholder activist campaign against COSCO Holding.[162] LRS's complaint against COSCO Holding was that, despite its enormous size and profitability, it had not paid a dividend for over a decade.[163]

On November 21, 2021, LRS posted a message on Snowball proposing to collect proxies in an effort to gather the requisite votes to exercise China's 3% Proposal Right. The 3% Proposal Right is the most popular strategy for carrying out shareholder activism in China.[164] LRS's success online was extraordinary—within one day, LRS had collected nearly 500

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[157] See *supra* Part I for conventional Wester view of CCP's control over activism. *See also* Nicolas C. Howson, *Corporate Law in the Shanghai People's Courts, 1992-2008*, *supra* note 68, at 405-06 (claiming that even if shareholders exercise their legal rights, government officials may simply refuse to acknowledge them due to political considerations); Cheng, *supra* note 54, at 664 (arguing that private institutional investors as minority shareholders are likely to remain passive in state-owned enterprises due to political pressure and other reasons). Researches also show that institutional investors in China seldom take active actions in listed companies. See Jiang & Kim, *supra* note 55, at 211.

[158] China COSCO Shipping Corporation Limited, https://en.coscoshipping.com/col6918/art/2016/art_6918_45339.html [https://perma.cc/5A99-F82E].

[159] *Id.*

[160] Press Statement, Michael R. Pompeo, *The United States Imposes Sanctions on Chinese Companies for Transporting Iranian Oil* (Sep. 25, 2019), https://2017-2021.state.gov/the-united-states-imposes-sanctions-on-chinese-companies-for-transporting-iranian-oil/ [https://perma.cc/H8S6-QDQR].

[161] *Cosco Shipping and Alibaba Latest Efforts Using Blockchain in Shipping*, THE MARITIME EXECUTIVE (Jul. 7, 2020), https://maritime-executive.com/article/cosco-shipping-and-alibaba-latest-efforts-using-blockchain-in-shipping [https://perma.cc/NBW8-S2SP].

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

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

[164] *See infra* Part III(D).

million proxy votes and was successful in meeting the 3% requirement.[165] Minority shareholders attempted to put forth a shareholder proposal requesting the company modify its dividend plan for the next three years. This proposal would guarantee that the company would not pay a dividend of less than 50% of its net profits, and would allow the board to repurchase the company's outstanding A-shares and H-shares.[166] On December 6, 2021, COSCO Holding held a board meeting and decided to seek general authorization from the shareholders' meeting for the board to repurchase A-shares and H-shares with no mention of cash dividends. Subsequently, in March 2022, the company declared a cash dividend plan to distribute 15.6% of the attributable net profit, which shareholders approved at the general meeting in May.[167] In May 2022, the company's shareholders meeting decided to distribute cash dividends of 50.15% of attributable profits of the parent company; and 15.6% of the net profit attributable to shareholders of the listed company COSCO Holdings.[168]

This shareholder activist campaign, as highlighted by mainstream media in China, successfully targeted a national champion and was in alignment with the central government's policy of ensuring that companies fairly distribute their profits to public investors.[169] The CSRC has consistently stressed the significance of listed companies providing fair returns to minority shareholders. Since 2006, cash dividends have been a prerequisite for companies seeking a second public offering.[170] In 2015, the CSRC, in conjunction with other regulatory bodies, issued notifications encouraging listed companies to engage in cash dividends and share repurchases. The CSRC specified that companies which satisfy the requirements that make them eligible to pay dividends should pay them accordingly.[171] In 2023, the CSRC further revised regulatory guidelines for listed companies to facilitate the payment of interim dividends. The total cash dividends of listed companies in 2023 reached a record high of 2.13 trillion yuan—suggesting that the regulatory architecture and government pressure for profitable companies to pay dividends has had an impact in practice.[172]

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

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[165] *Buzuo Chenmo de Gudong, Zhongxiao Touzizhe Tiyi Zhongyuanhaikong Tigao Paixibi, Huigou Gufen, Yijiqi 4.7 Yigu* (不做沉默的股东，中小投资者提议中远海控提高派息比、回购股份，已集齐 4.7 亿股) [Minority Investors Propose that COSCO Shipping Holdings Increase the Dividend Payout Ratio and Repurchase Shares, Having Already Gathered 470 million shares], Xinlang Caijing (新浪财经) [Sina Finance] (Nov. 22, 2021), https://finance.sina.com.cn/jjxw/2021-11-22/doc-iktzscyy7062658.shtml [https://perma.cc/H2LR-J64P].

[166] Although we didn't locate this proposal on CNINFO, we could still code this campaign as a publicly expressed dissatisfaction to public shareholders.

[167] *Cosco Holding Public Announcement* (Dec. 7, 2021), https://stock.stockstar.com/SN2021120600007769.shtml [https://perma.cc/JCQ5-FKCD].

[168] *Cosco Holding Public Announcement (2022-032)* (May 28, 2022), https://stock.stockstar.com/SN2022052700016492.shtml [https://perma.cc/YE9A-RWKE].

[169] 提案分红和回购！超 600 位中小股东向中远海控联合发声 [Proposal on dividends and repurchases! More than 600 small and medium shareholders jointly voiced their opinions to COSCO Shipping Holdings], CCTV-2, (Dec. 1, 2021), https://tv.cctv.com/2021/12/01/VIDE1M1uvWYGbVMdTzUJGgpd211201.shtml [https://perma.cc/9Y2N-J6XS].

[170] 上市公司证券发行管理办法 [Administrative Measures for the Issuance of Securities by Listed Companies] (promulgated by China Sec. Regulatory Comm'n, May 6, 2006, effective May 8, 2006), http://www.csrc.gov.cn/csrc/c106256/c1653996/content.shtml.

[171] 证监会、财政部、国资委、银监会关于鼓励上市公司兼并重组、现金分红及回购股份的通知 [Notice of the China Sec. Regulatory Comm'n, Ministry of Fin., State-Owned Assets Supervision & Admin. Comm'n & China Banking Regulatory Comm'n on Encouraging Mergers, Acquisitions & Restructuring, Cash Dividends & Share Repurchase of Listed Cos.] (promulgated & effective Aug. 31, 2015), https://www.gov.cn/xinwen/2015-08/31/content_2922663.htm.

[172] 中国证券监督管理委员会 [China Sec. Regulatory Comm'n], 2024 年 1 月 12 日新闻发布会 [Jan. 12, 2024 News Release] (Jan. 12, 2024), http://www.csrc.gov.cn/csrc/c100029/c7457231/content.shtml. [https://perma.cc/ARU2-CB9E].

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

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

The power of the CCP as the ultimate ruler over Chinese companies is a common theme in the conventional Western understanding of Chinese corporate governance.[173] In a system driven by politics, which is not rules-based, one would not expect private parties to rely on legal technicalities to thwart government investors. Indeed, based on a conventional view of China, especially in the President Xi era, one may expect the government to run roughshod over the shareholder rights of private parties in the context of shareholder activist campaigns in which a government investor is involved. In this context, it is surprising to find cases in the CSAD in which private investors use aggressive tactics and legal technicalities to prevail over government investors and government investors exercise their rights through public enforcement mechanisms. This phenomenon suggests that China has a rules-based system in which the government's political power is constrained.

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

The incumbent board refused to allow a vote on the election of the six shareholder activist director candidates, citing technical requirements.[174] The Government-Led Minority Activists persisted by challenging the slate of directors nominated by Innovation Medical's incumbent board, which resulted in three out of the nine incumbent-nominated director candidates failing to secure a majority of the votes required for them to be elected. [175]

In response to the incumbent board's refusal to allow a vote on the activist director candidates, the Government-Led Minority Activists filed a complaint with the Zhejiang

[173] *See* Groswald Ozery, *supra* note 60, at 43; Chen, Guo & Yu-Hsin Lin, *supra* note 20, at 2.

[174] For an elaborate report on this case, please see 创新医疗全体董监高被证监局约谈！新股东提名董事会成员被拒，股权争夺再升级 [Innovation Medical's Directors and Senior Management Being Summoned by Regulators, Struggle for Control Escalated], 澎湃 [Pengpai] (Nov. 18, 2020), https://m.thepaper.cn/baijiahao_10051224 [https://perma.cc/JU2S-PZX4].

[175] Public Announcement of Innovation Medical (2020-084), available at CNINFO Innovation Medical, https://data.eastmoney.com/notices/detail/002173/AN202011251432999732.html/.

Securities Regulatory Bureau (the Bureau).[176] In response, the Bureau issued a regulatory letter to Innovation Medical, seeking clarification on its behavior, which appeared to be a prima facie violation of the company law.[177] Despite the Bureau's letter, Innovation Medical's incumbent board maintained its position and failed to allow a vote on the activist's director candidates.

In February 2021, the Government-Led Minority Activists attempted to call an extraordinary general shareholders' meeting to vote on its slate of directors again—but the incumbent board failed to hold the meeting.[178] In March 2021, the incumbent board finally called a special shareholder meeting to fill Innovation Medical's three vacant board seats. At the meeting, the incumbent board, without providing any reasons, again rejected the Government-Led Minority Activists' proposal to have its slate of directors considered for election. Subsequently, Innovation Medical's incumbent board publicly announced that it was canceling the scheduled shareholders' meeting.[179]

Finally, the Government-Led Minority Activists commenced a lawsuit in the People's Court of Zhuji (where the target company is registered) to challenge the incumbent board's flagrant violation of the company law. In July 2021, the court held for the Government-Led Minority Activists, setting aside the decision of Innovation Medical's incumbent board rejecting the shareholder's proposal and requiring there to be a new directors' election.[180] In November 2021, the Shaoxing Intermediate Court upheld this decision.[181] However, surprisingly, despite the favorable court ruling, the Government-Led Minority Activists decided to sell their shares, without pursuing their right to hold an election for their director candidates.

It appears that the Innovation Medical Case is not an isolated incident. In 2018-2019, there was a shareholder activist campaign in a Tibetan beer company (the Tibetan Development Company Case), in which a Tibet SASAC-owned shareholder was pitted against private shareholders in a contested director election.[182] The local, state-owned shareholder's votes, which would have determined the outcome of the director election, were disallowed based on spurious technical grounds, resulting in an opposing slate of director candidates being elected. The local, state-owned shareholder reported this incident to the Shenzhen Stock Exchange and Tibet Securities Regulatory Bureau, both of which issued regulatory letters to the company.[183] The shareholder who was aligned with the local state-owed shareholder filed a lawsuit to

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[176] Public Announcement of Innovation Medical (2020-083), available at CNINFO Innovation Medical, https://data.eastmoney.com/notices/detail/002173/AN202011171430371107.html.

[177] *Id.*

[178] Innovation Med. Co., Ltd., Public Announcement of Innovation Medical (2021-030), CNINFO (2021), https://data.eastmoney.com/notices/detail/002173/AN202102211464004918.html.

[179] Innovation Med. Co., Ltd., Public Announcement of Innovation Medical (2021-039), CNINFO (2021), https://data.eastmoney.com/notices/detail/002173/AN202103101470361048.html.

[180] Innovation Med. Co., Ltd., Public Announcement of Innovation Medical (2021-081), CNINFO (2021), https://data.eastmoney.com/notices/detail/002173/AN202107081502545536.html.

[181] Innovation Med. Co., Ltd., Public Announcement of Innovation Medical (2021-184), CNINFO (2021), https://data.eastmoney.com/notices/detail/002173/AN202111041527029514.html.

[182] Chen Xing, A 股最长股东会争辩升级 西藏发展国资股东投票被否到底谁之过 [Longest Shareholder Meeting in the A-Share History, Who Stripped the Voting Rights of Tibet State-Owned Shareholder?], 每经网 (NAT'L BUS. DAILY) (Jan. 20, 2019), https://www.nbd.com.cn/articles/2019-01-20/1293136.html [https://perma.cc/TR2R-E77V].

[183] 西藏银河科技发展股份有限公司 [Tibet Dev. Co., Ltd.], 关于"公司部关注函〔2019〕第 1 号"的回复 [Response to Corp. Affairs Dep't Letter of Concern [2019] No. 1] (Jan. 8, 2019), http://static.cninfo.com.cn/finalpage/2019-01-16/1205773695.PDF.

invalidate the election of the directors. However, before a definitive judgment was reached, the ally of the local SAS completely exited the company.[184]

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

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

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

FAW Group Corporation was established in 1953 and produced China's first truck and first car.[185] It sells ultra luxury cars under the "Hongqi" (red flag) brand name. Hongqi cars are often used by Chinese officials, seen as a symbol of Chinese craftsmanship and grace the parades of the highest political significance. Some examples include the 10th anniversary celebration of the founding of New China in 1959 and National Day parades.[186]

FAW Car Company ("FAW Car") is a listed company, controlled by FAW Group Corporation ("FAW Group")—a central SOE and a quintessential national champion. In 2011, FAW Group underwent a reorganization which resulted in the creation of a newly established holding parent company called "FAW Holding." The publicly stated purpose of the reorganization was to resolve issues concerning related party transactions that were allegedly tunneling wealth out of FAW Car to benefit FAW Group (the Reorganization). Shareholders of FAW Car were originally promised, at the time of the Reorganization in 2011, that the Reorganization would be completed in five years. However, as the 2016 deadline approached, FAW Car sought shareholder approval to extend the deadline for the Reorganization by three years and to exempt FAW Holding from any liability resulting from the delay.[187]

Dissatisfied with the proposed delay, on June 5, 2016, Shenzhen Mingyao, a private equity fund (the PE Fund), launched an open letter campaign on its website, urging FAW Car investors

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[184] 西藏银河科技发展股份有限公司 [Tibet Dev. Co., Ltd.], *Public Announcement of Tibet Development (2019-146)(2020-081)(2020-095)*, CNINFO.

[185] 中国第一汽车集团有限公司 [FAW Grp], 关于集团 [Official Introduction of FAW Group], https://www.faw.com.cn/fawcn/373692/jtgl/jtjj42/index.html [https://perma.cc/J64P-ZVUF] (last visited May 30, 2024).

[186] 红旗"轿车接受毛主席的检阅 [1959: The Red Flag sedan is inspected by Chairman Mao], FAW Official Website (Sept. 29, 1959), https://www.faw.com.cn/zt_fawcn/dq100zn/zj/5388697/index.html [https://perma.cc/5YM3-KBFL].

[187] 一汽轿车股份有限公司 [FAW Car Co., Ltd.], 一汽轿车股份有限公司关于召开 2015 年度股东大会的通知 [Notice on Convening the 2015 Annual General Meeting of Shareholders] (Public Announcement No. 2016-028), CNINFO, http://static.cninfo.com.cn/finalpage/2016-06-04/1202355400.PDF; .

to oppose FAW Holding's request to extend the deadline for the Reorganization.[188] The PE Fund solicited proxies, encouraged shareholders to cast dissenting votes, and sought to exercise its 3% Proposal Right in FAW Car's upcoming shareholder meeting to claim compensation from FAW Group for the delayed Reorganization.[189]

On June 16, 2016, the PE Fund obtained proxies representing over 3% of FAW Car shares and, with support from the Jilin Securities Regulatory Bureau, successfully submitted its proposal to FAW Car.[190] However, FAW Car refused to include the proposal in the shareholders meeting agenda, alleging that the proposal documents were deficient because they failed to contain the original documents required to identify the shareholders, thereby invalidating the proxies.[191] This prompted the Shenzhen Stock Exchange to issue a letter of concern regarding FAW Car's conduct and the Jilin Securities Regulatory Bureau to issue a supervisory letter to FAW Car requesting more information about its conduct.[192]

On June 27, 2016, at FAW Car's shareholders meeting, 97.3% of independent shareholders present voted against the management proposal to extend the timeline for the Reorganization and to exempt FAW Holding from any liability arising from the delay.[193] FAW Holding, as FAW Car's controlling shareholder, was excluded from voting on the management proposal as it was a party in the related party transactions which were the subject of the vote. On this basis, the PE Fund succeeded in its shareholder activist campaign as it defeated a management proposal that would have had a significant deleterious impact on the company and its minority shareholders.

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

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[188]致一汽轿车投资者公开信 [A Public Letter to All FAW Car Shareholders], 深圳市明曜投资管理有限公司 [VIM China] (Jun. 5, 2016), http://www.vimchina.com.cn/newsinfo.aspx?CateId=14&Id=72, [https://perma.cc/9SWU-UC2L].

[189]一汽轿车将中小股东拒之门外 私募曾昭雄死磕 [FAW Car Shuts out Minority Shareholders, with Private Equity's Zeng Zhaoxiong Fighting to the End], 东方财富 [East Money], (June 24, 2016), https://finance.eastmoney.com/news/1354,20160624636705766.html [https://perma.cc/PY83-9PFV].

[190] 一汽轿车股份有限公司 [FAW Car Co., Ltd.], 一汽轿车股份有限公司关于收到吉林监管局《关于对一汽轿车股份有限公司监管关注的函》的公告 [Public Announcement Regarding Receipt of the Jilin Regulatory Bureau's Letter of Concern (No. 2016-032)], CNINFO, (June 25, 2016), https://static.cninfo.com.cn/finalpage/2016-06-25/1202408557.PDF. A more detailed story can be found at 一汽失诺震惊股民，机构狙击一触即发 [FAW's Breach of Promise Shocks Shareholders, Institutional Counterattack Imminent], 每日经济新闻报, https://www.nbd.com.cn/features/677.

[191] 北京德恒律师事务所 [DeHeng Law Offices], 关于一汽轿车股份有限公司 2015 年度股东大会 临时提案材料的鉴证意见 [Certified Opinion on Proposal Raised Regarding the 2015 Annual Shareholders Meeting of FAW Car Co., Ltd.], (June 17, 2016), https://static.cninfo.com.cn/finalpage/2016-06-22/1202381106.PDF, [https://perma.cc/X92L-CTGN].

[192] 一汽轿车股份有限公司 [FAW Car Co., Ltd.], 一汽轿车股份有限公司关于收到吉林监管局《关于对一汽轿车股份有限公司监管关注的函》的公告[Public Announcement of FAW Car (2016-031) & Public Announcement of FAW Car (2016-032)], CNINFO, https://static.cninfo.com.cn/finalpage/2016-06-22/1202381107.PDF; http://static.cninfo.com.cn/finalpage/2016-06-25/1202408557.PDF.

[193] 一汽轿车股份有限公司 [FAW Car Co., Ltd.], 2015 年度股东大会决议公告 [Announcement of Shareholder Resolutions of 2015 Annual General Meeting (2016-033)], CNINFO, (June 28, 2016), http://static.cninfo.com.cn/finalpage/2016-06-28/1202422267.PDF.

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

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

If one assumes that the Chinese government is a monolith, then one would not expect to find two SASs competing in an activist campaign to control a POE or an SAS launching a shareholder activist campaign against an SOE. To the uninitiated observer, such shareholder activist campaigns would seem illogical as the Chinese government seems to engage in shareholder activism against itself. However, intergovernmental competition at the national level between various departments, and competition at the local level between different provinces, is recognized as a mechanism that may serve to improve Chinese corporate governance.[194]

As one of us has explained in detail elsewhere in research examining shareholder activism involving institutional investors in China: "the CCP realizes the corporate governance and economic benefits of having [SASs] serve as a check on the controlling shareholder power of SOEs, which is congruent with the CCP's long-standing policy to support the development of institutional investors as a mechanism to improve corporate governance and stabilize the stock market."[195] As such, it is unsurprising that 15 out of the 156 activist campaigns in our sample involved cases where an SAS launched an activist campaign against an SOE. This suggests that shareholder activism in China may serve as an important corporate governance mechanism among government entities to promote good corporate governance, improve efficiency, and weed out corruption.

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

Taken together, SASs launching activist campaigns against SOEs and SASs suggests that shareholder activism in China occurs in a rules-based system where political entities often appear to play by the same rules as private entities. However, as mentioned earlier, it is important to recognize that the CSAD only includes cases which were publicly reported. It

[194] See for example, Lin & Puchniak, *supra* note 13, at 131.
[195] *Id*.

contains no information about potential activist campaigns which are not publicly reported, or which may have been prevented from arising in the first place.

As noted earlier, our review of the facts of the 156 cases in the CSAD did not reveal even a single case in which a local SAS attempted to launch a campaign against a national champion. We conclude that the political hierarchy between local state entities and national champions may serve to quell such campaigns. More research needs to be done on the role that such inter-governmental shareholder activism in China plays in corporate governance and how this may generally impact the Chinese government.

IV. CONCLUSION

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

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

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

Similarly, our case studies provide robust support for the conclusion that China's shareholder activism is primarily driven by rules-based market forces. Granted, politics may still play a role in shareholder activism in China. The lack of a single case in which a local, state-controlled shareholder activist attempted to even launch a campaign against a national champion suggests that the political hierarchy between local state shareholders and national champions is prohibitive. Our analysis of the FAW Car case raises the specter that national champions may be able to insulate themselves from legal consequences in extraordinary cases. Also, as noted, our observations are limited to publicly available information.

Although our findings indicate that the CCP has largely allowed space for a rules-based market for shareholder activism, the CCP has not abdicated its ultimate control over China. If allowing a rules-based market for shareholder activism improves Chinese corporate governance, this will likely strengthen China's economy, which arguably is the primary source of the CCP's power and legitimacy.

The recent amendments to China's Company Law, which took effect in July 2024, further reinforce the trend towards empowering minority shareholders that we have observed in our study.[196] These changes, which include lowering the threshold for shareholder proposals from

[196] 全国人民代表大会 [Nat'l People's Cong.], 完善中国特色现代企业制度推动经济高质量发展 [Improve Modern Enterprise and Promote High-Quality Development], http://www.npc.gov.cn/c2/c30834/202401/t20240104_434091.html (last visited May 3, 2024) [https://perma.cc/MKK3-83YV].

3% to 1%, and expanding shareholders' rights of inspection and litigation, are likely to accelerate the development of shareholder activism in China.[197] The new legal framework provides additional tools and opportunities for minority shareholders to engage in corporate governance, potentially leading to a more vibrant landscape of shareholder activism in the coming years.

Fans of rules-based markets should be heartened by our findings. Chinese companies have become world leaders in many important industries. Over the past 15 years, China has had the world's largest market for initial public offerings and the world's second largest stock market, which has grown five-fold in the past decade.[198] To think that this success is the result of a system in which the government uses its political influence to dictate corporate governance outcomes gives far too much credit to the Chinese government and far too little credit to rules-based markets. There is a reason why the USSR regularly had shortages of toilet paper and why it did not have shareholder activism. China has an abundance of both.

[197] PRC Company Law (as amended in 2023, effective July 1, 2024), arts. 110, art 115.
[198] Lin & Puchniak, *supra* note 13, at 77.

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