Foreword

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With the rise of China as a major economic power, this book is a welcome addition to the scholarly literature on Chinese law as the corporation is the dominant business vehicle in China. Though China is a socialist state, it is one that is heavily leavened with commercial sensibilities and China has therefore seen fit to allow companies to be incorporated through registration under a national law relating to companies, the present law being the 2005 Company Law. The dominance of the corporate vehicle as a business enterprise is a far cry from the early decades of the People's Republic of China when the corporation did not exist. Instead, all economic activities in China were then held by the state or collectives as part of the country's planned economy. This changed after the reforms of the former paramount leader of China, the late Mr Deng Xiaoping. Given that corporations are now an integral part of a dynamic Chinese economy, the manner in which the corporate vehicle is regulated and/or facilitated will have an impact on the evolution of China's socialist market economy, and in turn, the world economy. In particular, there is a need for the law to continue to emphasize issues of governance, as well as minority shareholder and creditor protection.

As the corporation is the most widely used business organization worldwide, it is not surprising that there are many aspects of Chinese Company Law that will be readily recognizable to corporate scholars and practitioners outside China. Thus Chinese Company Law recognizes the separate personality of the company and from this the limited liability of shareholders. It also recognizes that there will be occasions where the corporate veil should be pierced, notably when a shareholder abuses his or her rights to harm the interests of the company or those of other shareholders. The *ultra vires* doctrine is also a part of Chinese Company Law even as many developed economies have retreated from this. It is also noteworthy that aspects of company law recognized by other jurisdictions but not explicitly a part of China's Company Law, such as the 'business judgment rule', are considered by many Chinese academics and jurists to be part of Chinese Law. Yet because of China's position as

a socialist state, there are provisions in its Company Law that are unusual such as Article 5, which states *inter alia* that a company must ‘observe social morals and commercial ethics, act in an honest and trustworthy manner, subject itself to the supervision of the government and the public and assume social responsibility’. It is somewhat unclear how every aspect of such a statutory obligation will or can be meaningfully enforced.

An issue of interest is the extent to which Chinese corporate law sufficiently protects minority shareholders and creditors against rent-seeking behaviour by corporate controllers. In particular, there is the problem of the dominance of state-owned enterprises in the context of a lack of independence on the part of the judiciary in China together with perceptions of widespread corruption. To this end it is not surprising that Professor Wang devotes a substantial part of the book to such issues. He points out, for instance, that unlike the fairly clear distinction between ownership and management in companies incorporated in common law jurisdictions, such a distinction is blurred in China. This is because the general meeting is in charge of determining the company’s business and investment plans while the board has the power to decide on the company’s business operation plans and investment proposals. It is not clear what the line is between the two.

While some may welcome the existence of stronger shareholder rights in this context, the explanation by Professor Wang is less positive. He submits that the purpose behind these powers is to favour the majority shareholder, which, in the Chinese context, is often the state. As the powers of the general meeting can only be exercised collectively through voting by the shareholders, this means that the state as the largest shareholder in the SOEs is given some key decisional powers that can potentially undermine the independence of the board so as to prevent the latter from making decisions that are not in the interests of the state. Accordingly, the general meeting’s possession of such comprehensive powers does not necessarily entail better protection of the minority shareholders. In fact, the interests of minority shareholders are often overlooked in such a system.

This book provides a comprehensive account of Chinese Company Law that will be useful to all those with an interest in this area. Not only is the treatment of the doctrinal aspects of the law impressive, Professor Wang has injected into the book many of the policy issues and other realities that underlie the law, something that non-native observers will sometimes find difficult. For example, he points out that there is a large gap in the public expectation of independent directors and the performance of such directors (though this is not unknown in many other

countries as well). The main problems are the manner in which independent directors are nominated and the 'guanxi' based cultural environment of 'giving face' and not wanting to undermine personal relationships.

With this work, Professor Wang has made a valuable contribution to Company Law scholarship. His work will undoubtedly be useful to practitioners in and outside China who require an understanding of Chinese corporate law. It also deserves careful study by the academic community as it contains valuable insights not only about Chinese corporate law but also on the malleable nature of corporate law as it takes root in a socialist market economy. I welcome this learned work and commend it to all who are interested in this area.

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