



CHEN XIAO

**POWERS OF THE EXECUTIVE DIRECTORS VIS-À-VIS  
THE NON-EXECUTIVE DIRECTORS – A COMPARISON  
BETWEEN CHINA AND THE UK**

Dissertation to obtain a Master's Degree in  
Law and Management

Supervisor:

Dr. Pedro Caetano Nunes, Professor of the NOVA School of Law

2022, March

**NOVA School of Law**

CHEN XIAO

**POWERS OF THE EXECUTIVE DIRECTORS VIS-À-VIS  
THE NON-EXECUTIVE DIRECTORS – A COMPARISON  
BETWEEN CHINA AND THE UK**

Dissertation to obtain a Master's Degree in  
Law and Management

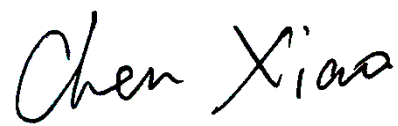
Supervisor:

Dr. Pedro Caetano Nunes, Professor of the NOVA School of Law

2022, March

## **Anti Plagiarism Statement**

I hereby declare that the work I present is my own work and that all my citations are correctly acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a serious ethical and disciplinary offence.

A handwritten signature in black ink that reads "Chen Xiao". The letters are cursive and connected, with a fluid, personal style.

CHEN XIAO

## **Acknowledgement**

I would like to express my sincere gratitude to Professor Pedro Caetano Nunes for accepting being my supervisor and providing constructive suggestions during the work. Without your contribution, this dissertation would not have been achievable.

I would like to give my special thanks to my cousin Lu Chen, and my family as a whole for their continuous support when undertaking my research and writing my project.

Finally, I would like to thank Nova Law School for giving me the chance to explore a different academic world and to open up my future career to more possibilities.

## **Quoting and Other Conventions**

In the final list of consulted bibliography, the works are presented ordered by sections divided into Books, Articles, Master's Dissertations and PhD's Theses, Official Documents and Research Report. Within which the references are organised alphabetically by the authors.

It's necessary to mention that, to complete the dissertation, I consulted a large number of documents in Chinese, so all the titles of works in Chinese listed in the bibliography will be transliterated and translated into English, while the names of the authors will be transliterated.

The body of this dissertation, including spaces and footnotes, occupies a total of 92,657 characters.

## List of Abbreviations

<b>ABC</b>	Agricultural Bank of China
<b>CATL</b>	Contemporary Amperex Technology Co., Limited
<b>CEO</b>	Chief Executive Officer
<b>CFE</b>	Chinese Federation of Enterprises
<b>CFO</b>	Chief Financial Officer
<b>CSCEC</b>	China State Construction Engineering Corporation Limited
<b>CSRC</b>	China Securities Regulatory Commission
<b>FRC</b>	Financial Reporting Council
<b>ICBC</b>	Industrial and Commercial Bank of China
<b>PRC</b>	The People's Republic of China
<b>SETC</b>	State Economic and Trade Committee

## **Abstract**

This study discussed the powers of executive directors and non-executive directors in listed companies in China and the UK, with the aim of finding out the insufficiencies of the distribution of powers of executive directors and non-executive directors in China and searching for insights from the British corporate governance to improve these insufficiencies.

To achieve the objective, the dissertation adopted a comparative approach. Starting with an analysis of the corporate governance structure and the powers of the executive and non-executive directors of listed companies in the UK and China through the study of legal documents, works of literature, articles of association and annual reports of companies, the readers will have a general and comprehensive understanding of the study objects. Next, the powers of the executive and non-executive directors of listed companies in China and the UK were compared together through a functional approach. Thus, the deficiencies of the distribution of powers in listed companies in China could be spotted more clearly. In the end, we concluded certain workable suggestions for the improvement of the power structure of executive directors and non-executive directors in listed companies in China.

**Keywords:** Executive Directors, Non-Executive Directors, Distribution of Powers

## Resumo

Este estudo discutiu os poderes dos administradores executivos e não executivos em empresas cotadas na China e no Reino Unido, com o objetivo de descobrir as insuficiências da distribuição dos poderes dos administradores executivos e não executivos na China e de procurar conhecimentos da governação empresarial britânica para melhorar estas insuficiências.

Para tanto, a dissertação adotou uma abordagem comparativa. A partir de uma análise da estrutura de governação empresarial e dos poderes dos administradores executivos e não executivos de empresas cotadas no Reino Unido e na China através do estudo de documentos legais, obras de literatura, estatutos da empresa e relatórios anuais, os leitores terão uma compreensão geral e abrangente dos objetos do estudo. Em seguida, os poderes dos administradores executivos e não executivos de empresas cotadas na China e no Reino Unido foram comparados em conjunto através de uma abordagem funcional. Assim, as deficiências da distribuição de poderes em empresas cotadas na China poderiam ser detetadas de forma mais claramente. No final, concluímos algumas sugestões viáveis para a melhoria da estrutura de poderes dos administradores executivos e não executivos em empresas cotadas na China.

**Palavras-chave:** Administradores Executivos, Administradores Não-Executivos, Distribuição de Poderes

# Index

<b>Introduction</b> .....	<b>1</b>
<b>Chapter 1. Powers of the Executive Directors Vis-À-Vis the Non-Executive Directors in Listed Companies Under the British Company Law System</b> .....	<b>4</b>
1.1 Typical Model of Board Structure in Listed Companies in the UK.....	4
1.2 Equivalent Concept of “Executive Directors” under the British Law System	5
1.3 Equivalent Concept of “Non-Executive Directors” under the British Law System.....	7
1.4 Powers of Executive Directors under the British Company Law System .....	10
1.5 Powers of Non-Executive Directors under the British Company Law System .....	13
<b>Chapter 2. Powers of the Executive Directors vis-à-vis the Non-Executive Directors in Listed Companies under the Chinese Company Law System</b> .....	<b>17</b>
2.1 Typical Model of Board Structure in Listed Companies in China.....	17
2.2 Equivalent Concept of “Executive Directors” under the Chinese Law System .....	19
2.3 Equivalent Concept of “Non-Executive Directors” under the Chinese Law System.....	21
2.3.1 Independent non-executive directors .....	22
2.3.2 Associated Non-executive Directors.....	24
2.4 Powers of Executive Directors in a Functional Approach under the Chinese Law System.....	25
2.5 Powers of Non-Executive Directors under the Chinese Law System.....	27
2.5.1 Powers of Independent Non-Executive Directors and a Comparison with the Board of Supervisors.....	28
2.5.2 Powers of Associated Non-Executive Directors and the Dilemma to Exercising the Powers.....	35
<b>Chapter 3. A Functional Comparison Between China and the UK on Powers of the</b>	

<b>Executive Directors Vis-À-Vis the Non-Executive Directors .....</b>	<b>38</b>
3.1 A Comparison of Powers of Executive Directors .....	38
3.2 A Comparison of Powers of Non-executive Directors.....	40
3.3 Key Learnings from the British Corporate Governance for Chinese Listed Companies.....	42
3.3.1 Enhancing the Powers of the Board of Directors.....	42
3.3.2 Separating the Chair and the General Manager (Chief Executive).....	42
3.3.3 Raising the Supervisory Role of Independent Directors in Corporate Governance .....	43
<b>Conclusion .....</b>	<b>45</b>
<b>Bibliography .....</b>	<b>47</b>
<b>Appendices.....</b>	<b>54</b>
Appendix 1: Table of listed companies in China .....	54
Appendix 2: Table of Listed Companies in the UK.....	55

## **Introduction**

In China, since the 1900s, the introduction of Western studies has become an important part of the development process of China's modern legal reform. Among them, English law, the origin of common law system, was also an important part of the introduction. Especially in recent years, the Chinese legal system, which inherited the framework of the civil law system as a whole, has paid more and more attention to absorbing the essence of the common law system. The study and research on common law have also become a hot topic in the legal academy in China.

In the Company Law of PRC of 1993, the corporate governance structure of general meeting of shareholders, board of directors and board of supervisors were set up. Since then, companies in China have been taking the two-tier model as their board structure. Formally, the Chinese model of corporate governance is very similar to the Japanese model, but in essence, it's not quite the same. China's corporate governance has also learned from the US and the UK by introducing the system of independent directors to the board of directors with the objective of using independent directors as a counterbalance to restrain internal directors. The Chinese model of corporate governance is an integration of the Japanese and German models and the American and British models. However, the development of companies and markets in China is unique in its own way, which means that China cannot blindly copy foreign corporate governance for its own use. One of the problems is that a simple combination of different models of corporate governance makes the distribution of the powers ambiguous. In particular, with regard to the division of powers of the members on the board of directors and the division of powers between the independent directors and the board of supervisors.

Compared with China, the United Kingdom has a clearer division of powers inside the board of directors in listed companies. Directors are divided into executive directors and non-executive directors, while in China, this terminology doesn't legally

exist. However, if we regard the board of directors in listed companies in China in a functional approach, we could find out that such division is also applicable to listed companies in China, which is likely to make the distribution of powers more precise and clearer than the current situation in China.

American Jurist W. Hohfeld defined “power” as where one person has the legal ability to change the legal position of another<sup>1</sup>, which has had a profound influence in the field of private law. “Power” should correspond to “liability”, the famous Chinese scholar Shen Zongling once said the relationship between power and liability is “I am able to, you must accept”<sup>2</sup>. The process of functioning of the internal bodies of the company shows that once the directors or the board of directors get authorisation (no matter from laws, by-laws or shareholders), they have the legal ability to change the legal position of another.

I chose the powers of directors as the subject of my study for two reasons. Firstly, the proper allocation of power in the boardroom determines whether the board system can function effectively. Secondly, cases of the ineffectiveness of independent directors and the corruption of executive directors in China are largely due to the lack of clarity in the distribution of powers. Therefore, I would like to use a comparative analysis to clarify the distribution of powers between the different roles of the board of directors in China and the UK, so that we are able to find a better path for the future development of corporate governance in China.

This dissertation will mainly adopt a comparative analysis approach, concretely speaking, comparing the UK’s delegation of powers between executive directors and non-executive directors with those of China. Through a functional comparison, we will try to figure out how the division of powers of executive directors and non-executive directors in listed companies in China should be like, and what Chinese legislature can learn from the British corporate governance, especially the delegation of powers

---

<sup>1</sup> HALPIN, Andrew – The Concept of a Legal Power.

<sup>2</sup> SHEN, Zongling – *Mordern Western Jurisprudence*.

between executive directors and non-executive directors in the context of China's economic and legal system.

Chapter 1 begins with a legal analysis of listed companies in the UK, in which I will offer an in-depth exposition of the board structure, the concept of both executive directors and non-executive directors and their powers. Chapter 2 will focus on the same issues regarding the situation in China. Besides, in this chapter we will also try to point out the biggest problem of corporate governance in listed companies in China, which is the overlapping functions of independent directors and board of supervisors. Chapter 3 presents a functional comparison from the perspective of powers of executive directors and powers of non-executive directors in China and the UK. Through a comprehensive comparison, we will try to abstract the main key learnings that China can get from the UK.

In this dissertation, I studied 10 Chinese listed joint stock companies and 10 British listed companies. All companies chosen are from the Forbes 2021 Global 2000<sup>3</sup>. I chose these large listed companies because their corporate governance structure is comparatively more mature and typical. By analysing their annual reports (from 2020 or 2021) and articles of association, we could have a more profound and practical understanding of the board structures and power distribution of directors and make the conclusions more practical.

---

<sup>3</sup> The list could be found at <https://www.forbes.com/lists/global2000/#165ff0c95ac0>

# **Chapter 1. Powers of the Executive Directors Vis-À-Vis the Non-Executive Directors in Listed Companies Under the British Company Law System**

## **1.1 Typical Model of Board Structure in Listed Companies in the UK**

In the UK, listed companies are organised on a one-tier basis. In contrast to the two-tier board structure popular in continental Europe and elsewhere, it unites both executive and non-executive directors within a single decision-making body – the board of directors. In the early 1990s, there was a lack of confidence in the financial reporting of many UK companies because of various financial scandals and collapses<sup>4</sup>. In 1992, when the Committee on the Financial Aspects of Corporate Governance carried out the Cadbury Report, the foundation of the UK corporate governance system has been formed. The recommendations in the Cadbury Report covered many essential problems of corporate governance in the UK including the operation of the main board, namely the board of directors, the establishment of key committees, as well as the importance of non-executive directors. Since then, a number of codes and guidelines have been issued during the 1990s and 2000s. The latest authoritative by-law about corporate governance of listed companies is the UK Corporate Governance Code 2018, which is issued by the Financial Reporting Council. It's necessary to mention that the Companies Act 2006 also plays an important role in the development of corporate governance of companies in the UK. In Article 154 (2) of the Companies Act, it's said that “a public company must have at least two directors”, which is the most basic requirement for the formation of the board of a company. In Part 10 about A Company's Directors, directors' duties and liabilities are codified precisely. Chapter 5 of Part 15 about accounts and reports gives a general picture of making directors' report of a company.

---

<sup>4</sup> MALLIN, Chris – Corporate Governance Developments in the UK and the Evolving Role of Institutional Investors.

The board of directors is responsible for the governance of the company. The shareholders will appoint the members of the board to satisfy themselves that an appropriate governance structure is in place. With the exception of certain matters such as amendments to the articles and reduction of capital, which are decided by the shareholders' meeting, almost all other matters can be resolved by the board of directors in accordance with the articles of association.

According to the UK Corporate Governance Code 2018, the board should have one chairman who leads the board and is responsible for its overall effectiveness in directing the company<sup>5</sup>. The board should also include an appropriate combination of executive directors and non-executive directors<sup>6</sup>, in particular, independent non-executive directors. One of the independent non-executive directors should be appointed as the senior independent director to serve as an intermediary for the other directors and shareholders<sup>7</sup>. The board of directors will set up several committees to support their work. These committees include remuneration committee, audit committee, nomination committee, and other committees if necessary.

It's worth mentioning that, as the Code is not mandatory law, under the UK Listing Rules, the annual financial report must include a statement as to whether the listed company has complied with all relevant provisions of the Corporate Governance Code, or in case of non-compliance, given reasons (comply or explain)<sup>8</sup>.

## **1.2 Equivalent Concept of “Executive Directors” under the British Law System**

The concept of executive directors in the UK is quite the same as in China. Or it's better to say that the concept of executive directors for listed companies in China is

---

<sup>5</sup> FRC. The UK Corporate Governance 2018. Principle F.

<sup>6</sup> FRC. The UK Corporate Governance 2018. Principle G.

<sup>7</sup> FRC. The UK Corporate Governance 2018. Provision 12.

<sup>8</sup> FINANCIAL CONDUCT AUTHORITY. FCA HANDBOOK. r. 9.8.6(6)

borrowed from the UK. Once the executive managers become members of the board, they will be considered as executive directors. Executive directors have the same duties as other members of a unitary board<sup>9</sup>, but will be engage with more day-to-day more management affairs. For British listed companies, the most senior executive director is so called chief executive, who is responsible for proposing company strategy and for delivering the strategy as agreed by the board<sup>10</sup>.

About the proportion of executive directors on the board, it has changed radically since the Cadbury Report took effect. Before, executive directors made up half of the board, and often in the majority<sup>11</sup>. However, since the Cadbury governance reforms of 1992, the balance has shifted remarkably.

Under the research of Odgers Berndtson, half of all FTSE 100 companies have only the chief executive and finance director as management members of the board. In the FTSE 250 index, about two-thirds of companies have only those two officers serving as directors<sup>12</sup>. Among the ten UK listed companies I chose to survey, all the companies have only CEO and CFO served as executive directors.

To conclude, the proportion of executive directors has reduced substantially in the past 20 years owes to the increased focus on the board's integrity and accountability. The independent non-executive directors are more and more demanded by the companies. It's now clearly suggested in the Code that "at least half the board, excluding the chair, should be non-executive directors whom the board considers to be independent"<sup>13</sup>, which has certainly enhanced the accountability and internal control of the board. But meanwhile, it's worth considering that is there anything lost along the way? Will the limitation of the powers or the number of executive directors on the board also limit the sustainable development of the company? It can't be denied that

---

<sup>9</sup> FCR. Guide on Board Effectiveness (2018). Provision 69.

<sup>10</sup> FCR. Guide on Board Effectiveness (2018). Provision 70.

<sup>11</sup> Odgers Berndtson. The Curious Role of the Executive Director. P.4

<sup>12</sup> Odgers Berndtson. The Curious Role of the Executive Director. P.4

<sup>13</sup> FRC. The UK Corporate Governance 2018. Provision 11.

appointing more executive directors to the board might bring additional insight into the performance of the business, especially in large companies. Apart from that, in terms of CEO succession, an internal candidate who served as an executive director on the board could be more competent and matchable to the position.

### **1.3 Equivalent Concept of “Non-Executive Directors” under the British Law System**

As discussed in the first section, from the 1980s and early 1990s, in the UK, growing corporate mergers and the expansion of management power led to many scandals and collapses in companies (examples including the Robert Maxwell Group, BCCI and Polly Peck). These led to the emergence and development of the concept of the “non-executive director”<sup>14</sup>. The emergence and development of non-executive directors in the UK owes much to a series of official reports, including the Cadbury Report (1992), Greenbury Report (1995), Hampel Report (1998), the Higgs Review (2003) as well as the current UK Corporate Governance Code (2018). Although these reports are not legally binding in British law, they have formed the legal framework for “self-regulation” and “comply or explain” in the UK.

In British law, non-executive directors are seen as an important consideration in ensuring the quality of corporate governance. Compared with the definition of executive directors, non-executive directors refer to directors who are not engaged in operational executive activities within the company, nor an internal employee of the company. The concept of non-executive directors could be understood in terms of functions as they can monitor the behaviour of managers through independent judgement. In addition, non-executive directors can contribute valuable external business expertise. This is because non-executive directors often see the risks and bring fresh perspective to the company, as they are not distracted by the over-intensive day-

---

<sup>14</sup> DIGNAM, Alan - Capturing Corporate Governance: The End of the UK Self-regulating System.

to-day running of the business. Although the use of non-executive directors is increasing from time to time on UK board of directors, some elements in the business community are unsatisfied with the increased emphasis on the board's monitoring duties, arguing that the growing use of non-executive directors for monitoring and control purposes as either irrelevant, excessively costly, or as a threat to board unity<sup>15</sup>.

For non-executive directors in a broad sense, there is no requirement for them to be independent. Speaking of independent non-executive directors, the Corporate Governance Code has given the clear standards to the term "independent" and requires the board to identify in the annual report each non-executive director it considers to be independent<sup>16</sup>. Moreover, the "at least half" benchmark for the proportion of independent non-executive directors on the board we have mentioned several times is also suggested in the Code.

There are several circumstances that will impair a non-executive director's independence stipulated in Provision 10 of the Code. These circumstances include being or having been an employee of the company, having or having had a material business relationship with the company, receiving additional remuneration from the company, having close family ties with the company's directors, representing a significant shareholder, having served the company for more than 9 years, etc. For instance, on the board of directors of AstraZeneca, the non-executive Marcus Wallenberg is not determined independent for the reasons of his overall length of tenure and relationship with a significant shareholder<sup>17</sup>, as he was appointed as Director of the Company in 1999, and is Non-Executive Director of Investor AB, which has a 3.93% interest in the issued share capital of the Company at 11 Feb. 2021.

The appointment of non-executive directors is led by the nomination committee,

---

<sup>15</sup> YOUNG, Steven – The Increasing Use of Non-Executive Directors: Its Impact on UK Board Structure and Governance Arrangements.

<sup>16</sup> FRC. The UK Corporate Governance 2018. Provision 10.

<sup>17</sup> AstraZeneca Annual Report and Form 20-F Information 2020. P. 115.

through a formal, rigorous and transparent procedure<sup>18</sup>, and should be subject to annual re-election at the Annual General Meeting.

As mentioned in the last section, the policy statements in recent decades such as the Cadbury Report, the Greenbury Report and the Hampel Report have focused on the board's monitoring responsibilities and underlined the special contribution that non-executive directors can make to the process<sup>19</sup>. Being seen as an important guarantee of integrity and accountability of companies, non-executive directors tend to make more independent judgements, and can often observe the risks and opportunities for the companies. One of the other reasons for non-executive directors being placed emphasis on the board is that they act as "buffers" between the executive directors and the company's outside shareholders<sup>20</sup>.

Accordingly, one of the most important functions of non-executive directors is sitting on board key committees to assist the board in specific areas including appointments, succession, audit, risk and remuneration, so that the decisions can be made without bias. Each committee will take different responsibilities in supporting the board in specific areas. Namely, the nomination committee should lead the appointment and succession process, as well as review the balance of the composition of the board; the audit committee will focus on the integrity financial report, internal control, risk management and the effectiveness of internal and external audit process; while the remuneration committee shall review and recommend the remuneration policy, ensuring the policy is aligned to the long-term success of the business. I believe that this is why the Code emphasises that all or a majority<sup>21</sup> of the members of the

---

<sup>18</sup> FRC. The UK Corporate Governance 2018. Principle G.

<sup>19</sup> YOUNG, Steven – The Increasing Use of Non-Executive Directors: Its Impact on UK Board Structure and Governance Arrangements.

<sup>20</sup> PASS, Christopher – Corporate Governance and the Role of Non-executive Directors in Large UK Companies: An Empirical Study. P. 4.

<sup>21</sup> FRC. The UK Corporate Governance 2018. Provisions 17, 24 and 32. Among which Provision 17 indicates that "A majority of members of the (nomination) committee should be non-executive

committees shall be independent non-executive directors.

Under the Code, in the listed companies of the UK, the board should appoint one of the non-executive directors to be the senior independent director<sup>22</sup>, whose role is to act as a sounding board for the Chairman and a trusted intermediary for other Directors. The senior independent director should be available to discuss with shareholders any concerns that cannot be resolved through the normal channels of communication with the Chairman or the Executive Directors.

In general, today non-executive directors, especially the independent non-executive directors, make up the majority of board seats and play an increasingly important role in corporate governance. The independence of management and free from any business or other relationships that could impair their independence make them unique in providing oversight of financial reporting practice of a company<sup>23</sup> and in protecting shareholders' interests.

## **1.4 Powers of Executive Directors under the British Company Law System**

In this section, we will discuss the powers of executive directors from two dimensions: firstly, we will explain the general powers of executive directors through statute, regulatory documents and literature reviews; secondly, we will try to give some real-life examples of some British listed companies from their annual reports and articles of association, thus we could have a more practical understanding about the role of executive directors.

Typically, full time executive directors are given significant powers in respect

---

directors”, Provision 24 indicates that “The board should establish an audit committee of independent non-executive directors, with a minimum membership of three”, Provision 32 indicates that “The board should establish a remuneration committee of independent non-executive directors, with a minimum membership of three”.

<sup>22</sup> FRC. The UK Corporate Governance 2018. Provisions 12.

<sup>23</sup> AGARWAL, Anup; CHADHA Sahiba - Corporate governance and accounting scandals.

of the affairs of the company they are paid to run on behalf of the shareholders<sup>24</sup>. Such powers include proposing the company's strategies, budget and plans and providing the leadership to put them into effect. Besides, executive directors also need to supervise the management of the business and report to shareholders at the annual general meeting on their stewardship.

It's noteworthy that in UK's corporate governance the chairman also has a pivotal leading role on the board. When deciding the powers and responsibilities of the chair and the executive directors, particular attention shall be paid to avoid the overlaps of powers<sup>25</sup>. In the execution of their powers, both shall comply with the duty to act within powers drawn in the Companies Act<sup>26</sup>. A productive working relationship between the chair and the executive directors will increase the effectiveness of the board.

According to the Guidance on Board Effectiveness, issued by FRC in 2018, when exercising the powers of executive directors, they shall look at the whole of the business instead of focusing only on that part of it covered by their individual executive roles. This means executive directors shall not regard themselves only as the chief executive's team when engaged in board business<sup>27</sup>.

As the most senior executive director<sup>28</sup>, the powers of chief executive could largely represent the powers of executive directors as a whole. The chief executive works as a bridge between the board and the senior management. On the one hand, the chief executive shall pass and explain the views from the senior management on business matters so that the board could discuss more efficiently at the board meeting.

---

<sup>24</sup> PASS, Christopher – Corporate Governance and the Role of Non-executive Directors in Large UK Companies: An Empirical Study.

<sup>25</sup> FRC. The Guidance on Board Effectiveness. Provision 70.

<sup>26</sup> In Section 171 of Companies Act 2006, about the duty to act within powers, it's said that "a director of a company must (a) act in accordance with the company's constitution, and (b) only exercise powers for the purposes for which they are conferred."

<sup>27</sup> FRC. The Guidance on Board Effectiveness. Provision 69.

<sup>28</sup> FRC. The Guidance on Board Effectiveness. Provision 70.

On the other hand, the chief director shall make sure that management fulfils their duties and provides other directors with information and resources required<sup>29</sup>.

Now let's look at two examples from Sainsbury's, one of the largest chain of supermarkets in the UK, and the Rio Tinto, one of the largest metals and mining companies, to comprehend the powers given as executive directors.

From the Governance Report of Sainsbury's 2021 annual report, the Chief Executive has "put in place a strong management team, refocused the culture and purpose of the business, and launched a new plan to put food back at the heart of Sainsbury's"<sup>30</sup>, from which we could draw the fundamental powers of executive directors to lead other senior managers and direct the business strategies of a company. In the part of the "Key areas of focus for the Board", it's said that "Simon Roberts (CEO) and the Operating Board led the work to clarify our strategy, simplify the operating model, accelerate cost savings programmes, and provide a detailed multi-year road map", which shows the co-work of the executive directors and the managers to drive the business. The following part "...the Board reviewed the key strategic proposals made by management, enabling Directors to provide constructive feedback and direction..."<sup>31</sup> reflects the relationship of the executive directors with the whole board. The executive directors have the powers to lead the management team to make plans, while other directors possess the powers to review and approve all the plans and strategies made by the executive directors and the senior managers.

In the Governance Framework of Rio Tinto's 2020 annual report, the Chief Executive shall propose the strategy, budget and plans. At the same time, the board is collectively responsible for pursuing the purpose of the company and approves all the major affairs proposed by the Chief Executive<sup>32</sup>. On the Board Charter, it's said that

---

<sup>29</sup> FRC. The Guidance on Board Effectiveness. Provision 72&73.

<sup>30</sup> Sainsbury's 2021 Annual Report. P.52.

<sup>31</sup> Sainsbury's 2021 Annual Report. P.54.

<sup>32</sup> Tinto Rio's 2020 Annual Report. P. 120.

“Chief Executive has delegated responsibility for the executive management of Rio Tinto... and subject to matters reserved for the Board, as set out in the Schedule of Matters Reserved for the Board...”, which could be considered as the counterbalance of the Chief Executive in delegating powers to other managers. From the Articles of Association of Rio Tinto, Article 79 about appointment and powers of executive directors, which says that “Directors may entrust to and confer upon any Director holding any executive office any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit”<sup>33</sup> we could see that the board will have more freedom in designing the powers of the executive directors, which is different from China.

To conclude, in the UK, the powers of executive directors are usually delegated by the board and are more flexible. The fundamental powers of them are the powers of proposing strategy, plans and budgets to the board and leading the executive teams (or management team, operating board, etc.) on the process of delivery of such affairs.

## **1.5 Powers of Non-Executive Directors under the British Company Law System**

As a majority of the members who make up the board, non-executive directors play very various roles on the board depending on their experience and expertise, thus, each non-executive director may exercise powers differently based on their specific role on the board. Despite this, the purpose of introducing non-executive directors to the Board is always the same. In Higgs Report, the role of non-executive directors is described as to monitor executive activity and contribute to the development of the strategy<sup>34</sup>. In the UK Corporate Governance Code (hereafter referred to as “the Code”), non-executive directors are required to provide constructive challenge, strategic

---

<sup>33</sup> Article of association of Tinto Rio. Article 79 “Appointment and powers of executive Directors”.

<sup>34</sup> HIGGS, Derek - Review of the Role and Effectiveness of Non-Executive Directors. 6.1. P.27. It also mentioned that Both Cadbury and Hampel identified a tension between these two elements.

guidance and specialist advice to keep management accountable<sup>35</sup>. Such components will lead non-executive directors to exercise their powers.

Before talking about the potential positions that non-executive directors could hold on the board and their corresponding powers and functions, I'd like to put their common powers forward first. All non-executive directors have the power to review and approve the plans and strategies proposed by the executives collectively at the board meetings. Another power, which is also responsibility, of non-executive directors is that they scrutinise and hold to account the performance of management and individual executive directors against agreed performance objectives<sup>36</sup>.

Basically, the roles that non-executive directors play on the board include the chair, the senior independent director and members of the specific committees of the board such as the nomination committee, audit committee and remuneration committee.

As a pivotal role on the board, the chair shall lead the board and ensure the effectiveness of the board. Generally, the chair acts as an intermediary between the executive directors and non-executive directors, ensuring that a timely and accurate information could be obtained by all directors<sup>37</sup>. The Guidance on the Board Effectiveness (2018) (hereafter referred to as "the Guidance") has drawn a series of powers of the chair, including setting a board agenda, shaping the culture in the boardroom, encouraging board members to attend the board meetings with their expertise, monitoring new directors on their work and leading the annual board evaluation<sup>38</sup>.

The second position that a non-executive director would hold is the senior independent director. Acting as a sounding board for the chair and an intermediary for

---

<sup>35</sup> FRC. The UK Corporate Governance Code. Principle H.

<sup>36</sup> FRC. The UK Corporate Governance Code. Provision 13.

<sup>37</sup> FRC. The UK Corporate Governance Code. Principal F.

<sup>38</sup> FRC. Guidance on Board Effectiveness. Principle 61. In this part, the Guidance lists the roles of the chair, which include powers and responsibilities. To avoid confusion, the terms expressing the responsibilities of the Chair are not shown in the dissertation.

the shareholders and other directors<sup>39</sup>, the senior independent director has a very special role among the non-executive directors. The main powers of senior independent director include leading other directors in evaluating the performance of the chair and discussing with shareholders when there are concerns that could not be resolved through normal channels. The Guidance has also mentioned that when the board is unstable or in trouble, the senior independent director will play a critically important role to maintain the board.<sup>40</sup> Therefore, the senior independent director could be considered as an extra “umbrella” for the stability of the board.

Last but not least, the most common roles that the non-executive directors play are as members on the board committees. Those committees are formed to assist the consideration of appointments, succession, audit, risk and remuneration<sup>41</sup>. The non-executive directors that sit on different committees will have different powers. For the members of the nomination committee, they have the power to propose new board appointment and to set out the merits and objective criteria for the appointment and succession of directors. The audit committee is with the power to monitor the integrity of the financial statements, review the internal audit function and recommend to the board about the appointment of external auditor<sup>42</sup>. The remuneration committee, correspondingly, have the delegated power to determine the remuneration policy of executive directors and to set remuneration for the chair, executive directors and senior management<sup>43</sup>. Apart from these committees mentioned above, the board could still set up other committees where necessary. The establishment of these committees helps non-executive directors to better exercise their powers and fulfil their responsibilities, thus, ensures the effectiveness of the operation of the board.

Although the independence and the expertise of non-executive directors greatly

---

<sup>39</sup> FRC. The UK Corporate Governance Code. Provision 12.

<sup>40</sup> FRC. Guidance on Board Effectiveness. Principle 68.

<sup>41</sup> FRC. Guidance on Board Effectiveness. Principle 62.

<sup>42</sup> FRC. The UK Corporate Governance Code. Provision 25.

<sup>43</sup> FRC. The UK Corporate Governance Code. Provision 33.

contributes to the effectiveness of the board, there are still potential limitations. First, as non-executive directors are employed on a part-time basis and are probably engaged with other directorships in other companies, the time devoted may be not sufficient to discharge their roles. This is why both the Code and the Guidance have required the non-executive directors to ensure sufficient time committed on the board. Second, non-executive directors may lack the knowledge of highly technical or complex issues, especially when they are on part time basis. To deal with this problem, the non-executive directors shall refresh their knowledge and skills to ensure a continuous positive contribution to the board<sup>44</sup>. Third, the asymmetry of information could also impede their exercise of powers. This could happen both because the non-executive directors don't insist on it or the information is withheld by executives. Therefore, on the one hand, the non-executive directors should seek high-quality information before making decisions; on the other hand, the chair and the executive directors should make sure that adequate information is provided to them.

---

<sup>44</sup> FRC. Guidance on Board Effectiveness. Principle 76.

## **Chapter 2. Powers of the Executive Directors vis-à-vis the Non-Executive Directors in Listed Companies under the Chinese Company Law System**

### **2.1 Typical Model of Board Structure in Listed Companies in China**

Under the Company Law of PRC and the Code of Corporate Governance of Listed Companies (2018 revision), companies whose shares are listed for trading on the stock exchanges in the territory of China should adopt a board structure with the general meeting of shareholders, board of directors and board of supervisors as three basic organisations. However, unlike the typical two-tier board structure in German's listed companies, in which the board of supervisors is elected by the shareholders, while the members of the management board are usually appointed by the board of supervisors. In China, both the members of the board of supervisors and board of directors are elected by the general meeting of shareholders.

The board of directors, as a representative of the company, establishes a good relationship with all parties and makes decisions with the long-term interests of the company in mind. Furthermore, the board of directors must take into account the interests of the company's shareholders, creditors and employees. According to the Company Law of PRC, the directors are elected by and responsible to the general meeting of shareholders<sup>45</sup>. They are entrusted by the general meeting of shareholders to elect and supervise the management and to exercise major management decisions. In order to better exercising directors' powers, the board of directors shall appoint managers to assist its work. These managers usually include a general manager, a secretary of the board, a CFO and several vice general managers. All these executives previously mentioned plus those confirmed by the board of directors compose "Senior

---

<sup>45</sup> Standing Committee of the National People's Congress. Company Law of PRC, Article 37&99.

Managers”<sup>46</sup> of the company, which is a legal term used in China. The board of supervisors is an organ specialised in supervisory functions, supervising the management behaviour of the board of directors and senior managers, with the power to remove directors and senior managers, to rectify acts detrimental to the interests of the company, and to put forth motions at the general meeting of shareholders. It also has the right to attend the board of directors’ meetings and the right to independently investigate any irregularities in the management of the company<sup>47</sup>.

In recent decades, in order to regulate the corporate governance of listed companies in China, a series of guidelines and regulations have been issued. In the process of improving the corporate governance of listed companies in China, the establishment of the system of independent directors has been of great concern to companies and scholars. The Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies, No. 102 [2001], issued by CSRC, stipulated officially for the first time the independent non-executive directors’ system in listed companies. The Guiding Opinions established the “one-third of the members of the board of directors”<sup>48</sup> standard as the minimum percentage of independent non-executive directors in listed companies. The Code of Corporate Governance of Listed Companies (2018 Revision), also mentioned that the board of directors of listed companies are obliged to set up an audit committee, while other relevant committees such as strategy, nomination, remuneration committees may be established depending on the need.

Before we move on to the next section, I would like to introduce briefly the composition of the board of directors for listed companies in China. The board of directors for listed joint stock limited companies in China shall be composed of five to nineteen directors<sup>49</sup>, among whom the independent directors shall be no less than one

---

<sup>46</sup> Standing Committee of the National People’s Congress. Company Law of PRC, Article 216.

<sup>47</sup> Standing Committee of the National People’s Congress. Company Law of PRC, Article 53&54.

<sup>48</sup> CSRC. Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 1.3.

<sup>49</sup> Standing Committee of the National People’s Congress. Company Law of PRC, Article 108.

third of the total number of the directors. The directorship could be held by senior management personnel, but generally the number will be limited by the company's articles of association. The board shall have one chairman and may have vice chairmen if necessary, all of which shall be elected and dismissed subject to approval of more than half of all directors.

As we can see, in China, classifying directors into executive directors and non-executive directors is not legally common in listed companies. However, from the equivalent perspective, the division of responsibilities and powers for directors still can be separated as executive directors and non-executive directors, which we will discuss in-depth in the following sections.

## **2.2 Equivalent Concept of “Executive Directors” under the Chinese Law System**

In the strict sense, the term “executive director” in Chinese under the Company Law of PRC means an acting director who plays the same role as the board of directors when the company is with a relatively small number of shareholders, or the limited liability company itself is relatively small<sup>50</sup>.

However, if we consider the term in its substantive meaning, “executive directors” could also refer to directors who hold a position of the company other than board director or member or chairman of special committees of the board of directors<sup>51</sup>. To be more specific, in most cases, if one member of the board of directors also serves as a manager for the day-to-day operational work, this board member will be considered as an “executive director”.

In present legal provisions in China, it's not regulated whether the board shall

---

<sup>50</sup> Standing Committee of the National People's Congress. Company Law of PRC, Article 50.

<sup>51</sup> Articles of Association of ICBC. Article 114: The term “executive director” refers to person who holds a position in the Bank other than director, or member or chairman of special committee of the board of directors.

have executive directors, nor the percentage of executive directors, but it's said in the Company Law that "the board of directors may decide that one of its members shall concurrently serve as the manager of the company"<sup>52</sup>, which allows board members to become managers in day-to-day management. This means that in China, a listed company can have no executive directors on its board, if no senior managers who also serve concurrently as directors. But in practice, the board of directors of a listed company will usually have at least one executive director, who is usually the general manager from the management. In fact, from the 10 representative listed companies in China that I have surveyed, the average percentage of executive directors is 22.1%, which means one out of every four directors will be an executive director.

As executive directors are not a statutory concept in China, the provisions for them are usually stipulated in the articles of association. For instance, in the articles of association of ICBC, it's said in Article 12 that "for the purpose of the "senior management personnel" shall include president, vice president, executive directors, board secretary, chief risk officer, chief financial officer and other senior management personnel appointed by board of directors", and in Article 114 "directors of the Bank comprise executive directors, non-executive directors, and non-executive directors including independent directors". These two provisions are a good example of the dual nature of executive directors with both the characteristic of directors and managers in China's listed companies.

The Code of Corporate Governance of Listed Companies gives certain freedom for the nomination of directors, in which it's said that listed companies should provide for standardised and transparent procedures for the nomination and election of directors in their articles of association<sup>53</sup>. Generally, the nomination of directors (independent directors and employees' representative are not included) are done by two groups of people: either by the board or by the individual shareholder or the shareholders together

---

<sup>52</sup> Standing Committee of the National People's Congress. Company Law of PRC, Article 114.

<sup>53</sup> CSRC. Code of Corporate Governance of Listed Companies (2018 Revision). 3.1.

holding more than 3% of the shares of the company<sup>54</sup>. For some of the listed companies, there will be a nomination committee that formulates standard and procedures for the election of directors, and propose the candidates for directors. After the nomination, the election process will be done in the general meeting of shareholders by all shareholders with voting right. The Company Law has suggested the system of cumulative voting<sup>55</sup> for the election of directors and supervisors, which, however, is not mandatory. Meanwhile, as executive directors in China have dual nature of directors and senior managers, they should also follow the procedure of election of senior managers, which will be appointed by the board and get the approval of over half of the directors.

In my opinion, an appropriate proportion of executive directors allows the company to make decisions more efficiently because they are directors that have a better insight into the operation and performance of the business, at the same time have a deep understanding of the company's strategy for long-term success. However, if the powers of the executive directors are too strong, the interests of shareholders, especially the minor shareholders, may be impaired. How to set the appropriate proportion of executive directors on the board and what is the best scope of powers of executive directors are topics that CSRC needs to consider.

### **2.3 Equivalent Concept of “Non-Executive Directors” under the Chinese Law System**

As discussed in the previous section, the term “non-executive directors” means the board directors who are not appointed as senior managers in the company. Generally,

---

<sup>54</sup> According to the Company Law of China, Article 102, “a shareholder individually holding, or the shareholders together holding, more than three percent (3%) of the shares of the company may make provisional proposals...”, here, the right to make provisional proposals usually include the right to nominate directors.

<sup>55</sup> Standing Committee of the National People's Congress. Company Law of PRC, Article 105.

we could subdivide the non-executive directors into independent non-executive directors and associated non-executive directors, depending on whether the non-executive director is related to the company's shareholders. In the most recent years, independent non-executive directors are widely discussed by economists and scholars. The independence from shareholders and managerial control, as well as their function of being able to independently give opinions to corporate decisions and major issues allow them to play a very important role in corporate governance. However, based on the current state of China and the board structure, the role of associated non-executive directors shall also get more attention, which is often overlooked.

It's noteworthy that as China has adopted a two-tier board structure, the supervising function is actually played by both non-executive directors and the board of supervisors, which means from a less detailed perspective, both non-executive directors and the board of supervisors in companies in China can be functionally equivalent to the non-executive directors in the UK. However, unlike the typical one-tier board structure in Germany, the actual powers of the board of supervisors in Chinese companies are very limited. Therefore, instead of including the board of supervisors in the non-executive directors, we will try to address the problem of coexistence of both organs in Chinese companies individually.

### **2.3.1 Independent non-executive directors**

The policy of independent non-executive directors was first introduced to China in the Guidelines for Articles of Association of Listed Companies in 1997 by the CRSC. It was stipulated in Article 112 that “A listed company could have independent directors according to its need”<sup>56</sup>. At that time, the appointment of independent directors was still not legally mandatory, and the definition for “independent” was ambiguous. In 1999, the Opinions on Further Promoting the Standard Operation and Deepening Reform of

---

<sup>56</sup> CSRC. The Guidelines for Articles of Association of Listed Companies (1997).

Overseas Listed Companies issued by the SETC and the CSRC required that in overseas listed companies, upon renewal of the Board of Directors, the number of outside directors should account for at least 1/2 of the board of directors, and there should be at least 2 independent directors<sup>57</sup>.

In 2001, the CSRC has published the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies (hereafter referred to as “the Guiding Opinions”), which is the most comprehensive and authoritative provision on the legal regime for independent directors. The Guiding Opinions have required that the independent directors shall be no less than one third of the total number of directors in the board of directors<sup>58</sup>. As defined in the Guiding Opinions, the term “independent directors” refers to “directors who do not hold any position in the company other than director, or member or chairman of special committees of the board of directors, and those who have no relation with the company and its major shareholders that may affect their independent and objective judgement”<sup>59</sup> and among which “one financial or accounting professional”<sup>60</sup> should be included. To satisfy the “independent” requirements, the Guiding Opinions also have listed certain situations in which a person should be excluded as independent director. For one thing, independent directors should be independent from the company, which means they should not be employee or its relatives of the company; for another thing, independent directors should be independent from the majority shareholders, for instance, persons or whose close relatives directly or indirectly hold more than 1% of the shares of the company<sup>61</sup> can’t

---

<sup>57</sup> CSRC; SETC. The Opinions on Further Promoting the Standard Operation and Deepening Reform of Overseas Listed Companies (1999). Point 6.

<sup>58</sup> CSRC. The Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 1.3.

<sup>59</sup> CSRC. the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 1.1.

<sup>60</sup> CSRC. the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 1.3.

<sup>61</sup> CSRC. the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies.

be the independent directors.

In 2005, China's highest legislative body, the National People's Congress, has amended the Company Law of PRC, and adopted the Article 123 of Chapter IV, Section V about the independent directors. It's said that "a listed company shall have independent directors. The specific measures in this regard shall be formulated by the State Council." This is a very important step to confirm the independent director system from a higher level. Thus, the "independent directorship" has been formally incorporated into the legal framework of China.

### **2.3.2 Associated Non-executive Directors**

In the China's legal framework, the associated non-executive directors refer to the members of the board of directors other than the executive directors and the independent directors. In this scenario, associated non-executive directors take the most basic and important responsibilities of the board of directors. Compared with the independent non-executive directors, there is no clear requirement from national regulators on the proportion of associated non-executive directors on the boards of listed companies, so the proportion of associated non-executive directors on the board of a company could reflect the actual demand for associated non-executive directors and the actual governance of the company.

Associated non-executive directors should get more attention by companies because of their special position on the board. For one thing, compared with the independent non-executive directors, associated non-executive directors have a deeper and more comprehensive knowledge of the internal situation of the company. At the same time, their information asymmetry with executives is not so severe as independent directors. Therefore, they are in a better position to exercise practical and effective

supervision to the management of the board. For another thing, compared with executive directors, associated non-executive directors have their own expertise and diversified social and professional experience, with which they can bring external resources to the company, such as government resources, financial support, sales channel expansion and other resources support needed in the company's operation and development<sup>62</sup>.

## **2.4 Powers of Executive Directors in a Functional Approach under the Chinese Law System**

In general, the powers of the board of directors can be summarised as decision-making on major affairs of the company and supervision and control of the company's management<sup>63</sup>. The directors are responsible for the management of the company's assets, but the management of the day-to-day affairs of the company is generally delegated by the board of directors to the senior managers. For each company, the powers of the board of directors will be slightly different due to their understanding about the major affairs of the company. Since executive directors have the nature of both director and manager, the powers of executive directors could also be discussed in these two dimensions.

Firstly, as a member of the board of directors, the executive directors exercise their powers as other directors on the board. There are ten legal powers of the board of directors stipulated in the Company Law of PRC<sup>64</sup>, which could not be modified. In the

---

<sup>62</sup> HUANG, Yisong – Functions of Non-Executive Directors in Corporate Governance. *Journal of Nanchang College of Education* p.125.

<sup>63</sup> For the details of the functions and powers of the board of directors, they can be found in Article 108&46 of Company Law of PRC.

<sup>64</sup> Article 46 of Company Law of PRC “The board of directors shall be accountable to the shareholders assembly and exercise the following functions and powers: (1) to convene the meeting of the shareholders assembly, and to report on its work to the board; (2) to implement the resolutions adopted by the shareholders assembly; (3) to decide on the operational plans and investment plans of the company; (4) to draw up the annual financial budget plan and final accounts plan of the company; (5)

Point 11 of Article 46, it's said that the board of directors could "exercise other functions and powers stipulated by the company's articles of association", which gives a flexibility to the powers of the board of directors. Companies could add other powers or functions to the board of directors, provided that it does not contradict laws and regulations. To exercise these powers, executive directors shall formulate the corporate strategy and key action plans, and make decisions on major company affairs at board meetings in conjunction with the rest of the board.

Secondly, as executive directors take other positions in the company, such as general manager and vice-general manager, they also need to work with day-to-day management of the company. However, their powers could differ based on their divisional and functional role. In most listed companies of China, the board of directors will make the general manager as director concurrently. Among the 10 Chinese listed companies I studied, it's always the case. The Company Law of PRC has stipulated the powers and functions of the general manager, which includes taking charge of production, operation and management of the company; organising the implementation of the resolutions of the board of directors; organising the implementation of the annual operational plan and the investment plan of the company; drawing up plans for establishment of the internal administrative bodies of the company and the basic management system of the company; recommending the engagement or dismissal of the deputy manager(s) and of the persons in charge of financial affairs of the company, etc.<sup>65</sup> It's worth noting that, besides all the powers granted by the provisions, Article

---

to draw up plans for profit distribution and plans for making up losses of the company; (6) to draw up plans for the increase or reduction of the registered capital and the issue of corporate bonds of the company; (7) to draw up plans for the merger, division, dissolution and transformation of the company; (8) to decide on the establishment of the internal administrative bodies of the company; (9) to decide on the appointment or dismissal of the manager of the company and the matters concerning his remuneration, and upon recommendation of the manager, decide on the appointment or dismissal of the deputy manager(s) and persons in charge of the financial affairs of the company, and on the matters concerning their remuneration; (10) to formulate the basic management system of the company;"

<sup>65</sup> Standing Committee of the National People's Congress. Company Law of PRC, Article 49&113

49 also provides that the powers of general manager shall include other powers granted by the board of directors and where the article of association of the company provide otherwise for the functions and powers of the general manager, the provisions there shall prevail. This article permits greater flexibility in establishment of the general manager and allows the company to extend or narrow the scope of the general manager's powers according to its own business situation. If the company wants to narrow the powers of general managers, they will need to be excluded by the articles of association. While if the company wants to delegate more powers and functions to the general manager, this could be done by the explicit provisions in articles of association or just by the authorisation of the board of directors.

To conclude, executive directors are most often the people who know best about the internal management of a company and are frequently the founders of a company. They play an extremely important role in defining the company's business strategy as well as its long-term business management. With the dual nature of director and manager, executive directors could be considered as the “heart” of the board of directors.

## **2.5 Powers of Non-Executive Directors under the Chinese Law System**

In contrast to the pivotal role that the executive directors play in the management of a company, the powers of non-executive directors seem to give the impression that they are insignificant in listed companies in China. In order to effectively perform the unique functions of non-executive directors and thus improve the corporate governance, we must firstly clarify what are the specific powers of non-executive directors and by whom are these powers assigned.

As it's mentioned above, in China, the powers of the board of directors can be divided into the decision-making of major affairs of the company and the supervision and control of the management. If the former is mainly guided by the executive directors, the latter is where the non-executive directors' most important powers lie.

## **2.5.1 Powers of Independent Non-Executive Directors and a Comparison with the Board of Supervisors**

### **Powers of Independent Non-Executive Directors**

In exercising the decision-making powers, the independent non-executive directors regularly attend board meetings like other directors, and try to make the process and outcome of board resolutions reflect the views of the independent directors. The introduction of independent directors and, in particular, the establishment of a special committee, mainly composed of independent directors, allows the board of directors to supervise the management much more effectively. Except for the two above-mentioned powers, the powers of independent non-executive directors do not include the execution of specific day-to-day operations, as they are non-executive directors by nature. Their excessive involvement in executive operations could easily compromise their independence from the management.

According to the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies (2001), in addition to the powers and functions conferred on directors by the Company Law and other relevant laws and regulations, listed companies shall confer on independent directors the following special powers and functions<sup>66</sup>:

1) approving significant related party transactions<sup>67</sup> before being submitted to the board of directors for discussion, and, engaging an intermediary institution to issue an independent financial advisory report as the basis for his/her judgment before making judgment;

2) proposing to the board of directors to appoint or dismiss an accounting firm;

---

<sup>66</sup> CSRC. Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 5.

<sup>67</sup> According to the Guiding Opinion, the “significant related party transactions” refers to a transaction proposed to be entered into by a listed company with a related party for a total amount of more than 3 million *yuan* or more than 5% of the listed company’s latest audited net asset value.

- 3) proposing to the board of directors to convene an extraordinary general meeting of shareholders;
- 4) proposing to convene a board meeting;
- 5) appointing external auditing and consulting institutions independently;
- 6) publicly soliciting votes from shareholders before a general meeting of shareholders is convened.

Among the powers indicated in the Guiding Opinions, the power to propose the convening of an extraordinary general meeting is particularly important. This is because the introduction of independent directors is to address the problem of “dysfunction” of the board, where the board is unable to exercise decision-making and supervisory powers in the interests of shareholders. If the independent directors of a company find that the board of directors is "dysfunctional", it is important to inform the general meeting of the shareholders of this situation in a timely manner, and there is no better way to do this than by giving the independent directors the power to propose an extraordinary general meeting.

In order to enable directors to better perform their role, the Code of Corporate Governance of Listed Companies (hereafter referred to as “the Code”) requires China’s listed companies to establish special committees of the board of directors. According to Article 38 of the Code, the board of directors of a listed company should establish an audit committee and may set up relevant special committees such as strategy, nomination, remuneration and appraisal committees as needed. The members of the special committees shall be composed exclusively of directors, of which the audit committee, the nomination committee and the remuneration and evaluation committee shall have a majority of independent directors who shall also act as convenors. Besides, the convener of the audit committee shall be an accounting professional. In the Code, Articles 39 to 42 also regulate the main powers and functions of the audit committee, the strategy committee, the nomination committee and the remuneration and evaluation Committee respectively. However, because the establishment of special board

committees is not mandatory, in practice, many listed companies in China won't set up other committees other than the audit committee, and in many cases, these committees can't effectively work.

The establishment of special committees allow independent non-executive directors to play specific roles in their areas of expertise and give them powers of decision-making in these specialised areas. This specialisation is considered as an effective means of reinforcing the collective power of the independent non-executive directors to counter or preclude interference by the executive directors in specific matters, such as the nomination and remuneration of directors, significant related party transactions, internal control, etc.<sup>68</sup>

Although the Guiding Opinions and the Code have stipulated well the powers and functions of independent non-executive directors, in practice, however, the independent directors are often considered as “eye candy”. According to a social survey for independent directors of listed companies conducted by the Shanghai Jinxin Securities Institute, 39% of the independent directors see themselves in an advisory role, 37% see themselves as directors and 21% see themselves as representatives of minority shareholders. The confusion about their role is a major reason why they do not perform their duties well. Another research from Deloitte shows that 44.7% of the independent directors faced obstacles in exercising their powers, among which 23.4% indicated that they had difficulties in exercising powers because some information was deliberately concealed by the related personnel, 10.6% said that the related personnel refused their objections and 2.1% of them was not familiar with the regulations of listed companies<sup>69</sup>.

Independent directors are essential decision-makers in corporate governance, representing the independent angle and professional insights outside the company. However, since they are still the “outside directors”, independent directors still have asymmetrical information compared to the senior managers who are the company

---

<sup>68</sup> XIE, Zengyi - Board Committees and Corporate Governance.

<sup>69</sup> Deloitte - 2018 Deloitte China Listed Companies Independent Directors Survey Report. P. 11.

insiders<sup>70</sup>. Although in Chapter 7 of the Guiding Opinion, it's stressed that listed companies should ensure that independent directors have the same right to information as other directors<sup>71</sup>, for independent directors to exercise their powers effectively, it's vital to have systems in place to support their exercise. Such systems should include the disclosure of corporate governance activities involving independent directors in appropriate public documents, the proper pre-appointment counselling for independent directors so that they are aware of their various powers and responsibilities, and the systematic training for independent directors, mainly on past and present relevant company circumstances. The chairman should also play his due role in helping the independent directors to obtain information. Besides, independent directors should establish effective channels of communication with key senior managers such as the company secretary and internal auditors, and hold regular meetings with external directors. Without these complementary systems, independent directors can easily be overridden by inside managers.

### **A Comparison with the Board of Supervisors**

As mentioned in Section 1 of this chapter, the basic structure of corporate governance in China is the separation of the general meeting of shareholders, the board of directors and the board of supervisors, among which the board of supervisors executes supervisory powers. At the same time, since 2001 when the CSRC issued the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies, the relevant authorities have started to implement the system of the independent directors in listed companies, requiring all listed companies to have independent directors. As a result, the company legislation of China requires all listed companies, without exception, to apply both supervisory mechanisms: system of the

---

<sup>70</sup> ZHENG, Xuejun - Study of Independent Directorship. Xiamen University. P. 30.

<sup>71</sup> CSRC. the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 7.1.

board of supervisors and the system of the independent directors.

There have been many discussions on the rationality of the existence of two supervisory bodies for listed companies in academic world. Before we talk about the rationality of the “dual supervisory mechanism” of China’s listed companies, I’ve made a table to compare the similarities and differences of the powers and functions of the board of supervisors and the independent directors, based on the Company Law of PRC and the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies.

A Comparison of the powers between the Board of Supervisors and the Independent Directors		
Powers of supervision	Board of supervisors	Independent directors
Proposing to appoint or dismiss an accounting firm	yes	yes
proposing to convene an extraordinary general meeting of shareholders	yes	yes
appointing external auditing and consulting institutions independently	yes	yes
approving significant related party transactions	no	yes
giving objective, impartial and independent opinions on the major matters	no	yes
publicly soliciting votes from shareholders before a general meeting of shareholders is convened	no	yes
nomination, appointment and dismissal of directors	no	yes, they can give independent opinions

appointment and dismissal of senior managers	no	yes, they can give independent opinions
compensations of directors and senior managers	no	yes, they can give independent opinions
demanding directors or senior managers to rectify when their acts damage the interests of the company	yes	no

Although theoretically, the dual-track mechanism of supervision in China could be compatible in terms of functionality<sup>72</sup>, as the independent directors have been given the powers to monitor the decision-making process, so as to prevent the operators from undermining the interests of shareholders, while the board of supervisors haven't. In reality, the problem of unclear positioning of supervision function by these two organs persists.

From the table, we can see that the board of supervisors and the independent directors do have some overlapping powers and functions. According to the development process of corporate governance in China, the board of supervisors was established first, followed by the independent directors. The legislation for independent directors is much more detailed and adequate than that for the board of supervisors. It can be inferred that the company legislator expects more from independent directors than the board of supervisors, and has lost confidence and patience in the system of the board of supervisors even without making appropriate adjustments to it<sup>73</sup>.

The opinion in favour of the dual supervisory mechanism shows that the powers of the board of supervisors and the independent directors have homogeneity and heterogeneity, which can't be replaced by each other. On the one hand, both organs are responsible for the interests of the listed company; on the other hand, based on the

---

<sup>72</sup> WANG, Liang. The Construction of Legal Model of Board Centralism – A Perspective of Corporate Governance in China. P. 141.

<sup>73</sup> ZHAO, Dawei - On the System Reform of Supervisory Board in Chinese Listed Companies. P. 49.

consideration that the supervisory process is closely aligned with the business decision-making behaviour in listed companies in China, the independent directors have been given powers of decision-making so that they can better protect the interests of shareholders.

Meanwhile, the opposing opinion states that firstly, the detailed powers of independent directors are stipulated in the Guidance Opinions, while the Company Law of PRC doesn't specify them on a more authoritative level, which makes it difficult to differentiate their supervisory powers from those of the board of supervisors, thus prevents both from playing the advantages of complementation in joint supervision in listed companies. Secondly, the abuse of power by controlling shareholders and beneficial owners to control the operation of the company with absolute superiority has led to the common phenomenon of "supervisors can't supervise"<sup>74</sup>, which is far from the expectation of the legislative design and is often questioned by academics as being less likely to play a positive supervisory role. Thirdly, dual supervision increases the organisational costs of listed companies in China<sup>75</sup> which include cost of elections, appointments in listed companies, cost of remuneration, cost of operation, and other potential extra costs. The higher costs brought by the dual supervision mechanism run counter to the objectives for which the company's supervisory body is set up.

Some scholars have therefore suggested that the system independent directors should be re-integrated into the supervisory system to create a reform path for independent supervisors<sup>76</sup>; some scholars have also proposed substantive measures to change the imbalance in the structure of the board of supervisors while others have suggested that legislation should support companies in choosing their own supervisory

---

<sup>74</sup> HUANG, Hui – Research on the Duty of Diligence of Independent Directors of Listed Companies.

<sup>75</sup> ZHAO, Dawei - On the System Reform of Supervisory Board in Chinese Listed Companies. P.51.

<sup>76</sup> LUO, Liping - Board of Supervisors and Independent Directors: Co-existence or Unity? - A Study on the Conflicts and Improvement of Internal Supervision Mechanism of Listed Companies in China.

structure<sup>77</sup>; and some have even suggested that the system of board of supervisors should be abolished.

Although the changes in the supervision direction of listed companies in China are beyond the scope of this paper, from my perspective, I am more in favour of retaining the dual supervisory mechanism in listed companies in China. If the company is willing to set up independent directors and the board of supervisors at the same time to strengthen supervision or improve the public image, the law does not seem to interfere. After all, the independent directors are inside the board of directors to exercise directors' decision-making and supervision powers, while the board of supervisors exercise their powers of supervision from the outside of the board of directors and management, which includes the supervision of independent directors. Therefore, the dual supervision mechanism is not inappropriate.

### **2.5.2 Powers of Associated Non-Executive Directors and the Dilemma to Exercising the Powers**

Unlike independent non-executive directors, there is no official document in China that clearly defines the powers of associated non-executive directors, as the concept of associated non-executive directors is in fact a functional equivalent division that we have made to distinguish between executive and non-executive directors. Accordingly, the associated non-executive directors are directors on the board that do not have other special powers, which means that they enjoy the general powers of the board of directors. Therefore, the powers of the associated non-executive directors are included in the powers of the executive directors, which could be found in the Company

---

<sup>77</sup> Ji, Guiming – Reconstruction of the Company's Internal Supervision Mechanism under Chinese Style.

Law of PRC<sup>78</sup>. In general, the powers of associated non-executive directors include supervising the work of senior managers and approving resolutions for major affairs like the strategic direction of the company's business and large value transactions in conjunction with other board members.

A study shows that the percentage of associated non-executive directors on the board of directors in listed companies in China is about one-third<sup>79</sup>. My study of ten listed companies in China also shows that eight out of ten companies have no less than one third of associated non-executive directors. This means if the board of directors, who has the power of control and resolution, is to exercise its powers effectively, it's crucial to appoint the appropriate associated non-executive directors, who can look at the long-term interests of the company while also taking into account the interests of minor shareholders, creditors and other stakeholders.

Currently in the Company Law of PRC, the associated non-executive directors could be nominated by the major shareholders<sup>80</sup> or the board of directors. If an associated non-executive director is appointed by major shareholders, to represent the interests of the shareholder, he/she will reduce the agency costs between the shareholders and the managers and increase the independence of the board of directors, so that could supervise the management of the company more effectively. If an associated non-executive director is nominated by executive directors rather than shareholders, he/she will generally follow the advice of the executive directors and represent their interests, thus making it difficult to exercise effective supervision over the board and management. The dilemma that associated non-executive directors face at the moment is that, as it is common for listed companies in China to have "a single

---

<sup>78</sup> See footnote 20 for detailed terms.

<sup>79</sup> HUANG, Yisong - Functions of Non-Executive Directors in Corporate Governance. *Journal of Nanchang College of Education* p.125.

<sup>80</sup> The "major shareholders" could have different standards according to the articles of association of each company, but very often it refers to shareholders who hold more than three percent (3%) of the shares of the company.

shareholder to be dominant", most of the associated non-executive directors are nominated and appointed by the major shareholders, thus the number of associated non-executive directors appointed by minority shareholders is too limited. Therefore, in many cases, the associated non-executive directors are simply sent to the company by the major shareholders to enjoy the title and benefits and don't fulfil their actual role on the board of directors.

In order to ensure that associated non-executive directors play their proper role in corporate governance, the regulators shall specifically provide for the right of minority shareholders to nominate a certain proportion of associated non-executive directors, enhancing the diversity of sources of associated non-executive directors, so as to reinforce the protection of the interests of minority shareholders and optimise corporate governance.

## **Chapter 3. A Functional Comparison Between China and the UK on Powers of the Executive Directors Vis-À-Vis the Non-Executive Directors**

Through the discussion in the previous two chapters, we have been able to understand the characteristics of corporate governance, the composition of the board of directors and the roles and powers of the executive and non-executive directors in China and the UK. In this chapter, we will make a more direct comparison between the powers of executive directors and non-executive directors in China and the UK and summarise the differences in corporate governance between the two countries. In the end, we will figure out what China can learn from UK' corporate governance, particularly in relation to the distribution of powers of the directors and what China can do to improve its current corporate governance structure.

### **3.1 A Comparison of Powers of Executive Directors**

It's clear that whether in China or in the UK, the powers of executive directors include the general powers held by the members of the board of directors and the special powers possessed by them as managers of the company. When it comes to specific powers of executive directors, we could find many similarities between them, for instance, the power to propose the strategy and annual operational plan of the company<sup>81</sup> and the power to build their own management team. In both countries, the executive directors of a company will take charge of the day-to-day management and lead the business of the company. However, from a macro perspective, the ways of obtaining powers are not the same.

---

<sup>81</sup> This can be found both in Company Law of PRC, Article 49 and Guidance on Board Effectiveness, Provision 70.

Firstly, at board level, the biggest difference is the scope of the powers that the board possesses. With the one-tier board structure, the board of directors in British listed companies has a wide range of management powers. Except for certain matters being decided by the shareholders' meeting, almost all other matters can be decided by the board of directors in accordance with the articles and laws<sup>82</sup>. The powers of board of directors in Chinese listed companies, in contrast, are set by laws. The Company Law of PRC illustrated a number of powers of different bodies, including those of the board of directors. Although the legislation allows some of the bodies to add powers, it's controversial that whether the additional powers could change the original allocation of powers regulated by laws<sup>83</sup>. The reasonableness of this mandatory division of powers is questionable. In one word, the powers of the board of directors in listed companies in the UK is more flexible and cover a wider range than those in China.

Secondly, as the term “executive director” only exists in the corporate governance in the UK, there are also significant differences in the concurrent appointment of executive directors. The UK Corporate Governance Code has stipulated that the roles of chair and chief executive should not be exercised by the same individual.<sup>84</sup> But in China, a concurrent appointment of chief executive and chairman is very common, particularly in private owned enterprises. This can lead to a problem of weakening the independence of the board. Actually, there is a potential conflict between the chair and the executive directors, the chair should hold meetings with non-executive directors to evaluate the work of executive directors, if the chair itself is an executive director, it will be difficult for the board to criticise the work of executive directors and give their independent opinions.

---

<sup>82</sup> For instance, in the Articles of Association of Sainsbury's, Article 99, about the general power of directors to run business, it's said that “The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by the Companies Acts or by these Articles required to be exercised by the Company in general meeting”.

<sup>83</sup> WANG, Jun - *Corporation Law of China (Second Edition)*. P. 246.

<sup>84</sup> FRC. The UK Corporate Governance Code, Provision 9.

### 3.2 A Comparison of Powers of Non-executive Directors

Similar to executive directors, the powers of non-executive directors can also be divided into the fundamental powers held by all members of the board and the particular powers held by virtue of their special status. In this section, we will mainly compare the powers of independent non-executive directors in China and the UK, as the associated non-executive directors in China actually possess only the first kind of powers, which we have already discussed in the former section.

The system of independent directors, as an externally absorbed system of corporate governance in China, should be able to play the same role in corporate governance as in the UK and the US, but in the process of converting the legal concept into a legal system, the independent directorship is subject to the impact of localisation and thus the variations of the system can occur<sup>85</sup>. This variation has led to differences in the powers of independent non-executive directors in China and the UK.

To figure out the differences of powers of independent non-executive directors between China and the UK, we need to look back at the Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies and to consider it from the perspective of the corporate governance structure.

First of all, although the Guiding Opinions stipulates that "if the board of directors of a listed company establishes committees on remuneration, audit and nomination, the independent directors shall constitute more than one-half of the committee members"<sup>86</sup>, compared with the UK, the Guiding Opinions does not impose a mandatory requirement for the establishment of these committees. It was not until the release of the revised version of the Code of Corporate Governance of Listed Companies in 2018 that the establishment of an audit committee on the board of directors was referred to as mandatory. As a result, in practice the exercise of the

---

<sup>85</sup> PAN, Chenglin – Study on Appointment and Removal System of Directors. P.42.

<sup>86</sup> CSRC. Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 5.4.

supervisory power of independent directors through special committees doesn't really work. For instance, in the UK, the board should establish a remuneration committee of independent directors to set remuneration for the chair, executive directors and the chair. However, in China such power is exercised by the general meeting of shareholders, while independent directors could only "give their independent opinions" to such matters.

Secondly, from the Guiding Opinions, we could find out that there are many restrictions on the exercise of powers by independent directors. One of the examples is that the Guiding Opinions stipulates that in exercising the powers, independent directors "shall obtain the consent of at least one-half of all independent directors"<sup>87</sup>, which greatly affects their "independence" in exercising powers. Another example is that according to the provision, the independent directors do not have the power to convene meetings of board of directors, but only the power to propose.

Lastly, about the environment to exercise their powers, the Guiding Opinions requires that one-third of the members of the board of directors should be independent directors. While in the UK, the proportion is higher both set out in the Code and in practice. Increasing the proportion of independent directors on the board can make them a strong group on the board to exercise their powers. A limit of multi-directorship could also help the exercise of powers of non-executive directorship. The Code in the UK regulates that full-time executive directors should not take on more than one non-executive directorship in big companies, while the Guiding Opinions stipulates that, in principle, one person may serve as an independent director in a maximum of five listed companies. In practice, what's the best benchmark for multi-directorship should be considered in the light of their workload and the capabilities of each individual. After all, a multiple directorship can help non-executive directors to bring more experience, but also result in distractions<sup>88</sup>.

---

<sup>87</sup> CSRC. Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. 5.2.

<sup>88</sup> PASS, Christopher – Corporate Governance and the Role of Non-executive Directors in Large UK Companies:

## **3.3 Key Learnings from the British Corporate Governance for Chinese Listed Companies**

### **3.3.1 Enhancing the Powers of the Board of Directors**

In accordance with the Company Law of PRC, the board of directors is responsible to the general meeting of shareholders and implements the resolutions of the general meeting of shareholders. This means that the powers of the board of directors are largely constrained by the general meeting of shareholders. Unlike the UK, where the shareholdings in listed companies are highly fragmented, companies' shareholdings in China are highly concentrated. It's common that one single shareholder dominates the general meeting of shareholders. In this situation, we must enhance the powers of the board of directors.

The weight of powers held by the board of directors also determines whether the non-executive directors can effectively supervise the majority shareholders and the management. Thus, the legislation must ensure the powers of the board of directors to make major decisions, formulate strategies, prevent and control risk and so on, defining the powers of the board of directors based on the business type of the company.

### **3.3.2 Separating the Chair and the General Manager (Chief Executive)**

Good corporate governance practice should set up the chair and chief executive separately, which can provide checks and balances on power, improve accountability and enhance the board's decision-making ability<sup>89</sup>. In China, although since 1999, the Fourth Plenum of the 15<sup>th</sup> CPC Central Committee have required state-owned

---

An Empirical Study.

<sup>89</sup> GUANG, Lei – Insights from the Internal Control and Management of British Companies on the Governance of State-owned Enterprises in China.

enterprises, in principle, to set up the chair and the general manager separately<sup>90</sup>, in practice, there are still problems of unclear boundaries of powers and poor communication between the chairman and the general manager. Moreover, this decision only for state-owned enterprises, which means that there is still no regulation on the concurrent appointment of the chair and the general manager in private-owned companies.

Setting up the chair and the general manager separately could make both roles exercise their powers more effectively. For one thing, if the chair is a non-executive director, the time commitment can be ensured. For another thing, a separation of chair and general manager can enhance the supervisory power of the chair and thus better monitor the work of the general manager.

### **3.3.3 Raising the Supervisory Role of Independent Directors in Corporate Governance**

The system of independent directors has been implemented in China for over 20 years, but in practice, independent directors don't really play their role well on the board. In order to prevent independent directors being "empty suit" on the board, the following insights can be taken from the UK.

First, the improvement of the system of independent directors should be linked to the reform of the board of supervisors and specific committees of the board of directors. From the corporate governance of the UK, the independent non-executive directors can be regarded as a supervisory mechanism in one-tier board structure. Their roles should be complemented and articulated with the special committees, thus enhancing their powers on the board. By establishing audit, remuneration and

---

<sup>90</sup> Such term could be found in The Decision of the Central Committee of The Communist Party of China on Major Issues Concerning the Reform and Development of State-Owned Enterprises (1999), Point 5.4.

nomination committees composed of independent directors, they are given the power to review conflict of interest transactions, determine directors' remuneration and nominate directors for appointment<sup>91</sup>.

Second, in order to enable the special committees mentioned above to function effectively, it's also important to increase the proportion of independent directors on the board. In the UK, a majority or all of the members of the committees should be independent non-executive directors, if we still keep the standard of "one-third" of the members of the board of directors to be independent directors, there is a risk that the powers of independent directors on board committees will be diminished. Therefore, the proportion of independent directors should be increased to one-half or even larger depending on the need of the companies.

Third, unlike the UK, listed companies in China have long had a concentrated shareholding structure, with the average shareholding of the largest shareholder exceeding 30%<sup>92</sup>. In this context, the selection, remuneration and performance of independent directors are directly influenced by the major shareholder, so it is necessary to set up a targeted mechanism to protect the selection and assessment of independent directors from the excessive interference from major shareholders.

---

<sup>91</sup> PEI, Mingxue – Study on Independent Directorship.

<sup>92</sup> ZENG, Bin – Origins and Implications of Independent Directorship in the US and UK.

## **Conclusion**

The purpose of the current dissertation was to figure out the features of the powers of executive directors and non-executive directors in China and the UK. Through a comparative approach, this dissertation tried to identify the deficiencies of the distribution of powers of executive directors and non-executive directors in China and to find out the insights from the British corporate governance to improve these deficiencies.

By comparative analysis, we find out that the powers of the board of directors in China is much limited compared with that in the UK, and the establishment of the system of independent directors is also inadequate. In particular, the normative documents about the independent non-executive directors didn't clarify the powers of the independent directors, as a result, the independent directors can't exercise their powers effectively. The findings correspond to the common views of Chinese legal scholars.

In terms of the powers of executive directors, although it's very common that the general managers in listed companies in China sit on the board of directors, there is no clear legal definition for such concurrent appointment as in the UK. In other words, the concept of executive directors actually cannot be found in normative documents in China. This brings certain problems for the actual "executive directors" in listed companies in China. Firstly, as the powers of the board of directors are limited by Company Law of PRC, executive directors can't fully exercise their powers as the decision-makers on the board. Secondly, because of the lack of normative documents for executive directors, it's more difficult for executive directors to find a balance between the board of directors and the management, consequently, executive directors may not be able to extend their powers to the whole business but only focus on their own roles as a manager. Thirdly, the concurrent appointment of the chair and the general manager is allowed in listed companies in China, which could possibly weaken the

effectiveness of the board.

For independent directors, the exercise of powers is more constrained. Although under the Chinese legal scheme, powers of the bodies of a company are stipulated strictly by laws, the powers of non-executive directors are very vague and inadequate, in particular the powers of independent non-executive directors. Such vagueness and insufficiency are reflected in the following two facts. First, unlike the UK, where the board are obliged to establish special committees to ensure the effectiveness of the role of non-executive directors, in China, there are no mandatory rules for such committees. This has prevented independent directors from playing their due role in decision-making and supervision. Second, China's corporate governance has adopted the two-tier board structure for listed companies, which means each company should have a board of supervisors. However, the powers of the board of supervisors and the independent directors are not clearly separated by law, existing some overlaps between them. This will further undermine the supervisory effectiveness and efficiency of the independent directors and the board of supervisors.

About the insights from British corporate governance, we discussed from three dimensions. The most crucial point is to enhance the overall powers of the board of directors in listed companies in China. Because such measures can not only ensure the exercise of powers of executive directors, but also strengthen the supervision of non-executive directors. Following this, we offered constructive suggestions for corporate governance in China in terms of setting up separately the general manager and the chair of the board, and strengthening the supervisory powers of independent directors.

Lastly, due to the limitations of my abilities, there are inevitably omissions and deficiencies in this dissertation. It must also be noted that there are more related topics that have not been mentioned in depth due to words constraints, such as the relationship of powers and liabilities of the board, the remuneration of executive directors and non-executive directors, etc.

## **Bibliography**

### **Published Books**

SHENG, Zongling – *Modern Western Jurisprudence*. Beijing: Peking University Press, 1992. ISBN: 9787301017210

WANG, Jun - *Corporation Law of China (Second Edition)*. Beijing: Higher Education Press, 2017. ISBN: 978-7-04-048341-3.

Standing Committee of the National People's Congress. *Company Law of the PRC (Annotations and Companion)*. 5<sup>th</sup> Edition. Beijing: China Legal Publishing House, 2020. ISBN: 978-7-5126-1414-5.

HIGGS, Derek - *Review of the Role and Effectiveness of Non-Executive Directors*. The London: Department of Trade and Industry, 2003. Available at: <https://ecgi.global/code/higgs-report-review-role-and-effectiveness-non-executive-directors>

### **Journal Articles – in Chinese**

CHEN, Rui- A Logical Analysis of Hohfeld's Theory of Legal Concept. *Journal of SWUPL* [On-line]. 05 (2003) 15-21. [Consult. 2021.11.05]. Retrieved from <https://kns-cnki-net-443.webvpn.wzu.edu.cn/kcms/detail/detail.aspx?FileName=XNZF200305003&DbName=CJFQ2003>

GUANG, Lei – Yingguo Gongsì Neibu Kongzhi Yu Guanli Dui Woguo Guoyouqiye Zhili De Qishi (Insights from the Internal Control and Management of British Companies on the Governance of State-owned Enterprises in China). *Research on*

*Development*. 01 (2020) 154-160. ISSN: 1003-4161.

HUANG, Yisong –Functions of Non-Executive Directors in Corporate Governance. *Journal of Nanchang College of Education*. Nanchang. 30:5 (2015) 124-125+128. ISSN: 1008-6757.

JI, Guiming – Zhongguoshi Gongsì Neibu Jiandu Jizhi De Chonggou (Reconstruction of the Company’s Internal Supervision Mechanism under Chinese Style). *Journal of Southwest University for Nationalities (Humanities and Social Sciences Edition)* [On-line]. 41:04 (2020) 67-74. [Consult. 2022-01-11]. Retrieved from <http://www.commerciallaw.com.cn/ueditor/php/upload/file/20200528/1590642294101322.pdf>

SHAO, Shaomin; WU, Canglan; LIN, Wei – Guowai Duli Dongshi Yanjiu (Study on Foreign Independent Directors). *The Journal of World Economy* [On-line]. 04 (2003): 67-78. [Consult. 2022-02-05]. Retrieved from <https://kns-cnki-net-443.webvpn.wzu.edu.cn/kcms/detail/detail.aspx?FileName=SJJJ200304009&DbName=CJFQ2003>

XIE, Zengyi – Dongshi Weiyuanhui Yu Gongsì Zhili (Board Committees and Corporate Governance). *The Journal of Legal Studies* [On-line]. 05 (2005) 60-69. [Consult. 2022-02-01]. Retrieved from [http://www.faxueyanjiu.net/Admin/UploadFile/publish\\_article/2005/5/20050506.pdf](http://www.faxueyanjiu.net/Admin/UploadFile/publish_article/2005/5/20050506.pdf)

ZENG, Bin – Meiyìng Duli Dongshi Zhidu De Qiyuan Bianqian Ji Qishi (Origins and Implications of Independent Directorship in the US and UK). *China Banking* [On-line]. 6 (2021) 23-25. [Consult. 2022-1-29]. Retrieved from <https://kns-cnki-net->

[443.webvpn.wzu.edu.cn/kcms/detail/detail.aspx?FileName=ZGBK202106009&DbName=CJFQ2021](https://443.webvpn.wzu.edu.cn/kcms/detail/detail.aspx?FileName=ZGBK202106009&DbName=CJFQ2021)

ZHAO, Tong – Quanqiu Gongsi Zhili Qutong Xiade Zhongguo Moshi Chuangxin (The Innovation of Chinese Model under the Convergence of Global Corporate Governance). *Co-operative economy & Science* [On-line]. 03 (2010) 34-35. [Consult. 2021-12-19].

Retrieved from <https://kns-cnki-net-443.webvpn.wzu.edu.cn/kcms/detail/detail.aspx?FileName=HZJJ201003018&DbName=CJFQ2010>

### **Journal Articles – in English**

AGARWAL, Anup; CHADHA Sahiba - Corporate governance and accounting scandals. *Journal of Law and Economics* [On-line]. XLVIII (2005) 371-406. [Consult. 2022-01-11]. Retrieved from

[https://www.academia.edu/24718116/Corporate\\_Governance\\_and\\_Accounting\\_Scandals\\_from\\_cover\\_page](https://www.academia.edu/24718116/Corporate_Governance_and_Accounting_Scandals_from_cover_page)

DAILY, C.M. [et al.] – Corporate Governance: Decades of Dialogue and Data. *Academy of Management Review* [On-line]. 28:3 (2003) 371-382. [Consult. 2022-01-11]. Retrieved from <https://doi.org/10.2307/30040727>.

DIGNAM, Alan - Capturing Corporate Governance: The End of the UK Self-regulating System. *International Journal of Disclosure and Governance* [On-line]. 4 (2007) 24-41. [Consult. 2022-01-06]. Retrieved from

<https://doi.org/10.1057/palgrave.jdg.2050046>

HALPIN, Andrew – The Concept of a Legal Power. *Oxford Journal of Legal Studies* [On-line]. 01:16 (1996) 129-152. [Consult. 2021-11-16]. Retrieved from <https://doi.org/10.1093/ojls/16.1.129>

ODGERS BERNDTSON – The Curious Role of the Executive Director [On-line]. (2013). [Consult. 2022-01-10]. Retrieved from <https://www.odgersberndtson.com/pt-pt/insights/the-curious-role-of-the-executive-director>

MALLIN, Chris – Corporate Governance Developments in the UK and the Evolving Role of Institutional Investors. *Handbook on Emerging Issues in Corporate Governance* [On-line]. Chapter 9. [Consult. 2022-03-01]. Retrieved from [https://doi.org/10.1142/9789814289351\\_0009](https://doi.org/10.1142/9789814289351_0009)

PASS, Christopher – Corporate Governance and the Role of Non-executive Directors in Large UK Companies: An Empirical Study. *Corporate Governance International Journal of Business in Society*. 4 (2004) 52-63. DOI: 10.1108/14720700410534976.

RAFEL, Crespí-Cladera; BARTOLOMÉ, Pascual-Fuster – Executive directors' pay, networks and operating performance: The influence of ownership structure. *Journal of Accounting and Public Policy* [On-line]. 34:2 (2015) 175-203. [Consult. 2022-01-18]. Retrieved from <https://doi.org/10.1016/j.jaccpubpol.2014.09.004>

YOUNG, Steven – The Increasing Use of Non-Executive Directors: Its Impact on UK Board Structure and Governance Arrangements. *Journal of Business Finance & Accounting* [On-line]. 27:9 (2000) 1311-1342. [Consult. 2022-01-19]. Retrieved from [\(PDF\) The Increasing Use of Non-Executive Directors: Its Impact on UK Board Structure and Governance Arrangements | Steven Young - Academia.edu](#)

ZATTONI, Alessandro; CUOMO, Francesca – How independent, competent and incentivized should non-executive directors be? An empirical investigation of good governance codes. *British Journal of Management* [On-line]. 21 (2010) 63-79. [Consult. 2022-01-11]. Retrieved from <https://doi.org/10.1111/j.1467-8551.2009.00669.x>.

### **Dissertations and Theses**

Fan, Lili – The Comparison of Independent Directors between China and United Kingdom. East China University of Political Science and Law, 2013. 64p. Master's Dissertation.

HUANG, Hui – Research on the Duty of Diligence of Independent Directors of Listed Companies. Lanzhou University, 2021. 62p. Master's Dissertation.

Nasser Salim Mohamed Alkalbani – The Evolution of the Board of Directors in the UK - Corporate Governance Context. University of East Anglia, 2017. 246p. PhD Thesis.

Pan, Chenglin – Study on Appointment and Removal System of Directors. Jilin University, 2013. 161p. PhD Thesis.

PEI, Mingxue – Study on Independent Directorship. Southwest University of Political Science & Law. 2005. 210p. PhD Thesis.

WANG, Liang – The Construction of Legal Model of Board Centralism – A Perspective of Corporate Governance in China. Southeast University of Political Science and Law, 2017. 184p. PhD Thesis.

YU, Hongtao – Board Characteristics, Risk-Taking and Corporation Performance.

Dongbei University of Finance and Economics, 2019. 130 p. PhD Thesis.

ZHANG, Jiandong – Research on Power Distribution between Shareholders’ Meeting and Board of Directors of Public Companies. Jilin University, 2020. 144p. PhD Thesis.

ZHAO, Dawei – On the System Reform of Supervisory Board in Chinese Listed Companies. Jilin University, 2017. 132p. PhD Thesis.

ZHENG, Xuejun – Study of Independent Directorship. Xiamen University, 2001. 68p. Master’s Dissertation.

### **Official Documents**

CSRC – Announcement No. 29 [2018] of the China Securities Regulatory Commission—Code of Corporate Governance of Listed Companies (2018 Revision). Entered into force on 30 September 2018.

CSRC – Guidelines for Articles of Association of Listed Companies (2022 Revision)

CSRC – Guiding Opinions on Establishing Rules for Independent Directors of Listed Companies. No. 102 [2001].

FRC – The UK Corporate Governance Code. 2018.

FRC – Guidance on Board Effectiveness. 2018.

The Parliament of the United Kingdom – Companies Act 2006 (c 46)

### **Research Report**

Deloitte - 2018 Deloitte China Listed Companies Independent Directors Survey Report [On-line] (Chinese Version) (2018). [Consult. 2022-01-19]. Retrieved from <http://www.d-long.cn/eWebEditor/uploadfile/2018040509521119628623.pdf>

Deloitte – Report on independent Non-executive Directors of Listed Companies in China 2021 [On-line] (2021). [Consult. 2022.02.05]. Retrieved from <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/financial-services/deloitte-cn-ined-survey-report-2021-en-210603.pdf>

EY – UK Corporate Reform: Directors’ Accountability for Internal Controls. [On-line] (2021). [Consult. 2021-12-14]. Retrieved from [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_uk/topics/assurance/sarbanes-oxley/uk-corporate-reform.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_uk/topics/assurance/sarbanes-oxley/uk-corporate-reform.pdf).

## Appendices

### Appendix 1: Table of listed companies in China

Name of the company	Number of directors	Executive directors	Associated non-executive directors	Independent non-executive directors	Is chairman executive director?
Sinopharm Group	14	2	7	5	yes
ABC	13	3	5	5	yes
ICBC	11	2	4	5	yes
Greenland Holdings Group	11	2	5	4	yes
CATL	9	2	4	3	no
HIKVISION	9	2	3	4	no
Foshan Haitian	9	2	4	3	yes
Yihai Kerry	9	3	3	3	no
CSCEC	7	1	2	4	no
CITIC Securities	6	2	1	3	yes

## Appendix 2: Table of Listed Companies in the UK

Name of the company	Number of directors	Executive directors	non-executive directors	Independent non-executive directors	Is chairman non-executive director?	Are there executive directors apart from CEO and CFO?
HSBC	14	2	12	12	yes	no
AstraZeneca	14	2	12	11	yes	no
bp	12	2	10	10	yes	no
Unilever	12	2	10	10	yes	no
Barclays	12	2	10	10	yes	no
RELX	11	2	9	9	yes	no
Rio Tinto	11	2	9	9	yes	no
Sainsbury's	10	2	8	8	yes	no
Diageo	10	2	8	8	yes	no
Ashtead Group	8	2	6	6	yes	no