Rethinking Corporate Governance and Law in China: The Theories, Rules and Practices

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abstract

Hailing China as a rising economic giant is not an understatement. Economic reforms have transformed China into a modern economy rivalling the neighbouring Asian tiger economies like South Korean and Taiwan. This requires greater emphasis on regulating markets and governing corporations to ensure economic growth continues. Yet, legal reforms are not as straightforward as transplanting Western models, more modification to suit Chinese political and cultural considerations needs to be incorporated. Likewise, privatisation of the telecommunications sector does not mean that government influence in the new corporations cease. This is not necessarily negative, as long as safeguards are in place. Plainly, further reforms to the law and governance will be needed. Given that Confucius's philosophy continues to play a central role in Chinese society and values, developing laws and governance practices from Confucian principles will arguably be appropriate for modern China.

China is unmistakably an economic powerhouse of the twenty-first century. Two decades of economic reforms have transformed China. Some most visible impacts of the reforms include the many city skylines towering in major cities, new products and fashion filled department stores, and cars clogs the streets where decades ago only bicycles were seen. The economy is expanding rapidly with double-digit growth rates. Increased economic activity has raised the per capita income of the urban population from $383 *Yuan* per annum in 1978 to $1686 *Yuan* in 1991 (Duckett, 1998, p 41). But to what extent is this true in corporate governance and law reforms?

China's former company laws were enacted in 1904, 1914, 1929 and 1946 respectively. Tomasic and Fu (1999, p 135) argued that:

> All of these laws have reflected a considerable degree of central government control and have had limited impact on the organisation of business activity in China. Historically, Chinese governments have not encouraged commerce, perhaps due to the long-standing policy of national isolation and what some have described as a Confucian disdain for the world of business. This meant that the state provided minimal protection for private business, so that, by default, the family and the relationships of trust became a more secure basis for business activity than formal bodies of law, such as company law.

A recent attempt by the Chinese government to modernise China's company law was in 1994 and was significant for a Communist regime. Subsequent key amendments were made in 2006.

Since modern concepts of corporate governance and laws an alien for China, Western models have been adopted as benchmarks. Concerns about the suitability of Western governance principles for China are justifiable due to the ideological and cultural differences between them. Consequently, how robust and applicable are these new laws? These are some of the issues this article will attempt to examine.

To develop further insights into governance practices, a case study on the Chinese telecommunications sector is selected. Even though there are limitations in case study analysis, certain patterns and norms of large Chinese enterprises can be identified. Given the Chinese government's reform agenda and privatisation programs, we will explore whether State-owned enterprises (SOE) have transformed into modern and competitive entities like those in the developed Western nations.

Theorising corporate governance and law in the Chinese context

Corporate governance can be an imprecise and all-embracing concept. It can be narrowly defined as how companies are directed and steered (Farrar, 2001, p 3), or broadly described as a system of checks and balances to ensure that decision makers are accountable to various stakeholders (Solomon and Solomon, 2004, p 13–5). Governance entails both structural mechanisms and relational protocols involving processes and decisions administered by formal and informal rules (Hunt and Wickham, 1994, 78–9).

Rules imposed by the state would usually consist of laws, regulations, and codes, where penalties would be imposed for non-compliance, or conflict resolution through the courts would be available (Farrar, 2001, p 3–4). This would necessitate the creation of institutions to monitor and prosecute for breach of those rules. Appropriate penalties would also have to be set to redress the wrongs and function as deterrents against others from certain deviant actions and inactions. State rules are therefore costly requiring sizable resources and many institutional processes and safeguards.

Whereas rules within an organisation are a form of self-regulation (Ayres and Braithwaite, 1992, p 19–20) unlike state laws or regulations, according to Giddens (1984) rules can be a form of routine and practice. They can also be constitutive and regulative norms to control behaviour. Consequently, organisational rules are dynamic and complex as organisations adapt and change in relation to the context, use and interpretation of the rules. Such rules need to be communicated through verbal and non-verbal interactions, constantly subjected to multiple and subjective sense making regarding their application and implementation. Hence, rules in an organisation are less rigid than state imposed obligations. This can be both positive and negative.

State imposed rules and regulations are inclined to be prescriptive, comprehensive and certain with the proviso that they are well drafted and practicable. State imposed regulations should be understood as a 'fall-back' measure to invoke when organisational rules fail. State regulations are not a substitute for organisational rules (Farrar, 2001, p 3–10). The interdependent nature of state imposed and organisation generated rules accentuate the importance of instituting robust governance regimes where the state complements organisational rules by formulating regulations in a concise, consistent and coherent manner.

Over the last two decades, there have been a number of conflicting theories about corporate governance. Yet the underlying assumptions and arguments seem to be shaped by contextual considerations that understand that there is no 'one size fits all' model. Thus, tailoring to each sector and country could be more effective because it incorporates cultural and socio-political factors in its model (Lau and Young, 2006, p 41–2).

The two leading theories are agency and stakeholder. The agency theory presumes that ownership and control of the corporation is separate. Therefore, shareholders incur cost in monitoring managers' compliance. The stakeholders argue that managers and boards of directors, creditors, debt financiers, analysts, auditors and corporate regulators should be incorporated in governance. This approach tends to blur the 'lines' of accountability when executives do have a clear chain of command to answer to as a priority separate to the notion of generating profits (Clarke, 2004, p 189, 196). Letza, Sun, and Kirkbride (2004, p 242, 257) assert:

> Both shareholder and stakeholder perspectives claim superiority of their models respectively; however, in reality we have seen a dynamic shift with both models becoming mutually attractive all over the world in the last two decades … All this implies is that the so-called superiority and priority of any model is not permanent and universal, but rather temporary and contextual.

Therefore each country would have to adapt these theories into its historical experiences and cultural values (OECD, 2004).

On the topic of cultural values, there is substantial literature on this subject matter even from the business perspective. Deresky (2006, p 112) notes that:

> The culture of a society comprises the shared values, understandings, assumptions, and goals that are passed down through generations and imposed by the members of society. Cultural and national differences strongly influence the attitudes and expectations and therefore the on-the-job behaviour of individuals and groups. Managers must develop cultural sensitivity to anticipate and accommodate behavioural differences in different societies.

Hofstede (1991, p 13–5) developed value dimensions to identify and profile the cultural and behavioural differences between countries. Tales about differences in many aspects of management between Chinese and foreign (especially Western) managers show quite different approaches. A distinct cultural dimension in managing is unmistakable (Child and Warner, 2003, p 37–9); yet, in the field of governance there has been little research devoted to the cultural aspects.

In view of the fact that corporate governance is an alien concept for China, it is understandable that Chinese legislators look towards developed Western nations' governance laws and codes as benchmarks. Though the debate about transplanting laws is ongoing, there are three issues arising relevant to this article. First the cultural acceptability of the recipient, second the political agendas of the government, and third possible inconsistencies and unintelligible provisions resulting from the combination of the first and second issues.

Tam (1999, p 39–40) noted that the Chinese academics' grasp of corporate governance was primarily influenced by the agency theory, but he questioned its appropriateness. The enticement to adopt Western standards could be a matter of convenience to modernise state owned enterprises (McNally, 2002, p 94). Since the agency model was consistent with market reforms to enhance confidence and encourage further investments, it was a sensible choice.

Hawes and Chiu (2006, p 28) argue that Western countries' corporate laws and governance models are wrong for China:

> Because of some basic flaws in the assumptions of those advocating 'Western-style' corporate governance in China… They are based on assumptions about the purposes and functions of business enterprises that are not shared by most Chinese policy makers… even if Western-style corporate governance reforms were appropriate in China's very different business environment, the jury is still out on the effectiveness of such reforms in their country of origin, such as the United States.

Shi (2005, p 84–5) concurs by noting:

> The peculiarities of the social governance fabric of a particular country can make harmonisation with other foreign governance systems difficult… Chinese social traditions and legal culture are very different from those of Western countries where contemporary ideas of corporate governance developed. In particular the development of state-owned enterprises, the emergence of corporations and the coming into existence of laws governing corporations have thus taken a path that is distinct from those of most other countries.

Governance models based on Chinese culture orientations and political ideology would be much more appropriate.

It is without a doubt that Confucius's philosophy is deeply rooted in the Chinese culture. The current Communist regime has widely promoted the revival of Confucianism. McKerra, Taneja and Young (1988, pp 54–5) observed:

> A sign of growing Chinese nationalism in intellectual life is the revival of pride in Chinese culture… Part of this trend is the revival of Confucianism. This is expressed in renewed attention to morality and ethics, and an emphasis on family values, at the same time as modern and Western ideas are undermining family stability in the major cities. The Confucian revival stands for discipline in the workforce and stability and harmony in politics. Official spokespeople have espoused the view that Confucianism is better fitted than Western culture to form the basis of science or business.

In Confucian philosophies, the role of the State is central to creating an orderly and civil society. Leaders of the State and heads of households should rule with benevolence. Confucius asserts that the rulers shall treat its subjects like 'parents' caring for their 'children'. This paternalistic authority would ideally be exercised for the betterment of its citizens (Chen, 1986, p 441, 442–5). Therefore the role of the State does not appear to be passive, instead it's an active and powerful one. This suggests the Chinese government's role in corporate governance would inevitably be in hierarchical and patriarchal relationships (Mead, 2005, p 279).

The head of the State or corporation is expected to be an authoritarian and benevolent leader. Thus certain moral superiority in the leadership is likely to be expected, which means decisions are not always justifiable in an analytical manner. Rather, personal values and experience form the basis of decisions. The retention of power and control over information by the head are common attributes of patriarchal leadership (Chen, 2005, p 73–5).

Governance is therefore in the hands of 'a few', who enjoy close relationships to central business and management practices in China. Hence, when disputes arise the Chinese prefer settlement by informal mediation based on harmony, rather than by enforcement of legal rights through litigation (Chen, 2003, p 259). Enacting appropriate laws seems to be peripheral.

Among the citizens, maintaining a harmonious and close relationship is another key attribute of Confucius's teachings (Child and Warner, 2003, p 28–9). The term 'guanxi' is defined as a particular kind of interpersonal relationship or connection that serves as a form of social currency. They are informal associations and can provide access to specific information, resources or to gain influence (Tsui, Farh and Xin, 2000, p 225–44). This norm has been embedded in Chinese culture for centuries and has survived under the communist regime. People with good guanxi provide favours to each other. This makes the maintenance of good corporate governance even more complicated. The Chinese believe that family and interpersonal relationships are more secure than the law in protecting the stakeholders' interests (Tomasic and Fu, 1999, p 135–82).

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In view of these cultural and political issues, corporate governance in China would more than likely be shaped by Confucian philosophies even though many of the ideas are transplanted from Western countries. This could also explain why the Chinese corporate laws are riddled with many inconsistencies. Governance has tended to be driven by customary practices rather than reform agendas. Even if 'teething' problems are not uncommon, the entrenched cultural/political influences are evident. The discussions below on the law and a case study on the Chinese telecommunications sector attempt to demonstrate the cultural/political dimensions of governance in China.

State prescribed governance under Chinese company law

The *Company Law* was first enacted on 1 July 1994. Except for a very minor amendment in 1999 on two articles, nothing was done over the next twelve years. On 1 January 2006, substantial amendments were introduced. The two dominant types of companies under the law are limited liability companies (LLC) and joint stock companies (JSC).

It is evident from the new *Company Law*, which came into effect in 2006, that many provisions are difficult to apply as they are brief and written in ambiguous language. They led an author of this article to undertake a literature survey of Chinese legal academics in an attempt to grasp how Chinese academics come to terms with those ambiguities. Suffice to say that in all the issues discussed, none of those authors offered any concrete explanations on most of the vague sections of the law (Lau, 2006). They merely state the provisions in the statute, followed by a brief statement. Hence, without clarification or further amendments, we doubt the application of current laws will be credible during any subsequent litigation.

Below we discuss some of the problematic areas in the current laws.

Establishment of a trade union in each company

Each LLC or JSC must establish its own trade union to take care of staff welfare (Art 18). This is arguably an extension of socialistic ideals drawn from the 'quasi-market' paradox in the economic reform propaganda, but there is no penalty for non-compliance. One can only speculate that this provision was enacted to serve political ends.

Establishment of a grass root organisation in each company (Art 19)

The grass root organisation (GRO) is a typical working unit within the Chinese Communist Party (CCP). The CCP Charter provides that any Chinese organisation (such as schools, companies, or factories) must establish a GRO if it contains at least three CCP members. The GRO provides a venue for CCP members to socialise and discuss. The issues can cover a broad range. They include whether CCP members are treated fairly or whether their organisation is following CCP's party lines. The CCP cuts through every aspect of life in China, since it is the only ruling party. Strangely, there is again no penalty provision for non-compliance.

Shareholders decide major corporate policies

This is probably the most significant difference in corporate governance between Chinese and common companies. In HK companies, the board of directors makes all the strategic business decisions. In LLCs and JSCs, shareholders decide business policies (Arts 38 and 103). This is so without regard to whether shareholders know how to run a business. The board of directors are only given a subsidiary role to decide the business plan (Arts 47 and 112).

Inspection of board decisions by shareholders

Stemming from the above, if shareholders make important corporate decisions, obviously they want to check whether the directors have implemented such decisions (Arts 34 and 98). However, the statute does not provide guidance on how a company can protect itself against sensitive information being leaked to non-shareholders.

Presence of staff directors

Both Chinese and HK companies have directors elected by shareholders. However, there is a second type of director in LLCs and JSCs whom the staff members elect amongst themselves (Arts 45 and 109). There is no differentiation between the legal responsibilities of both types of directors and they have the same duties. The *Company Law* does not prescribe the number of staff directors in a company.

Presence of the supervisory board

China adopted the civil law company structure and so a second board also exists. The board consists of representatives from shareholders and staff members. Its main task is to monitor and ensure that senior officers comply with the law (Arts 52 and 118). If they do not, supervisors are authorised to sue these officers in the name of the company.

Passing of resolutions in supervisory boards without a majority vote

If the supervisory board does decide to sue a rogue director, a resolution must be passed. The votes required are 'more than' half of the votes (Arts 56 and 120). To a HK director or shareholder, the term 'more than' is hardly surprising because it means exceeding. Yet in Chinese civil law, 'more than' (in Chinese *yi shang*) actually means 'equal to or more than' by virtue of Art 155 of GPCL. So a supervisory board can pass a resolution if exactly half of its members decide to sue, regardless of what the other half think!

Presence of supervisors and managers in meetings of the board of directors

Both supervisors and managers are permitted to attend meetings of the board of directors but not to vote there (Arts 50, 55, 114 and 119). This makes LLCs and JSCs more transparent than their HK counterparts. However, there is no provision to protect against information being leaked.

Directors' duties

There are two types of duties: the duty of honesty and the duty of diligence (Art 184). Both duties are not defined in the *Company Law*. It is, however, possible to presume that the duty of honesty is a passive duty. This is because Chinese law does not have the equitable concept of the fiduciary duty, which is a pro-active duty. The duty of diligence should be based on an objective standard because this is the international standard.

The controlling shareholder

This is defined as a shareholder holding 'more than' 50% of shares in the company. There are two problems. First, 'more than' again means that holding just 50% qualifies as a controlling shareholder. However, in order to pass resolutions in LLCs and JSCs, a majority vote is required. A 50% shareholder cannot carry a majority vote because the shareholder is 1% short. So how can that shareholder 'control' the company? Secondly, in Chinese companies, major decisions require a two-third vote. One can effectively control a Chinese company if one holds only 34% of the votes so there is no need to hold 50% to become a controlling shareholder.

Absence of the company secretary

There is no company secretary in LLCs and unlisted JSCs. One of the senior officers may also take up the post of the chief administrative officer. However, for listed JSCs, a secretary of the board of directors is required. This person's role is very similar to the role of the common law company secretary. See for example the *Guidelines of Articles of Association of Chinese Listed Companies*, issued by the CSRC on 16 March 2006.

Substantial requirements for issuing bonds

Article 16 of the Chinese Securities Law requires a minimum net asset of RMB 60 and 30 million respectively for LLCs and JSCs before they can issue bonds. Note that the figures for the much smaller LLC is double that for the much larger JSCs. It is suggested that the very high threshold figures are means adopted by the Chinese Government to discourage the issuing of bonds because the market is not yet mature enough to entertain an influx of bonds. Hong Kong companies have no such minimum requirements.

Minority shareholders can petition a company to be wound up by the court

Article 183 provides that shareholders with 10% or more can petition the court to wind up a company if it is in serious finance difficulty, if continuing will cause great loss to shareholders, and there is no other available solution. It is interesting to note that the same application in Hong Kong would require 75% of the shareholders' votes to consent. But there are no additional reasons required. It is submitted that this is an attempt to give minority shareholders more say in LLCs and JSCs. However, as there is no definition for the term 'serious', in the end the Hong Kong version might end up easier to follow.

Tokley and Ravn (1998, p 11) argued that the company law was driven by the Government's desire to attract foreign capital and investors. Jia (2005, p 234) states that, '[p]art of the impetus for reforming corporate governance in China has come from the perceived urgency of improving the competitiveness of China's publicly listed companies in the global financial market that has developed after China joined the WTO in 2001'. Motivations of the government aside, China's company law appears to either suffer from contractions and inconsistencies, or an attempt by the authorities to enact a law governing modern businesses with traces of Chinese philosophical influence and prevailing political realities.

State driven governance in the telecommunications sector

In an earlier article, two co-authors of this article studied the regulatory approach and rationale of Indonesia and China's telecommunications sector (Young, Rahaju and Li, 2005). In this section, we revisit some of those experiences with emphasis and additional analysis of certain governance issues that arise.

For several decades, the Ministry of Post and Telecom (MPT) and Provincial Posts & Telecoms Bureaus (PPTs) had a state sanctioned monopoly (Zita, 2000, p 34). Apart from certain telecommunications infrastructure operations delegated to the Ministry of Electronics Industry (MEI) for defence purposes and the Chinese People's Liberation Army (PLA), which had its own dedicated telecommunications infrastructure, MPT and PPTs enjoyed exclusive powers to plan, construct, operate and regulate the country's public networks (Wu, 2004, p 220–1). Consequently, for many years MPT's sub-standard performance was evident, but they had no incentive to improve or be efficient. This changed when 'open door' policies compelled the dismantling of the state imposed monopoly (Zhou, 1997).

Breaking up the monopoly

Economic reforms were expected, at least according to the official propaganda, to introduce greater efficiencies and growth. However the reform had created unintended consequences, a 'tug-of-war' between various government ministries for a share of the lucrative telecommunications market (Yan, Levine and Pitt, 1998, p 375–92). The negotiated outcome resulted in the introduction of 'limited competition' dominated by a small number of players (Ure, 1997, p 34). Observers described this process as 'turf warfare' (Lovelock and Ure, 1998).

The Directorate-General of Telecommunications (DGT) became separated from the postal operations and the corporatisation of China Telecom in 1995. In line with privatisation expectations, the government wanted MPT to be an independent regulator. However, the new management in China Telecom had strong personal connections (guanxi) with MPT (Becky and Loo, 2004, p 697-714), which enabled China Telecom to retain its dominance and enjoy many privileges. In particular, China Telecom seemed immune from public discontent (Wu, 2000). Nevertheless, this domination attracted many potential challenges. Other ministries started to look for ways to get a 'slice of the cake'. After years of negotiation and inter-ministries bargaining, the State Council finally approved new entrants in the market. As a result of this approval, China Telecom's legal monopoly was curtailed. JiTong Communications Company (JiTong) and China Unicom were established in a relatively short period of time.

Unfortunately, the new entrants did not bring about greater competition. China Unicom encountered many problems with China Telecom. In fact, Unicom faced the same problems all new entrants faced against China Telecom. There were no agreed terms for revenue sharing or universal service obligation. Unicom lacked vital resources to develop a stand-alone network and was therefore more inclined to look for overseas technical partners and finance. This permitted MPT to oppose any expansion plans with foreign participation or partnership (Ure, 1995).

The 1998 and 2002 shakeups

Lobbying led by the Ministry of Electronics Industry (MEI), Ministry of Railways (MOR), Ministry of information Industry (MII), China International Trade and Investment Corporation (CITIC) and other interest groups brought the most significant reform to the telecommunications sector in 1998 and consequently in 2002.

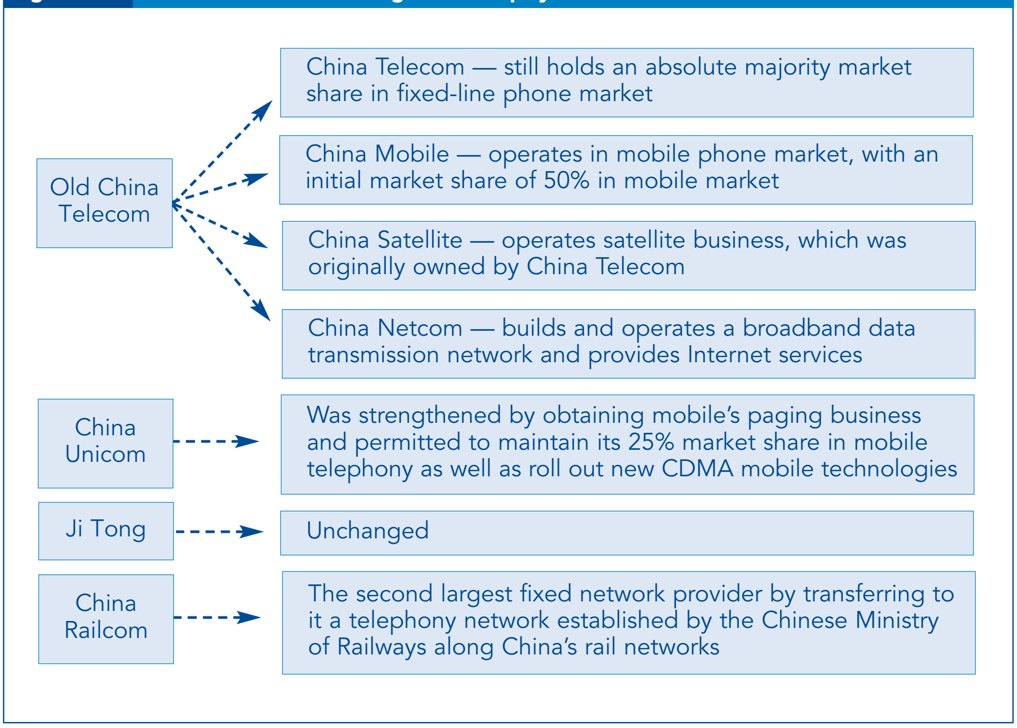
In March 1998, whilst reforming the Chinese bureaucracy, MEI and MPT, the former rivals in the telecom market, were merged with State Radio Regulation Commission and formed a new ministry, the Ministry of Information Industry (MII), which became a principal regulator of the telecommunications and information industry. Government news releases stated that the purpose of this reform was to set up an independent regulator necessary for a competitive market. However, observers believed that this was a concession of '*an uncompromised battle*' (Hui, 2000, p 44–68).

Yet, after the 1998 restructure, the battle for domination in the telecommunications sector persisted. During 1999–2000, the newly established MII led the market through a complicated restructuring program to accommodate all other competing interest groups. As a result, ministries negotiated a new 'playing field' with a total of six SOEs in 2000, breaking up China Telecom's four divisions of services into separate entities. Consequently, four independent companies were formed. They were responsible for the fixed line, mobile, paging and satellite communication services, respectively. Figures 1, 2 and 3 describe the 1998 reform from the functions performed and the players' perspective.

Figure 1: 1998 Reform—new arrangement for functions/services

Source: Young, Rahaju and Li (2005)

Figure 2: 1998 Reform—new arrangement for players



Source: Young, Rahaju and Li (2005)

As one can imagine, the superficial compromise between operators was never a permanent resolution. Not surprisingly, in May 2002, the Chinese State Council created six multi-functional state-owned enterprises with a high degree of functional overlap. The sector was reorganised again, apparently a negotiated outcome between various operators brokered by the government. Figure 3 details this new arrangement.

Since the 2002 reform, the Chinese telecommunications services have six major providers including internet and other value-added businesses and this topography of competition remains unchanged to date.

The current topology

Upon closer scrutiny, it is not difficult to find that there are many similar attributes amongst various telecom companies. They are

- The types of the companies—Except China Telecom, the rest of the companies are LLCs.

- The ownership of the companies—The Chinese government in conjunction with various ministries or departments are the controlling shareholders of all six telecommunications companies, undoubtedly securing full control and ongoing revenues.

- The management of the companies—The management of all six companies are very similar in terms of the senior management teams. They are either former government officers or ex-political appointees with only a handful of non-executive directors whose independence appears little more than tokenistic. Therefore, governmental involvement in decision-making, especially on key strategic issues, could not be eliminated (Wang, 2006, p 16).

It is interesting to note that the majority of top management have spent their entire careers in the telecom industry whether it be with the public or private sector. For example, the Chairman and CEO of China Telecom used to be vice president of China Mobile and served the government for 25 years. The current

Figure 3: 2002 Reform—Intermixing the functions of the players

China Telecom	China Telecom, Northern (part of China Netcom) — permitted to operate a mobile telephony and fixed line, operates with China Netcom
	China Telecom, Southern — new China Telecom: permitted to operate a mobile telephony and fixed line
China Mobile	Unchanged as China's largest operator in the mobile services market
China Satellite	Expanding services into other markets
China Netcom	China Telecom North + China Net com + Jitong
China Unicom	Unchanged and can provide a full range of telecommunications services with a focus on mobile telephony
China Railcom	Unchanged and can provide a full range of telecommunications services with a focus on fixed-line telephony

Source: Young, Rahaju and Li (2005)

Chairman and CEO of China Unicom also came from long service as a government official, as well as one of the senior executives in China Telecom. However, such behaviours seem to be common and normal in China.

Another minor commonality amongst these telecom companies is that many have a combined Chairman and CEO. This person possesses considerable power over all aspects of the company operations, as well as having strong links with various government departments.

All in all, the process and outcomes of China's massive privatisation of the telecommunications sector could be considered as both positive and negative. On the positive side, China's telecommunications sector has moved into the modern era. There are several major providers offering more competitive products and services. Then again, on the negative side, instead of a 'super' monopoly the telecommunications sector has become an oligopoly with several service providers who are in fact state owned enterprises operating as private companies (as most are LLC) and managed by a small group of elite ex-government officials.

Given this prevailing reality, corporate governance of this sector still lies in the Chinese government hands. The twist is perhaps the meaning of government here is not one entity, rather a group of departments operating these companies with commercial ends, thereby reaffirming Duckett's notion of 'state entrepreneurialism', where state bureaucracies adapt to market reform as an enabler to facilitate the transition of planned to market economy, as well as becoming entrepreneurs performing rent seeking activities (Duckett, 1998, p 13–15 and Chen, 2001, p 180).

Conclusion

After more than three decades of change in China, it is undeniable to any observer that the economic reforms have been successful by any standards. The economic reforms were not intended to emulate the Western free market ideals, even though some of the ideas are borrowed from Western nations. Yet there are a number of challenges, Chen (2001, p 180) notes that:

- It is unrealistic to expect that in the next twenty years China will become like Japan—which has thrived through its adoption of American-led Western capitalism. Instead, it is likely that the PRC will take a few decades to find a balance between Western free-market enterprise and the historical influences of communism, nationalism, and Confucianism.

Unlike economic reforms, legal reforms are far more complex. On one hand, there are those who believe there will be a convergence between different countries, as globalisation would bring about greater integration in how markets are regulated. On the other hand, given the fundamental difference in political ideologies and cultural attitudes, legal reform is not just a matter of changing a few laws or reforming a few institutions to transform the legal system. There are obvious limitations with regards to transplanting foreign Western laws into Chinese legislation.

Corporate governance poses a unique challenge for Chinese legislators because it is the intersection of both economic and legal reforms. Samir Chatterjee and Alan Nankervis (2003, p 51–3) argue that, 'the great challenge for Asian societies is to simultaneously integrate with the modern world and to rejoin with their past'. Not to mention the fact that the current *Company Law* in China as it stands has quite a few non-operable and inconsistent provisions.

Evidently many sections of the Chinese *Company Law* manifest political/cultural undertones, which do not sit well with the agency model, a concept borrowed from developed Western economies. Apart from the relative lack of experience on the part of the Chinese legislators in transplanting laws from other countries, this could help explain the many inconsistent and vague provisions.

The telecommunications sector in China underwent major changes from a State owned monopoly to privatisation and introduction of new providers. Despite the transformation, some things do not change. The presence of State linkages in these new corporations suggests the State intertwines with how businesses are governed. This is not necessarily detrimental to how businesses operate if the State does not interfere with decision-making or influence those corporations from the objectives of profitability. Nevertheless, this makes real competition difficult to achieve.

Corporate governance poses a unique challenge for Chinese legislators because it is the intersection of both economic and legal reforms.

In a Confucian society, the role of the State is not a passive one. Along with the acceptance of paternalistic leadership and the importance of guanxi in business and political circles, government intervention in SOEs and the wider economic transactions will not fade away anytime soon. Given this, the pertinent question is: what is the appropriate framework to reform China's corporate governance?

Perhaps Hawes and Chiu (2006, p 51–3) are right to suggest that the Chinese government should do more to raise the awareness of ethical issues. Reviving Confucius's teaching has a clear advantage apart from the cultural considerations. It is consistent with the CCP's political objectives. However, Confucian philosophy is thousands of years old. China is no longer a feudal regime with a peasant economy. Modern revisions and applications have to be developed. In order to transform Confucius's principles into prescriptive legal provisions, much research has to be done. Therefore, the reforms in China's corporate laws and governance so far should be seen as a mere footnote compared to the task of coding Confucius's philosophies into Chinese laws to suit a modern China. ❖

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