Front. Law China 2009, 4(3): 457–473
DOI 10.1007/s11463-009-0024-1

RESEARCH ARTICLE

ZHOU Linbin, HE Zhaodan

On corporate social responsibility "beyond law" in China*

Abstract The corporate social responsibility "beyond law" is the responsibility of enterprises beyond the mandatory obligations by force of law but in line with social values and expectations. Indeed, the legal norms on such kind of responsibility are "soft law", which mainly incorporate social values and expectations in corporate business behaviors and governance structure, so as to realize corporate "self-regulation". By protecting the substantive and procedural rights of stakeholders and improving their negotiation power, the "soft law" aims at realizing the spontaneous confrontation and balance of the market, and the corporate reputation mechanism and the functions of NGOs adds much to the performance of corporate social responsibility.

Keywords corporate social responsibility, soft law, self regulation

摘要 "超越法律"的企业社会责任，是由企业承担的超出法律强制性义务规定且符合社会价值和期望的责任。确认这种责任的法律规范实为"软法"，主要是通过责任目标内化于企业的商业行为和治理结构之中，以实现企业的"自我管制"。通过保护利益相关者的实质性和程序性权利，提高利益相关者的谈判抗衡力量以实现市场的自发对抗，并以声誉机制和非政府组织的作用作为责任实施机制的补充。

* A key project "Law and China's Economic Growth" for humanities and social sciences research of universities in Guangdong Province.

Translated from *Xiandai Faxue* 现代法学 (Modern Law Science), 2008, 30(2): 37–45

ZHOU Linbin (✉)
Research Centre of Law and Economics, Sun Yat-sen University, Guangzhou 510275, China
E-mail: lpszlb@mail.sysu.edu.cn

HE Zhaodan (✉)
Research Centre of Law and Economics, Sun Yat-sen University, Guangzhou 510275, China
E-mail: hezhaodan1@126.com

关键词 企业社会责任，软法，自我管制

As a field of compatible multiple disciplinary researches, corporate social responsibility reflects the convergence of multi-disciplinary research perspectives of economics, management, jurisprudence, sociology and ethics. No matter it is the development of the "theory of stakeholders" in economics, or the management exploration on how to internalize social values and responsibility into corporate management decisions, or the political metaphor that takes enterprises as "social citizens", or the sociological perspective that takes corporate social responsibility as the investment of enterprises for obtaining social capital, or even the ethical pursuit of legal and commercial ethics contained in the norms of corporate behaviors, the multi-disciplinary research prism not only shows us a colorful 3D research picture, but more importantly, keeps driving the vigorous development of the theory and the practice of corporate social responsibility.

Nonetheless, with the vigorous rise and prosperity of the practice and legislative activities of corporate social responsibility, the practice imperatively needs further deepening under the guidance of theory as well as response by theory, and thus our research focus should shift from "what is corporate social responsibility and why enterprises need to shoulder social responsibility" to "how to implement corporate social responsibility", and the research on corporate social responsibility should concentrate on the practical operability and its systematic, quantitative and empirical features. In implementation of corporate social responsibility, it is generally realized that law is an indispensable force, and how to regulate the activities of enterprises by law so as to realize their social responsibility has become a new issue to us.

1 What is corporate social responsibility "beyond law"

1.1 Controversy over the connotation of corporate social responsibility

The definition of the connotation and denotation of corporate social responsibility has always been a controversial topic in the academic circle and there have been specification and description of corporate social responsibility in various angles.

First of all, in view of the interest subjects emphasized, corporate social responsibility goes beyond the shallow "shareholder primacy" and focuses on various stakeholders that are closely related to the survival and development of enterprises, including shareholders, creditors, employees, consumers and suppliers of enterprises, governmental departments, local communities, natural

environment and the offspring of human beings. (Mitchell, 1997)

Secondly, in view of the division by corporate social responsibility, Carroll's theory of "corporate social responsibility pyramid" has been widely recognized, whereby he divides corporate social responsibilities into four levels: At the first level are economic responsibilities, which are also the fundamental responsibilities at the bottom of the pyramid; at the second level are legal responsibilities, meaning that enterprises should operate within the legal framework prescribed by the society; at the third level are ethical responsibilities, referring to the activities and practices that are expected or forbidden by the society, which have not formed legal provisions, including what is right, just and fair, as well as morals and norms; and at the fourth level are philanthropic responsibilities. (Carroll, 2004)

Furthermore, in view of official legal documents, the EU defines corporate social responsibilities: A concept whereby companies integrate social and environmental concerns in business operations and in interaction with their stakeholders on a voluntary basis.[1]

In the exploration of the concept of corporate social responsibility, the relationship between corporate social responsibility and corporate legal responsibility often causes controversies and confusion. In the above-mentioned Carroll's division, social responsibilities cover legal responsibilities, and legal responsibilities are just a subordinate concept of social responsibilities; while in some discussions and deliberations of scholars of law in China, corporate social responsibilities are the same as legal responsibilities. For example, they think that as far as the nature and basis is concerned, corporate social responsibilities mainly refer to the legal responsibilities of enterprises toward the society. (Chang, 2006) But in many overseas research literatures (Parker, 2007), corporate social responsibilities and legal responsibilities are interwoven and independent, and the concept of corporate social responsibilities places more emphasis on assumption of the responsibilities beyond legal obligations but in line with social values and expectations, which are the responsibilities beyond legal responsibilities. This can be seen from the emphasis on voluntary behaviors in the EU definition of corporate social responsibilities.

We believe that corporate social responsibilities as a topic of multi-disciplinary researches are not a strict legal concept. The "responsibilities" here are not the penalties or adverse consequences to be borne in breach of statutory obligations,

[1] On March 22, 2006, the EU Commission issued the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee — implementing the partnership for growth and jobs: Making Europe a pole of excellence on corporate social responsibility (COM/2006/0136 final), which defines corporate social responsibility. See European Community's Policy on Corporate Social Responsibility [EB/OL]. [2007-02-05]. http://chinawto.mofcom.gov.cn/aarticla/by/ca.

which, however, reflect the response of enterprises to the ethical expectations of the society, and what the enterprises assume is the due duty of a good "social citizen" for facilitating the development of social welfare, which reflects the pursuit of enterprises for long-term development and the regression of the value of harmony with the society. Due to its extensive connotation, discussions by people incorporate assumption of legal obligations, pursuit for economic value and compliance with ethical expectations by enterprises into corporate social responsibility, but different interpretations have been made on it from different research angles of different emphasis.

1.2 Corporate social responsibility within and beyond mandatory legal constraints

To review corporate social responsibility from jurisprudential analysis, a relatively simple assessment approach is to adopt mandatory legal constraints as a split line, and accordingly corporate social responsibilities falls in the pattern within and out of mandatory legal constraints. The obligations and responsibilities prescribed by law are the fundamental requirements and the bottom line for enterprises to undertake social responsibilities; and the behaviors and obligations not legally mandatory are a higher level of responses from enterprises to social values and expectations at ethical and moral levels. The former is the overlapping of social responsibility and legal responsibility, and the latter is the social responsibility "beyond law", the difference of which can be illustrated by the following examples:

1.2.1 The most expensive cleaning staff in history

In May 2007, Miss Yang who worked for a company in Shanghai was requested by the employer to terminate the employment contract, and Miss Yang requested the company to resume the employment contract through labor arbitration by the reason that she was pregnant. In July 2007 Miss Yang returned to the company and received a notice on "change of post" from its HR department. While her monthly salary of RMB9,000 remained unchanged, Miss Yang was assigned to do cleaning for the company. Faced with moral and public denouncement from the society, the company claimed that all the decisions made were in compliance with the provisions of the Labor Law.

1.2.2 Suicide of employees in Huawei Company

In July 2007, Zhang Rui, an employee under probation of Huawei Company died by suicide because of work stress. Deputy HR manager of Huawei Company

Zhang Zhigang stated that all the employees of Huawei were indeed under pressure, but such pressure was far from crushing Zhang Rui. Huawei Company was only willing to pay an "appeasement fee" of RMB10,000, holding that since Zhang Rui committed suicide and it happened outside the company, the subsidy system of employee casualties did not apply to his death. Not long ago Hu Xinyu, another employee of Huawei Company died from excessive fatigue resulted from continuous overtime work, which was another negative news faced by Huawei Company.

1.2.3 Ren Zhiqiang: Real estate developers are not obliged to build housings for the poor

In December 2004, remarks made by Ren Zhiqiang, Chairman of Huayuan New Era Property Co., Ltd., immediately attracted extensive criticism on Internet. Internet users sharply reproved Ren Zhiqiang for his being unscrupulous, but Ren insisted that from the perspectives of business, real estate developers should sell housing buildings to the rich at a high price, while housing buildings for the poor should be handled via financial transfer and secondary distribution of the government. In his opinion, when the taxation of enterprises was at Grade A, banks were at Grade A, and there was quality guarantee towards consumers, what other responsibilities should be borne by enterprises?

By the above-mentioned examples we can see that from the perspective whether the statutory obligations are breached, the behaviors of the aforesaid enterprises may not be blamed, but from the standpoint whether their behaviors comply with social values and expectations, we may not say that their behaviors are impeachable. What those enterprises lack is nothing but social responsibility "beyond law". The main reasons that this paper does not differentiate legal responsibility and ethical responsibility at two levels as follows: (1) Fuzzy and overlapping areas are between legal responsibility and ethical responsibility, and to adopt the two-level division as a measurement can not make issues clear. (2) Though both ethical responsibility and corporate social responsibility "beyond mandatory legal constraints" emphasize self-regulation and voluntary behaviors of enterprises, the division of ethical responsibility is easy to confine the discussion within the ethical area and render it solely dependent on ethical enlightenment. (3) Corporate social responsibility "beyond law" leaves us an open research field, which is a platform on which market mechanism, legal mechanism and social public opinion mechanism work jointly.

1.3 New subject of research — corporate social responsibility "beyond law"

If the category of corporate social responsibility includes the social responsibility outside the mandatory legal constraints, the key point we emphasize or the new

issue we face is actually corporate social responsibility "beyond law". Although much research literature discusses in the academic circle how enterprises act according to law for performing their social responsibilities from the angle of various laws (such as labor law, product quality law, consumer rights and interests protection law and environmental law), there is also no substantive difference between it and the exploration on how enterprises comply with the legal obligations and legal responsibility that have the same connotation of social values and they actually have the same meaning, or we can say that was just "old wine in new bottles", with difference only in label.

In fact the rise of the campaign of corporate social responsibility is transmitting a message and reflecting a trend. While giving new meaning to the old issue, it has brought new issues like how to upgrade and expand the target values of enterprises and how to render the norms on corporate behaviors adaptive to a higher internal requirement. Of course, in the actual national situation, many enterprises even fail to perform the social responsibility prescribed by law, not to mention corporate social responsibility "beyond law". This is also one of the reasons why we differ from western scholars in the focus of concerns when analyzing corporate social responsibilities. Nonetheless, in view of the essence of the issue, the jurisprudential thinking and the research trend, corporate social responsibility "beyond law" is the new issue that we really need to explore. For a legal researcher, the first question would be as follows: For assumption of corporate social responsibility "beyond law", can law play its role, what kind of role does law play and how does law play such a role?

2 Why corporate social responsibility "beyond law" needs to be regulated

What corporate social responsibility "beyond law" exceeds is only mandatory legal constraint, which does not mean that it has nothing to do with law. Although corporate social responsibility "beyond law" is mostly the moral responsibility and voluntary behaviors of enterprises, it does not fall only into the category of ethical judgment and moral enlightenment. Without the driving power of law, there is no sufficient motivation for this kind of voluntary behaviors; without law as guidance and benchmark of conducts, an ideological mode of conducts for implementation of corporate social responsibility can not be established. It can be said that though corporate social responsibility "beyond law" is not constrained mandatorily by law, it fits in the meaning of law and the principles of law support the core of corporate social responsibility.

The regulation by law on corporate social responsibility "beyond law" reflects a trend of integration and convergence of "legalization of morality" and

"moralization of law" in the legislation of modern society. The so-called "legalization of morality" means when a moral value receives general recognition of the society, it will be incorporated into the value system of law. As the US jurist Bodenheimer said, "Those principles of moral justice that are considered as fundamental and necessary in social communication have been endowed with a strong power of mandatory nature in all societies and the enhancement of the binding force of those moral principles is realized by their transformation into legal rules." (Bodenheimer, 1999) And the so-called "moralization of law" means that the spirit and values of law have been penetrated deep in the inner mind of people and have sublimed to moral requirements that are voluntarily observed. (Cheng, Li, 2002) The US jurist Fuller who stressed the morality and justice of law pointed out in his book "The Moral Nature of Law" that the real legal system shall comply with certain intrinsic morality (procedural natural law) and external morality (substantive natural law). (Zhang, 1996) Legal norms and moral ethics share the common source in the long history of human development, the same pursuit of the principles of fairness and justice and the complimentary social adjustment that regulates and induces people's behaviors, and they often transform to each other in institutional evolution. The relationship between law and morality has experienced close combination in the ancient societies (such as "rule of etiquette" advocated by China's Confucianism and the combination of morality and law in the church law of medieval times in the West), gradual alienation in the contemporary society (such as the stress on legal techniques of the contemporary legal positivism, which excludes ethical judgment and moral reasoning from the application and execution of law), and the reunion of law and morality in the modern society (such as the convergence of the theory of natural law and jurisprudence of positivism under the influence of the thoughts of sociological law and the emergence of various social legislations representing social value standards). The convergence of law and morality is concentrated and reflected by adopting law to adjust and fulfill corporate social responsibility "beyond the mandatory constraints of law", hence incorporating moral obligations of enterprises in the category of adjustment by law, and representing social ethical values in the legal norms of conducts.

Although corporate social responsibility "beyond law" is the voluntary and spontaneous behaviors of enterprises, it is not a behavioral standard that can be self-implemented and it needs to be driven by various mechanisms, among which law is one of the important forces. Looking at the history of the campaign of corporate social responsibility, it can be found that the rise of the campaign of corporate social responsibility was originated when the labor campaign, human rights campaign, consumers campaign and environmental protection campaign were gaining momentum, and it has been promoted by various industrial

organizations and NGOs, where many multinational companies have formulated their own codes on social responsibility. Nonetheless, the campaign of social responsibility did not stop at the stage of market self-regulation, instead, it proceeded to trigger an upsurge of social responsibility legislation — there have been not only legislation in international law, such as declarations and codes of conducts established by various international organizations and the United Nations, but also successive domestic legislations on social responsibility in the countries, including the US, France, the UK, Germany, the Netherlands and Japan, which have adopted legislative regulations on corporate social responsibility, and have taken initiatives to facilitate it through various measures. (Scherer, Palazzo, 2008) Whether for corporate social responsibility within mandatory legal constraints or for corporate social responsibility "beyond law", strong supports are needed of law. Legal regulation of corporate social responsibility "beyond law" seems a paradoxical issue, and to resolve this paradox, the nature and characteristics of this kind of legal regulation need to be understood.

We believe that the regulation by law of corporate social responsibility activities "beyond law" can be defined as "soft law".[2] The concept of "soft law" fits well with the legal norms that regulate corporate social responsibility, which are similar in the formulating subjects, legal function and implementation. In view of overseas legal norms that regulate corporate social responsibility, whether it is the guidelines on corporate social responsibility drafted by the EU, or the corresponding reporting system on social, environmental and ethical issues established by enterprises at the request of the US and European countries, or the

[2] "Soft law" refers to the rules on conducts that are of no binding force of law in principle but of actual effects. The differences between "soft law" and "hard law" include: (1) Besides the legal norms formulated by the state legislative bodies which make no clauses on legal responsibilities and whose execution is safeguarded by the compulsory force of the state, "soft law" also includes the rules or agreements reached by the subjects which are not the formal legislative bodies of state but super-state communities (such as the United Nations, World Trade Organization, International Labor Organization) and sub-state communities (such as lawyer's association, doctor's association, higher education institutions and villager's committee); (2) "hard law" emphasizes sanction and penalty, while "soft law" focuses on declaration and evaluation; "hard law" emphasizes order and regulation, while "soft law" focuses on education and guidance; and "hard law" reflects state will and the extensive interests of the members of communities, while "soft law" reflects social will whereby different requirements may be formulated on the basis of different social groups so as to meet the requirements of different levels; moreover, the implementation of "hard law" is safeguarded mainly by resorting to the state mandatory power for prosecution of the liabilities for violation of law, while "soft law" mainly depends on social public opinions, moral self-regulation, internal supervision and interest induction to force the compliance of the behavioral subjects that treasure their reputations.

social responsibility rules[3] formulated by various international organizations, most of the legal documents have the nature of declaration and commitment but without deterrence of legal mandatory power. However, this does not indicate that those principles of social responsibility are of no effect in practice. For example, many multinational companies start to conduct assessment and audit on the social responsibility with their suppliers and subcontractors, and partner relations may be formed only after they pass such assessment and auditing. For instance, the Code of Business Conduct of International Council of Toy Industries (ICTI) promoted by ICTI stipulates that all the toy manufacturers that have not passed the authentication will be excluded from the list of international procurement. Such economic sanction and market pressure may be far more powerful in binding the behaviors of enterprises than the compulsory force of law. In view of the existing domestic legal regulation on corporate social responsibility, either the general provisions on corporate social responsibility in Article 5 of the new Company Law, or the Guidelines for Listed Companies Regarding Social Responsibility released by Shenzhen Stock Exchange in September 2006 and the prescribed annual reporting system with respect to social responsibility are mostly norms on advocating and encouraging enterprises to bear social responsibility, which are of no mandatory binding force of law. We can see that though the legal norms on corporate social responsibility are of no external deterrence to corporate behaviors in the form of compulsory force of the state, they depend on social values and expectations to call for internal spontaneous self-regulation of enterprises. Though their implementation may not be enforced, they can influence the conducts of enterprises the same way.

Further analysis shows that both corporate social responsibility within the mandatory legal constraints and corporate social responsibility "beyond law" need the support and guarantee of legal system and measures. The difference and characteristics of them are mainly demonstrated in the following aspects: Firstly, in view of the nature of legal norms, the former is regulated and governed by the mandatory "hard law" in the nature of order and control, and the latter is adjusted by the "soft law" that is of no mandatory legal binding force; secondly, what the former establishes are external behavioral norms and requirements that rely on the "regulation by others" of mandatory legal deterrence, while the latter is concerned about how to internalize the purposes of social values and responsibilities in the business behaviors of enterprises, which relies on the spontaneous and voluntary "self-regulation" of enterprises; thirdly, as a kind of

[3] For example, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the Global Agreement of the United Nations and the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights of the United Nations Commission on Human Rights.

"hard constraints", the former is a bottom line of behaviors that enterprises must observe and the basis for maintaining the orderly operation of social economy, reflecting a kind of basic social fairness, while as a kind of "soft constraints", the latter is more of moral and ethical nature and is the expectation for harmonious development of the society, which reflects "substantive justice"; fourthly, what law prescribes for the former is mostly explicit and specific standards for implementation of responsibilities, and if the requirements prescribed by law are not satisfied, corresponding legal responsibilities shall be borne, while the norms and requirements prescribed by law for the latter are relatively abstract and accordingly uniform criteria are hard to establish, because too low standards do not work at all and too high and harsh standards are difficult to implement; and fifthly, in view of the consequences of the shortage of corporate social responsibility, if enterprises fail to assume the social responsibility within the mandatory legal constraint, they are likely to face the penalty for violation of law, resulting in sanctions of fine or civil compensation responsibility towards the victim; while if enterprises fail to bear corporate social responsibility "beyond law", even though they do not incur corresponding legal sanctions, their public image and reputation will be damaged, and consequently their sales and market share may be affected.

In addition, though corporate social responsibility "beyond law" is not legal responsibility or obligation, it is possible to result in contractual responsibility and obligation; and though it is of no mandatory binding force of law, its binding force comes from the observance of the "spirit of contract" and the commitment to "pacta sunt servanda". In view of the practice of corporate social responsibility, the above-mentioned declarations, norms and commitment regarding the assumption of corporate social responsibility released by various international organizations, industrial associations and multinational companies are actually a kind of contract, which are of strong binding force and influence on the behaviors of enterprises though they are not mandatorily enforceable in law. Though corporate social responsibility "beyond law" can not be used directly as claim of disputes due to its lack of legal enforceability, when enterprises are in breach of the self-regulatory norms or contractual commitments of industrial associations regarding corporate social responsibility, how will judiciary organs judge whether the corresponding sanction or penalty by industrial associations is of statutory force? In our opinion, according to the principle of judicial autonomy and pacta sunt servanda, the commitment of enterprises to perform social responsibilities is of certain binding force. If the judiciary organ believes the sanction by industrial associations is of substantive rationality, such sanction should be granted with legal enforceability; otherwise the statutory force of the sanction shall be negated, an important factor for the judgment and consideration of which is the value connotation and the contractual spirit of corporate social

responsibility.

3 How legal regulations carry out corporate social responsibility "beyond law"

"Self-regulation" is considered a substitute and supplement to the traditional legislation of "order and control", as well as an in-depth reflection of "regulation failure", it is designated to safeguard the interest of the stakeholders of enterprises more effectively mainly through indirect intervention of the government and self-regulation of enterprises. "Self-regulation" differs from external regulation in that it causes enterprises to proactively bear responsibility, regulate their own behaviors in a self-regulatory way, and to be more concerned about their internal governance process rather than external responsibility consequences by change of governance structure and various working mechanisms. It holds that the cause of the behavioral consequences of violation of legal and ethical responsibilities of enterprises is certain defect and inadequacy in their governance structure and decision making process, and as a result, the key to solution is to improve the internal governance structure according to the value target of social responsibility. Law shall enable enterprises to transcend the shallow self-interest, to establish the target of the undertaking of social responsibility, and to embody such target in the corporate structure and practice, hence enabling enterprises to pursue interests within the responsibility framework similarly, to reduce short-term interest incentives for enterprises and their management, to enhance long-term interest incentives, to combine self-interest with long-term interest, and to align the interest of shareholders and that of stakeholders, hence triggering and facilitating the self-regulatory behaviors of the enterprises.

The adjustment of corporate governance structure by the "self-regulation" for realizing corporate social responsibility is reflected as follows:

(1) The fiduciary obligation of directors shall be extended, hence extending the fiduciary responsibility of directors towards shareholders to stakeholders including employees, consumers, suppliers, environment and communities. When executing corporate business, directors shall ensure that stakeholders receive appropriate return to their specific investment in the company and they shall try to avoid negative externality on the environment and communities caused by corporate business operation, otherwise the relevant remedy or compensation shall be made; and when there are conflicts of interest among stakeholders, directors shall make a balance an impartial attitude.

(2) In corporate governance, the board of supervisors, outside directors and independent directors shall be for stakeholders. As the board of supervisors and

independent directors assume the function of supervising and managing corporate business decisions, it is easier for them to supervise the exercise of corporate power and the performance of social responsibility from the standpoint of stakeholders. Law may enable the board of supervisors to better reflect its supervision function by adding the proportion of employee representatives in the board of supervisors and prescribing the authority and procedure of their participation in decision making and their supervision on execution concerning the interest of stakeholders.

(3) An advisory committee on behalf of various stakeholders can be set up to put forward related analysis opinions and policy recommendations to the directors and management of the company when the business decision of a relatively big impact on the interest of stakeholders and the committee is also entitled to disclose and give notification to the public on the execution of social responsibility by the company, the specific authority, function and procedures of which may be specified in the articles of association of the company. (Turnbull, 2006)

(4) The audit, examination and information disclosure system shall be establish for implementation of corporate social responsibility, hence enabling those companies that treasure reputation and image to be more strict in self-regulation with transparent and open information. Information disclosure of corporate social responsibility has already been implemented in some western countries long ago, and many enterprises have adopted the reporting mode that combines finance, environment and social responsibility, hence releasing comprehensive performance of corporate operation to the society in a transparent way. In China, the Guidelines on Social Responsibility of Listed Companies promulgated by Shenzhen Stock Exchange also requires listed companies to establish the social responsibility system, regularly review and assess the implementation of the corporate social responsibility system and the issues that exist, and disclose them together with annual reports.

Compared with governmental regulation, "self-regulation" reduces the cost and improves the effectiveness of regulation, and therefore, considered as a useful supplement, it is winning more and more attention and included in corporate regulation and governance frameworks. In view of interest incentives, the willingness of enterprises to assume social responsibility is closely related to the long-term interest of enterprises and shareholders. Through analysis, Geoffrey Heal held that the implementation of corporate social responsibility and self regulation reduce the conflicts between enterprises and their stakeholders, help enterprises establish trust and reputation, enhance the confidence of stakeholders in dealing with enterprises, hence benefiting enterprises and shareholders in the form of increased sales, savings in cost of capital and pooling of loyal employees. (Heal, 2005) Riyanto and Toolsema stated in view of

analysis on agency cost that the implementation of corporate social responsibility may promote the management to make more efforts and consequently reduce the supervision cost of shareholders and improve the profitability of enterprises. (Riyanto, Toolsema, 2007) Nonetheless, it still remains to test by practice and explore in theory to what extent the self-disciplined "self-regulation" of enterprise may improve corporate governance structure and under what conditions it may better promote enterprises to implement social responsibility. Some scholars have adopted the event-study method to conduct positive study on the self-regulation activities of enterprises in the Netherlands. The results showed that there was no substantive change in the feature of corporate governance structure and the relationship with the value of enterprises before and after the implementation of such activities, and thus, there were doubts on the effectiveness of such "self-regulation" without safeguard by external execution. (De Jong, 2001) Moreover, the request for directors to assume responsibility towards stakeholders in the implementation of corporate social responsibility is most likely to end up with "being responsible for everybody means no need to be responsible for anybody". In China, it still takes a lot of efforts to protect the rights and interests of medium and minority shareholders, and neither external legal regulation nor internal adjustment of governance structure has achieved obvious improvement. As for the stakeholders who have a weaker voice in enterprises, to safeguard their rights and interests by reliance on the self-regulation of enterprises is just a dream. In implementation of corporate social responsibility, much more continuous efforts are still needed to turn the ideal mode of "self-regulation" into reality.

In view of analysis of economics, the issue of corporate social responsibility is actually a rectification of the imbalance between social cost and individual cost due to the negative externality in the course of corporate production and operation. Pigou and Coase have enlightened us by their different ways of solutions to the issue of social cost: Compared with the interference by the external regulation of the government, market transactions and voluntary cooperation with clearly identified property rights are more likely to realize optimized allocation of resources and the economic efficiency of the society.

Therefore, the most important motivation for assumption of corporate social responsibility "beyond law" comes from the market, since the motive force and pressure of the market form an effective constraining mechanism for the implementation of corporate social responsibility. For instance, consumers can drive the implementation of corporate social responsibility through their purchasing power and the purchase by consumers of the products that conform to the standard of social responsibility will create market competitive advantages for their manufacturers, hence attracting other enterprises to move towards such trend. As a result, some enterprises deem the performance of social responsibility

as an important marketing strategy to establish their brand image and increase their market shares. In addition, better implementation of corporate social responsibility may not only win the trust of business partners, but also attract investors and obtain more funds for development. Currently, the investment based on social responsibility that targets enterprises with good performance in social welfare, finance and environmental protection has gained momentum throughout the world. Take the US for example. In 2005 social responsibility investment fund in the US amounted to 2.29 trillion US dollars, accounting for 9.4% of total funds of the year in the US. It can be said that the proactive assumption by enterprises of social responsibility is usually realized through interest incentives in the spontaneous market. And the operation effect of a market mechanism is often related to different market environments. If consumers have no preference among the products of the enterprises with different sense of social responsibility, the enterprises would have no internal motivation to undertake social responsibility. On the other hand, if consumers have strong preferences, the internal motive force of the market will become more powerful. In the markets of different levels of competition, such as the market of perfect competition or that of complete monopoly, the implementation of the market mechanism may be restricted as the influence of the manufacturers is too weak or the choice of consumers is too limited.

Coase Theorem tells us that the smooth realization of the market spontaneous confrontation mechanism is based on the preconditions of the effective definition of rights and the equal dealing status of market subjects. The lack of corporate social responsibility is due to the failure of effective safeguard of the rights and interests of the shareholders including creditors, employees, consumers, suppliers, communities and environment, and they are often in a disadvantaged position in their cooperation with enterprises. Consequently, we need to fully understand and protect the substantive and procedural rights of other stakeholders in the self-confrontation with the enterprises, and to increase their negotiation power through various mechanisms and policy measures, hence replacing the compulsory legal intervention with the spontaneous confrontation of the market.

As one of the instruments of the society, law works with other social control mechanisms to better realize social values and purposes. Those non-official norms and mechanisms include the role of reputation mechanism, the promotion of NGOs, public opinions and education and awareness of enterprises and consumers.

Reputation mechanism is considered as an alternative to governmental regulation, which plays a positive role in mitigating the market failure due to information asymmetry. Waddock defined reputation as the perceptive capacity of organizations to meet the expectations of stakeholders. Reputation not only functions as information signal, but also acts as warranty for performance of

contract. The reason is that if an enterprise fails to meet the expectations of stakeholders, it will lose their accumulative capital in reputation investment. (Waddock, 2000) In reality, corporate social responsibility is a way to build up a good corporate reputation and many companies start to pay attention to corporate social responsibility. The better the reputation of an enterprise, the more the competitive advantages the enterprise may have in labor market, commodity market and capital market, and the more the profits it will bring to the enterprise, hence improving the incentives for the enterprise to undertake social responsibility. As indicated by the increasingly growing number of contest and assessment in the community of enterprises such as those for "the most respected enterprises", "the best employers" and "the enterprises of the best public images", reputation mechanism is playing a more and more important role in the implementation of corporate social responsibility. The effect of reputation mechanism is sometimes even more powerful than the mandatory mechanism of law, once the reputation of an enterprise is damaged, the cost of losing the trust of consumers and the market share may be far higher than the penalty for violation of law. However, the role of reputation mechanism varies substantially in the enterprises of different sizes, in different market patterns and environments. Positive study shows that reputation mechanism is of a much weaker role in small companies than in large companies. For example, scholars including Spencer have found that the possibility of implementing environmental policies by small companies is limited as the effort of small companies in improving the environment is hard to get return from the market. (Spence, 2000) Also reputation mechanism is of a more restraining role in a monopolistic competition market than in a perfect competition or a complete monopoly market, because consumers have certain market control power to punish the enterprises of worse reputation, and the brand image of enterprises is of a bigger role in obtaining the support of consumers. In addition, when the NGOs that drive social welfare in the market are relatively active and the circulation of information by media makes the behaviors of enterprises more transparent, the role of reputation mechanism is more obvious.

NGOs have made critical contributions to the promotion and implementation of corporate social responsibility. Initiated and summoned by various international labor organizations, consumer groups, human rights organizations and environmental protection organizations, the worldwide campaign of corporate social responsibility has given rise to a series of social activities, and promulgated a large number of principles, standards, commitments, and declarations, hence forming powerful social pressure and orientation of public opinions, and playing a key role in the legal transformation based on the orientation of corporate social responsibility in countries. As the representative subject of social public welfare, NGOs overcome the issue of "free-rider" of

individual stakeholders existing in the promotion of corporate social responsibility, and reinforce the organizational power of stakeholder communities and the power to contend with enterprises. When interviewed by a journalist from Finance Magazine, chairman of the UK Federation of Corporate Social Responsibility Deborah Doane admitted that NGOs are an important force in the citizen society, as without strong organizations, it is hard for individuals to seriously challenge the powerful decision makers and huge enterprises. Through the events that promote corporate social responsibility activities, NGOs publicize the ideas of corporate social responsibility, influence the legislation of corporate social responsibility and participate in the public welfare litigations of corporate social responsibility, hence making important contributions to the implementation of corporate social responsibility. NGOs form a non-governmental, market-oriented and spontaneous driving and constraining force of corporate social responsibility, constituting a useful supplement to governmental regulation. In China, NGOs have witnessed great development in recent years, and by the end of 2006, the number of NGOs had reached 346,000 in China, playing a positive role in various areas such as poverty alleviation, environmental protection, education, healthcare and employment. Nevertheless, as the overall level of Chinese NGOs is still relatively underdeveloped, they have failed to play a due role in implementation of corporate social responsibility. Institutional conversion, organizational standardization and governmental support are required to facilitate the development of Chinese NGOs so that they can play a more important role in implementation of corporate social responsibility.

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Author

Zhou Linbin is a doctoral supervisor, vice dean and professor in the Faculty of Law at Sun Yat-Sen University. His research covers civil law, economic law, commercial law, law and economics. During his over twenty years' research, he has published many academic works, for instance, Introduction to Comparative Study of Commercial Law (2001), A New Research on Property Law (2002), Law and Economics: The Theory and Practice of China (2007). Moreover, he has released over 30 articles in the academic journals of China, such as Social Sciences in China, China Legal Science, Chinese Journal of Law.

He Zhaodan, Economics Doctor of Sun Yat-Sen University, mostly focuses on Law and Economics. She has published six research articles in the academic journals of China.