

## BUCHBESPRECHUNGEN

**SHEN Wei, *Corporate Law in China. Structure, Governance and Regulation*, Sweet & Maxwell, Hong Kong 2015, LXII + 669 pp., ISBN: 978-962-661-436-5, HK\$ 2,000.**

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Since 1979, the Chinese economy has undergone an unprecedented transformation from a command model to a socialist market system. How companies are governed and regulated, and how investors are protected in China's vibrant economy is a concern of legal practitioners and scholars worldwide. China's 2013 revision<sup>2</sup> of the Company Law<sup>3</sup> has sparked new attention in this more than 35-year-old debate. In his 2015 publication, "*Corporate Law in China. Structure, Governance and Regulation*", author, *SHEN Wei*, Professor of Law at Shanghai Jiao Tong University, aims to provide an understanding of the dynamics that inform the current legal landscape of different corporate actors in China. The book's ultimate goal is to give a full account of various types of Chinese corporations and their distinctive characteristics. As the title indicates, his approach seeks to frame legal questions within a broader regulatory context. This is an ambitious endeavor, and one that necessarily crosses into multiple facets of law, history, politics and socio-economics.

The book is broken down into thirteen chapters, each covering a specific topic. These range from key legal and institutional concepts to particular issues concerning Chinese legal entities. The central themes developed in the book include basic concepts of company law, corporate finance, corporate governance, mergers and acquisitions (M&A), securities regulations and private equity (PE). Although all topics are interconnected, the chapters remain largely self-sufficient.

The introductory chapter gives a brief overview of the history of company laws and touches on the complexity of their application and interpretation. The first chapter is followed by an overview of the different forms of enterprises under the company law, foreign investment law and partnership law. It explains fundamental concepts such as the bifurcated company law system – divided on the basis of the investment being foreign or domestic by origin – and the dichotomy between public and private establishments.

Chapter three takes a more theoretical direction. The discussion is devoted to basic notions of a company. The main focus is on piercing the corporate veil doctrine, which was incorporated in the Company Law in 2005. The cohesive illustration of the legal framework and pertinent judicial rulings help to provide clarity on this area of law renowned for its complexity and vagueness, not only in China, but worldwide.

In the subsequent chapter, the author explores the practice of forming corporations in China. The chapter culminates with a short examination of the regulatory peculiarities of the Shanghai Free Trade Zone.

Chapter five takes on the task of explaining corporate finance in China. It gives a detailed explanation that links issues of registered capital with basic types of funding and secured finance. Several subsections expose many practical details of how to source and structure funding, while leaving no questions unanswered both for domestic and foreign investments.

*SHEN Wei* then moves into a multi-chapter discussion of corporate governance topics. Perhaps the strongest, most revelatory part of the book, it gives a doctrinal account of the various corporate governance regulations and practices in China. Chapter six deals with general questions of corporate governance and corporate structure, clarifying the roles and responsibilities of the corporate bodies. The second part of the corporate governance debate (chapter seven) is devoted to directors' duties and liabilities. The final section culminates in the discussion of the mechanics of shareholder protection (chapter eight). Aside from discussing a shareholder's rights and remedies, attention is accorded to shareholder activism in the context of the concentrated ownership structure of most Chinese corporations.

In chapter nine the analysis turns toward examining bankruptcy proceedings. It provides the read-

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<sup>2</sup> Since its adoption, the 1993 Company Law has been revised in 1999, 2004, 2005 and 2013; *WANG Jiang Yu*, in: *Company Law in China: Regulation of Business Organizations in a Socialist Market Economy*, Cheltenham/Northampton 2014, p. 7. For a brief summary of the latest reform, see *Barth/Prautzsch/Paus*, *Reform des chinesischen Gesellschaftsrechts*, in: *Recht der Internationalen Wirtschaft* 2015, pp. 133-136.

<sup>3</sup> 中华人民共和国公司法, December 12, 1993, last amended by the Decision of the Standing Committee of the National People's Congress, December 28, 2013; for the German translation (rev. 2013) see *Pißler*, *Gesellschaftsgesetz der VR China (Revision 2013)*, in: *ZChinR* 2014, pp. 254 et seq.

er with substantial knowledge of corporate liquidation and dissolution procedures that demonstrate options for companies in financial difficulty.

Chapter 10 expands upon the themes of previous parts of the book, addressing the laws and regulations that affect mergers and acquisitions. *SHEN Wei* conveys a sound understanding of M&A processes to effectively cope with transaction models, approval procedures and cross-border contexts.

The explanations on capital markets and securities regulation are another highlight (chapter 11). The chapter takes a mammoth topic and boils it down into a relatively brief but useful depiction of the interplay between corporate and securities law. To be more precise, it reviews China's securities law infrastructure, capturing the salient features of the listing rules, including trading and disclosure regulations. The legal framework of takeovers ultimately serves as a supplement to the previous chapter.

Lastly, a word about private equity: The topic's inclusion in the book (chapter 12) is in part simply due to the fact that PE activities in China have gained significant momentum in recent years.<sup>4</sup> This being said, PE firms operate in a complex, uncertain and constantly evolving environment. The author charts out a path for navigating through the most important laws which those involved in PE financing need to be aware of. Fortunately, the chapter also contains valuable impulses for future legislative developments.

"Corporate Law in China" tries to bridge the gap between academic rigor and practical relevance. Since there is stronger focus on business practice, the book gives us fewer insights as to dogmatic questions and prospects of legal development. In this respect, more directions for future legislation would be of particular interest. Detailed suggestions<sup>5</sup> would, however, go well beyond the scope and conception of this publication. What is not covered in the book, and hopefully will be the aim of future research, is to further elucidate the basic question raised in the final chapter of why China's companies have been able to succeed without a comprehensive rule of law and corporate governance deficiencies. As yet, there exists only scant research, not allowing a comprehensive explanation of this mystery.

The book is more than a mere synopsis of Chinese company law. It makes an up-to-date statement of the subject, capturing both the status quo

and the complex interplay of forces that shape business corporations in China. Another strength is that *SHEN Wei* brings attention to areas complementary to company law, such as matters of bankruptcy, private equity and securities regulation. All findings are based on an extensive literature review, complemented by empirical and historical evidence. Moreover, the book contains many useful references to judicial decisions. Despite this wealth of topics and details, it remains an analysis with a clear agenda, written in an easy-to-read manner. It adds to the book's value that the author clearly distinguishes between domestic and foreign-invested enterprises throughout the book. Tables and graphs provide the reader with comprehensible overviews, reducing complex issues into manageable, clear terms.

*SHEN Wei's* "Corporate Law in China" is unquestionably a groundbreaking contribution to its field. In this meticulously researched, yet closely reasoned format, the author has drawn from his far-ranging legal experience to bring to life the company law of the world's second largest economy. The result is impressive. It's a compendium that constitutes a fundamental work for a deeper understanding of the Chinese corporate law regime. Despite the complexity of the subject, the book succeeds in covering the whole spectrum of relevant Chinese laws, providing a comprehensive statement of its principles. The publication's value and significance can be summarized in one statement: It gives an incisive, in depth and illuminating perspective on the topic and will thus be the first port of call for academics, lawyers, students and others approaching the subject.

<sup>4</sup> Roland Berger Strategy Consultants, think: act CONTENT, "Private equity in China", pp. 2 et seq., available at: <[http://www.rolandberger.com/media/pdf/Roland\\_Berger\\_tac\\_Private\\_Equity\\_in\\_China\\_20130721.pdf](http://www.rolandberger.com/media/pdf/Roland_Berger_tac_Private_Equity_in_China_20130721.pdf)> last visited June 19, 2015.

<sup>5</sup> See, for instance, *GU Minkang's* (now partly outdated) proposals, *Understanding Chinese Company Law*, 2nd Edition, Hong Kong 2010, pp. 363-390.