

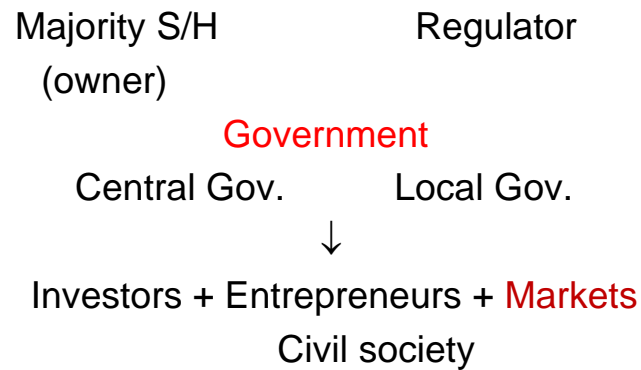
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Corporate Governance of Chinese SOEs

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- Past
- Present
- Prospect

Key Features of China



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Enterprise State Owned Assets Law

(passed on Oct. 28, 2008, became effective on May 1, 2009) 企业国有资产法

- Art. 5
- Wholly State-Owned Enterprise 国有独资企业
 - **Law on State-Owned Industrial Enterprise** (passed in Apr. 1988, revised in Aug. 2009)
- Wholly State-Owned Company 国有独资公司
- State Capital Controlled Company 国有资本控股公司
- State Capital Invested Company 国有资本参股公司
 - **Company Law**

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Company Law

- Promulgated on Dec.29, 1993 and effective as of July 1, 1994.
- First Amendment: Dec.25, 1999 (Re. 2)
- Second Amendment: Aug.28, 2004 (Del.1)
- Revised on Oct. 27, 2005 and effective as of Jan. 1, 2006.
- Third Amendment: Dec.28, 2013

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Backdrop: the SOE Reform, why?

- Contribution to macro economic development
- Underperformance – Loss incurrence
- Poor management – short of carrot and stick
- Severe debt problem – bank loans (indirect financing mainly)
- Highly concentrated and illiquid ownership
- Planned economy and lack of market mechanism
- **Soft Budget Restraint** (János Kornai)

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Reform & refinance SOE

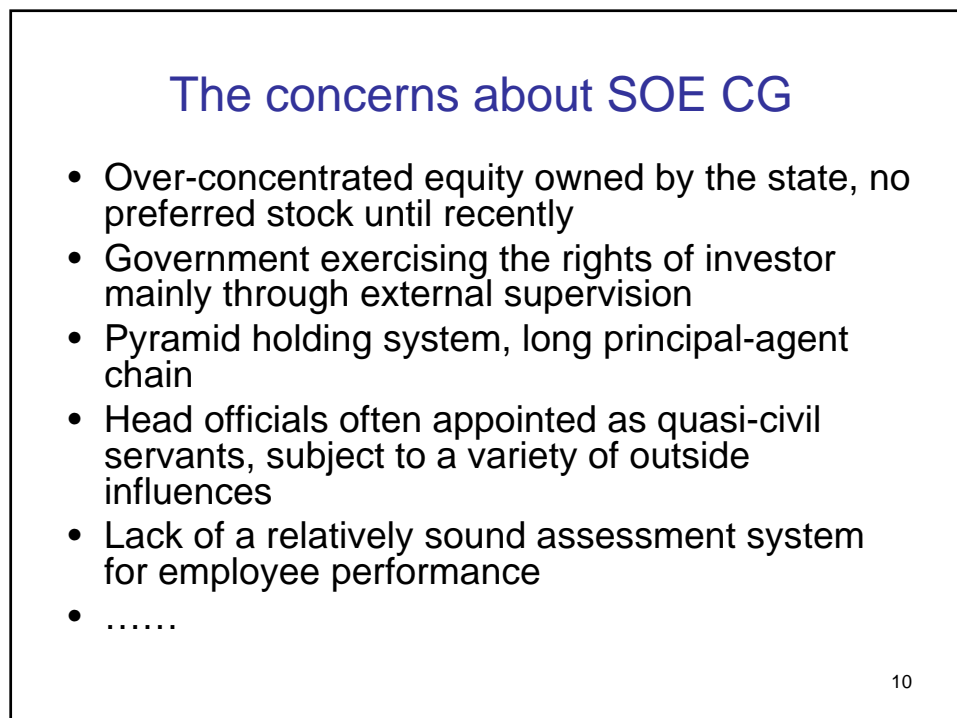
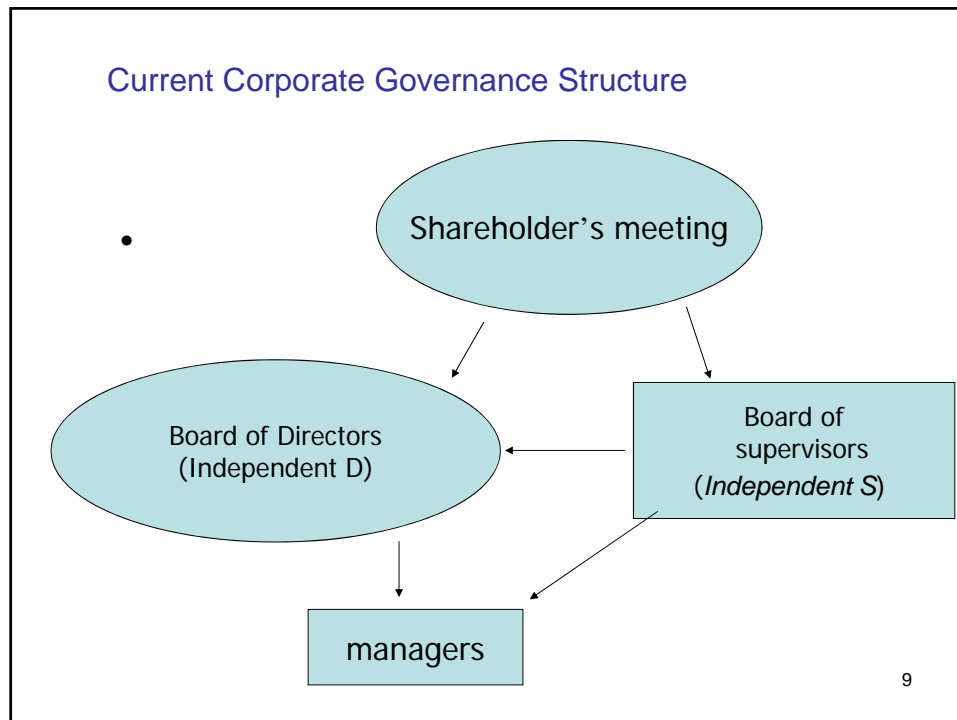
- For small & medium SOE, in particular those local ones: corporatization/ privatization (many owned now by managers or employees)
- For large SOE: wholly owned (military industry, etc); others incorporated and brought in more S/H, including foreign investors (sometime controversial); most recently, mixed/hybrid/diversified ownership 混合所有制(Hun He)

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Progress of Company Law

- Total Number of Articles: 218
- Simplifying the formation conditions
 - Legal Capital easing up (2013 Amendment)
- Granting more autonomy to company (AoA, Articles of Association)
- Enhancing corporate governance (fiduciary duty)
- Protecting S/H Rights further

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The common comments / criticism

- Absent owner problem: the missing of true shareholder, while the overreaching of investor (government) and /or insiders
- As for CG, alike only in form rather than in spirit (hypotaxis vs. parataxis)
- Several controversial issues for example
 - Regulatory officials attending the Board meeting
 - Sliding door & bank managers' rotation
 - Dissatisfactory independent directors
 - The leaving of foreign cornerstone investors in succession

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New round of reforms

- Mixed/hybrid/diversified ownership 混合所有制
Sinopec retail unit (30% stake, 2014)
Hope; catalyst for growth; supplementary?
Mixed feelings
- Cap the SOE executive remuneration (controversial)
- Enforcement a/g SOE (for example, Anti-trust)
- Judiciary system restructuring
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Conflict of interests

- The **localization of judicial power** results in a situation that the local courts are not able to resist the political influence of local governments, thus can not remain impartially when disputes involve local SOEs.
- CPC 3rd Plenum of 18th Congress (Nov. 2013)
- CPC 4th Plenum of 18th Congress (Oct. 2014)

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4th Plenum of CPC's 18th National Congress Central Comm. (Oct. 20-23, 2014)

- **Court** -- reduce extra-judicial interference
- eliminating leverage local officials influence
- establishment of "circuit courts" operating across provincial jurisdictions
- lifetime liability on court officials mishandling major cases
- more consistence, guiding cases
- transparent, independent and professional

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Thanks !

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