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1. Special Observer

A Retrospect of Legal Cooperation between Europe and China in 2017

Authored by Dr Chi Zhang*

Ever since the 'One Belt One Road' Initiative was launched by the Chinese government, the cooperation between China and European countries has been boosted much more rapidly than ever before. The Europe-China economic cooperation and financial investment need a comprehensive legal and policy environment as institutional infrastructure for a long-term development. This article aims to review the projects and related progress in legal cooperation between China and European countries, by which our readers may get a whole picture of the interaction of law and regulation between China and Europe during the passing year and get a glimpse of its prospectus in the upcoming year.

At the highest level of legal communication between Europe and China, the second EU-China Legal Affairs Dialogue took place in Brussels on 16-17 October, followed by a study visit to Paris on 18-19 October. The Dialogue was created by consensus at the 17th China-EU Summit in 2015 which aims to enhance the cooperation and communication between the EU and China in a context of globalization. This second meeting of the Legal Affairs Dialogue invited policymakers, non-governmental organisations and academia from the EU and China to participate. The Dialogue focused on better regulation and improvement of the quality law-making and discussed the importance of transparency, the involvement of stakeholders, evidence-based policy-making and uniform implementation of laws; as well as the making and development of the Chinese Civil Code. As agreed by both sides, and in line with the terms of reference, the third Legal Affairs Dialogue will be held in 2018 in China.

In the respect of direct investments, the economic cooperation between China and OBOR countries were also developing in a highway. The China-Central and Eastern Europe Investment Cooperation Fund (CHINA-CEE FUND) was established in 2012, which is organized in the form of limited partnership. The limited partners (investors) of the CHINA-CEE FUND are commonly the national policy banks from both China and the CEE countries (e.g. The Export-Import Bank of China, etc.) and the general partner is registered in Luxemburg whose management team consists of very experienced financial and legal experts from the CEE countries. In November 2017, the

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National Export-Import Bank of Hungary agreed to contribute 100 million Euros to CHINA-CEE FUND as a limited partner. By the end of October 2017, the CHINA-CEE FUND has successfully invested in more than thirty projects including but not limited to infrastructure, energy, corporate re-organizations in the CEE countries.

In terms of academic cooperation between Europe and China, the Fourth China-Europe International Frontier on Legal Cooperation was held on 9th June 2017 in Zagreb, Croatia. The China-Europe International Frontier on Legal Cooperation is a long-term cooperation mechanism between the European countries and China, in this year the theme of the meeting was the 'Cooperation in anti-corruption' and 'Improving the efficiency in legal cooperation between China and Europe'. The law scholars from China, Croatia, Czech Republic, Slovenia and Serbia exchanged their opinions and experience in anti-corruption in public governance and the strategies for enhancing investor protection in cross-border investment between China and Europe.

The above-mentioned cooperation in law between China and European countries is only the tip of the iceberg, the economic and legal interaction between China and Europe has achieved a series of fruit during this year in the context of OBOR Initiative. The year of 2017 is a different year for both China and Europe, especially for the CEE countries, Beijing OBOR Initiative International Summit which was held in May has clarified that the primary goal of the cooperation between China and OBOR countries in close future will be 'the communication of policy and law' which means that the legal cooperation between China and European countries will be accelerated further in the upcoming year. We believe that the legal cooperation and communication between China and Europe will be a powerful dynamic for guaranteeing the co-prosperity for the both. We will continue to follow up developments and progress in this field and facilitate better understanding the trend of Sino-European institutional construction in 2018.

Editor's Note:

In recent years, the Chinese government has promoted reforms from different perspectives in order to build a better business environment meeting international standards. More and more Chinese companies have become publicly listed companies in the US stock markets.
In order to provide a close look and better understanding at changes in this field, we have organized the following Section on 'Company Law', with papers from our expert consultants and members.

2. Company Law

2.1 To be or not to be?

— An Empirical Study on Dual-class Share Structure of US Listed Chinese Companies (II)

Authored by Judge Fa Chen and Dr Lijun Zhao*[1]

Abstract:

Dual-class share structure is widely used as a hostile takeover defense. However, it is extremely controversial. There is neither theoretical consensus nor practical trend relating to its application. Currently, Mainland China employs the one share, one vote principle and is witnessing hostile takeover boom. Nevertheless, little research has discussed the feasibility of adopting dual-class share structure as a solution.

This paper aims to fill in the research gap through analyzing the feasibility of adopting dual-class share structure in China mainly by way of analyzing the necessity and devising a framework of limited application from an empirical perspective.

2. An Overview of the US Listed Chinese Companies with Dual-class Share Structure and Other Takeover Defenses

2.1 The US Listed Chinese Companies with Dual-class Share Structure

Currently, there are 150 Chinese companies[2] listed on the American stock exchanges, including 63 companies on NYSE, 85 companies on NASDAQ and 2 companies on AMEX. Of the 150 companies, 45 were listed after 2011; one corporation named Wins Finance Holdings Inc (symbol: WINS), which was listed on NASDAQ in 2015, should be excluded from the sample since it

[1]* *This paper has been published in Journal of International Business and Law*, 16(2017), pp.215-248. Full text can be downloaded, free of charge, from http://scholarlycommons.law.hofstra.edu/jibl/vol16/iss2/6/

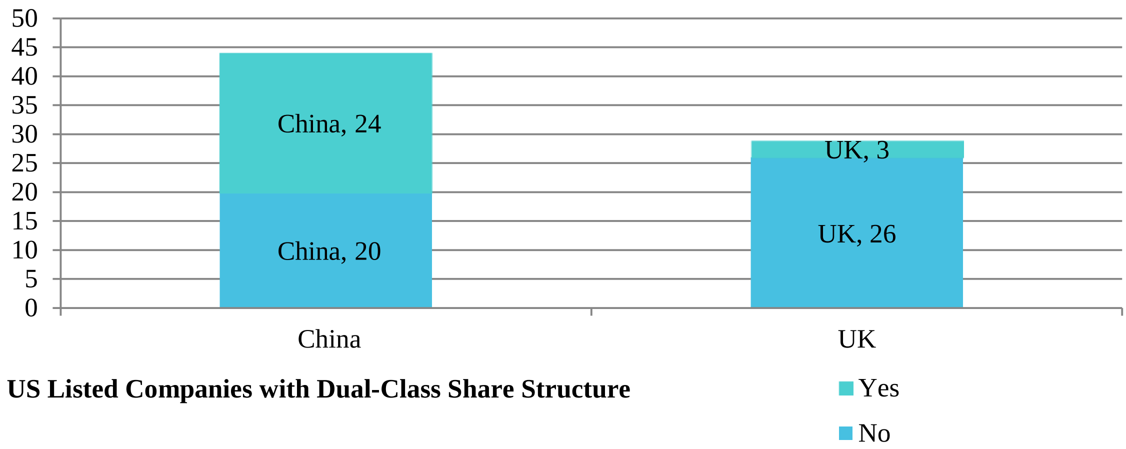
[2] Companies headquartered in China that raised capital through issuing ordinary shares (or depositary receipts over ordinary shares) by primary listing on the American stock exchanges are counted. Companies which are also listed in Hong Kong or China are not included as well as those that were delisted or suspended as of 30 June 2016. This criterion is applicable afterwards unless specified. Data sources: NASDAQ and NYSE.

achieved US listing via the merger with a shell company rather than IPO[3]. Therefore, the sampled subject to be analyzed in this part is 44 companies, which were listed on the American stock exchanges from 1 January 2011 to 30 June 2016.

Among these 44 companies, 24 issued dual-class shares during their IPOs[4], including 13 on NYSE while the other 11 on NASDAQ[5]. Furthermore, one company, Xunlei Limited (symbol: XNET), proposed to adopt DCSS according to its prospectus but eventually employed the OSOV principle during its IPO in 2014[6]. Moreover, two companies used DCSS, but had been delisted[7].

It seems that DCSS and the OSOV principle enjoy a similar popularity since the number of the US listed Chinese companies with DCSS prevails over their counterparts with single-class share structure (SCSS) slightly. However, compared with the UK contemporarily, of which only 3 out of the 29 US listed British companies issued multiple voting shares[8], DCSS seems to be more attractive to the US listed Chinese companies (see Figure 1).

Figure 1: Comparison between China and the UK in terms of the Application of Dual-class Share Structure on the American Stock Exchanges from 1 January 2011 to 30 June 2016



* Figure drawn up by the authors. Sources: NASDAQ and SEC.

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[3] The parent company of WINS served as the shell in this merger. Detailed information.
[4] Data as of 30 June 2016, source: SEC, Company Filings, the prospectuses and annual reports of these 44 companies.
[5] Detailed information of the 24 US listed Chinese companies with DCSS, see Appendix I.
[6] See SEC Company Filings. According to Xunlei Ltd's initial prospectuses as of 8 June 2011, its shares would be divided into Class A shares with one vote per share and Class B shares with ten votes per share. However, pursuant to its revised edition of prospectuses as of 12 June 2014, Xunlei Ltd chose one share, one vote framework eventually.
[7] The two companies are Sungy Mobile (symbol: GOMO) and Youku Tudou (symbol: YOKU), which were listed on NASDAQ in 2013 and NYSE in 2012 respectively. GOMO was delisted in 2015 due to the going-private transaction between the major shareholders and small shareholders; while YOKU was delisted in 2016 on the basis of the acquisition by BABA. These two companies are not counted into the 24 companies with DCSS.
[8] Data as of 30 June 2016, sources: NASDAQ and SEC.

There is no clear tendency towards or away from the application of DCSS by the US listed Chinese companies during their IPOs. Overall, from 2011 to 2014 the number of those companies with DCSS succeeded that without it; peaking at 2014 before declining fast afterwards (see Figure 2, and Appendix I containing detailed information on IPO dates).

Figure 2: The Number of the US Listed Chinese Companies with and without Dual-Class Share Structure from 1 January 2011 to 30 June 2016

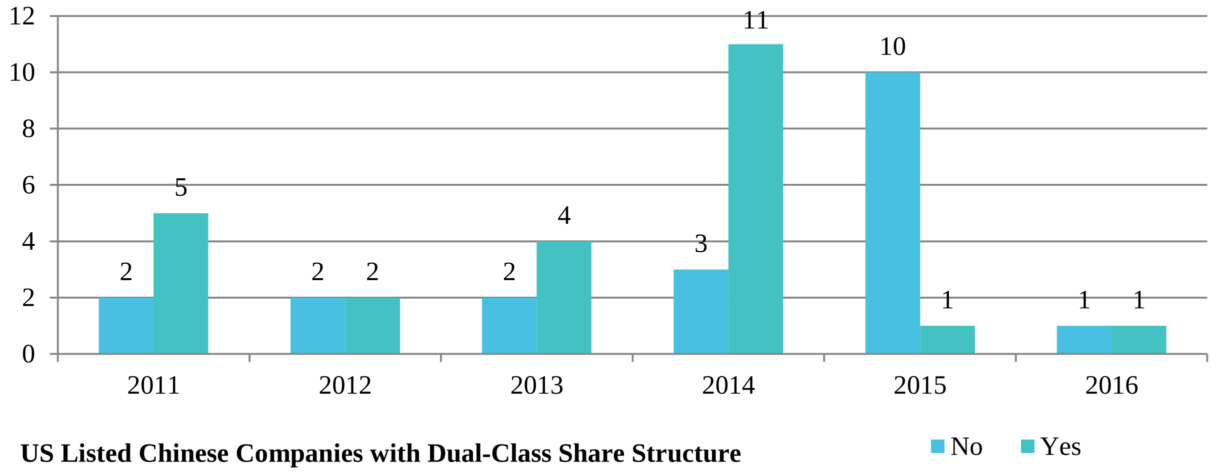

*Figure drawn up by the authors.

Through their US IPOs, the 24 companies with DCSS jointly raised USD $5,585,000,000 in capital, which represented 19.53% of the total IPO funds raised by the 44 US listed Chinese companies[9]. As of 30th June 2016, they possessed a combined market capitalization of approximately USD $78,237,000,000, which was 27.85% of the total market capitalization of the 44 companies[10].

For industry classifications, Computer & Software contributes the largest proportion of the 24 companies with DCSS, which is employed by 10 companies with a percentage of approximately 42%[11]. This industry is followed by General Retailers and Healthcare Services, which are operated by five companies and two companies respectively; while the other seven companies involve seven different business fields (see Figure 3).

[9] The total capital raised by the 44 Chinese companies through their US IPOs was USD $28,592,000,000. Data source: NASDAQ.

[10] The total market capitalisation of the 44 Chinese companies was USD $280,924,000,000 as of 30 June 2016. Data sources: NASDAQ and NYSE. Detailed data of market capitalisation of the US listed Chinese companies with DCSS, see Appendix I.

[11] The percentage is calculated by the authors. 10 ÷ 24 = 41.67%.

Figure 3: Industry Classifications of the US Listed Chinese Companies with Dual-Class Share Structure from 1st January 2011 to 30th June 2016

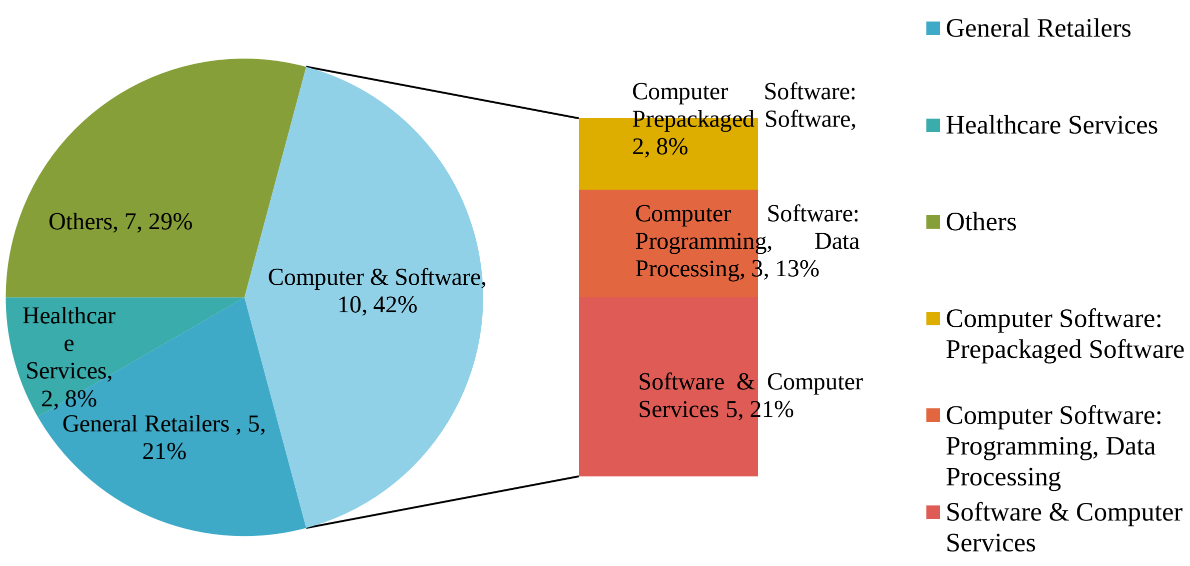

*Figure drawn up by the authors.

2.2 Other Takeover Defenses in Use by the US Listed Chinese Companies

In addition to DCSS, these US listed Chinese companies also adopt other takeover defensive measures. In this part, these takeover defenses in use will be analyzed.

2.2.1 Conditional Dual-class Share Structure and the Variant of Dual-class Share Structure

One apparent characteristic of DCSS lies in the fact that two classes of shares carry differentiated voting rights. In this strict sense, the company named Autohome Inc (symbol: ATHM) does not employ DCSS since both its Class A shares and Class B shares are entitled one vote per share[12]. However, its articles of association reverse this status.

According to these articles, where the shareholding of the controlling shareholder falls below 51% but remains above 39.3% regardless of the specific percentage, the Class B shares held by the shareholder as a whole would carry a fixed voting power of 51%[13]. In other words, less than 51% of

[12] Source: SEC, Company Filings, The Articles of Association of ATHM filed on 27 November 2013.
[13] The Articles of association of ATHM: If the number of Telstra's shares represents more than or equal to fifty-one percent (51%) of the total issued and outstanding shares, then each Class B ordinary share shall carry the right to one vote. If Telstra's shares represent less than fifty-one percent (51%) but more than or equal to

shareholding represented by Class B shares could carry 51% of voting rights under special conditions.

Furthermore, these articles of association state that where the controller's shareholding is above 39.3%, they are entitled to appoint at least a majority of the directors on the board, as well as, fill the vacancy in case a director he nominated is removed. Moreover, the directors appointed by the controller are not obliged to retire by rotation[14]. These articles jointly result in the effect that special control power is directly entitled to the particular person who holds Class B shares. It is hard to say there is any substantial difference between this mechanism and the rationale of DCSS which indirectly grants the specific person the right to control through weighting his voting power. On this basis, ATHM employs a conditional DCSS[15].

The pattern of LightIn The Box Co Ltd (symbol: LITB) is special as well. LITB issues a single class of shares, of which the mode conforms to the OSOV principle at the general meeting of shareholders under most circumstances. However, in case it relates to a change of control of the company, the shares held by the founders are entitled three votes per share[16]. This means that the founders' shares would be converted into multiple voting shares under such special circumstances. Nevertheless, it is proper to regard this mode as a variant of DCSS rather than a conditional DCSS as there is a single class of shares after all[17].

2.2.2 Staggered Board

Another takeover defense commonly used by the US listed Chinese companies is staggered board. From 2011, five out of the forty-four US listed Chinese companies[18] have applied such defenses in their articles of associations, taking up a percentage of over 10%; and all these five companies were listed on NASDAQ in 2015. Moreover, one company, Acorn International Inc

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thirty-nine and three-tenths percent (39.3%) of the total issued and outstanding shares, then each Class B ordinary share shall carry such number of votes that would result in Telstra's shares carrying, in the aggregate fifty-one percent (51%) of the total voting rights in the company. Source: SEC, Company Filings, The Articles of Association filed on 27 November 2013.

[14] The Articles of association of ATHM: so long as the Telstra shareholders in the aggregate hold at least fifty-one percent (51%) of voting rights represented by the issued and outstanding voting shares in the company, the Telstra shareholders shall be entitled, but not obligated, to appoint at least a majority of the directors and remove and replace any director so appointed, in each case by depositing a notification of appointment or removal at the registered office of the company…a Telstra director shall not be subject to retirement by rotation and should not be taken into account in determining the number of directors who are to retire by rotation so long as the Telstra shareholders in the aggregate hold at least fifty-one percent (51%) of voting rights represented by the issued and outstanding voting shares in the company. Source: SEC, Company Filings, The Articles of Association filed on 27 November 2013.

[15] ATHM is calculated into the 24 US listed Chinese companies with DCSS.

[16] The Articles of association of LITB: Each holder of our ordinary shares is entitled to one vote per share. However, in matters related to change of control, certain founding shareholders will be entitled to three votes per share. Source: SEC, Company Filings, the Articles of association filed on 23 May 2013.

[17] LITB is not counted into the 24 US listed Chinese companies with DCSS.

[18] Source: SEC, Company Filings. Detailed information, see Appendix III.

(symbol: ATV), proposed to adopt a staggered board according to its prospectus but employed a single class of directors eventually. Furthermore, none of the US listed Chinese companies adopt DCSS and staggered boards simultaneously, although they do not conflict.

Take Pacific Special Acquisition Corp (symbol: PAAC) as a representative to reveal the functionality of staggered board, PAAC divides its five directors into two classes with three directors in Class A and two directors in Class B. Where the directors of Class A face replacement and election at the general meeting of shareholders in 2016, Class B directors can stay on the board until the following general meeting of shareholders in 2017. In 2017, Class B directors will be re-elected wholly while Class A directors stay unchanged until the 2018 annual general meeting of shareholders. In other words, Class A and Class B retire alternatively by rotation rather than simultaneously. Correspondingly, the term of office is two years. It should be noted that where there are three classes of directors, the term of office would be three years as employed by the other four companies with staggered board structures. It means that under this mode the amount of classes equals the directors' term of office. Special attention should be paid to the stipulation of Wowo Ltd (symbol: JMU), which sets a sunset clause of the rotational election of different classes. Pursuant to its articles of association[19], after each class of the directors experiencing election, the method of rotational election will expire. Instead, one third of the directors (or, if their number is not a multiple of three, the number nearest to but not greater than one third) will retire from office and stand for election at annual general meeting of shareholders. It means that an unfixed scope of directors will retire annually regardless of which class they are from; and accordingly, the term of office is not fixed.

The mechanism of staggered board could make a target company less attractive rather than frustrating a hostile takeover fundamentally. It accounts for the fact that although over one tenth of the forty-four US listed Chinese companies adopt this defense, these five companies[20] jointly took up 0.26% of the total market capitalization of the forty-four Chinese companies; and thus it is not a leading takeover defense.

2.2.3 Exclusive Directors Nomination Right — 'Alibaba Partnership'

BABA employs a unique mode of takeover defense among the forty-four companies, namely, 'Alibaba Partnership'[21]. Pursuant to its articles of association, BABA applies a mechanism of partnership, which consists of thirty-four partners who conduct their rights on the one partner, one

[19] See SEC, Company Filings, The Articles of Association of JUM filed on 09 January 2015.
[20] The combined market capitalisation of the 5 companies was USD $727,000,000. Data as of 30 June 2016, Sources: NYSE and NASDAQ.
[21] All of the stipulations relating to BABA discussed in Part 2.23 are from the source: SEC, Company Filings, The Annual Report of BABA filed on 24 May 2016, Item 6, Alibaba Partnership.

vote basis. This partnership enjoys two special rights: one is the exclusive right to nominate directors, while the other relates to the allocation of bonus.

According to the articles, even though the director nominees should be appointed at the general meeting of shareholders, in case these nominees are denied by the general meeting of shareholders or leave the board after election regardless of the reason, Alibaba Partnership enjoys the right to appoint an interim director who serves until the following annual general meeting of shareholders. There is no limitation of such an appointment in terms of frequency, which means that as long as the nominees chosen by Alibaba Partnership are not elected by the general meeting of shareholders, this Partnership could appoint interim directors constantly. Such a stipulation results in an effect that Alibaba Partnership has the actual power to nominate directors, even though in the name of nominees or interim directors. Furthermore, pursuant to the articles, whenever the directors nominated (including the interim directors appointed) by Alibaba Partnership take up less than a majority of the total directors on board, Alibaba Partnership is empowered to appoint additional directors to the board at its sole discretion without any additional shareholder approval to ensure that the directors nominated or appointed by Alibaba Partnership could comprise a simple majority of the board. According to BABA's latest annual report, there are eleven directors on the board currently, of which five are Alibaba Partnership nominees. Consequently, this Partnership is entitled to appoint two additional directors to increase its nominees to seven, occupying a simple majority of the thirteen directors in total.

Alibaba Partnership also determines the allocation of corporate bonus. The allocation of bonus, *prima facie*, is decided by the compensation committee according to its articles of association. However, the compensation committee is established by the board of directors. Since Alibaba Partnership controls at least a simple majority of the directors as discussed above, it determines the *de facto* allocation of bonus.

Several other stipulations in the articles of association make Alibaba Partnership unbreakable. Firstly, the election of partners is the own business of this Partnership. The number of partners is dynamic and new partners are elected annually. The election of new partners requires the approval of at least 75% of all the partners without the participation of shareholders. Secondly, Alibaba Partnership's nomination rights and related provisions of the articles of association cannot be changed unless upon 95% of voting rights. Due to the agreement between Alibaba Partnership and the largest two shareholders of BABA named Softbank and Yahoo which hold 32% and 15.4% of shares respectively[22], as well as the fact that the co-founders Jack Ma and Joseph C. Tsai jointly hold

[22] The agreement is written as follows: Softbank will vote its shares in favor of the nominees of Alibaba Partnership to be directors at each general meeting of shareholder as long as its shareholding is above 15% in exchange for the right to nominate one director of its own, who will be supported fully by Jack Ma and Joseph

11% of the total shares, it is impossible for outsiders to collect 95% of voting rights to abolish this Partnership *per se* as well as its exclusive directors nomination right. Lastly, there is a bottom clause that where any change of control, merger or sale of BABA, Alibaba Partnership should not be transferred or otherwise delegated or given a proxy to any third-party with respect to the right to nominate directors.

In essence, the core of Alibaba Partnership is exclusive directors nomination right as long as the partners as a group hold no less than 5% of the outstanding shares. Compared to staggered board and DCSS, which aim at resisting hostile takeovers to keep the control of a company, Alibaba Partnership is more effective in ensuring that the control of the company is held by the insiders even if a tender offer is successful, even though such success is practically impossible. Since this mechanism is new to the stock exchanges, it is difficult to conclude whether Alibaba Partnership will be imitated by other companies. However, it is of little doubt that the mode of BABA is extremely effective in keeping the control of a company.

Taking the analyses above into consideration, 26 out of the 44 companies employ weighted voting rights, comprising 24 companies with DCSS, LITB's variant of DCSS and BABA's mode of exclusive directors nomination right. The other 18 companies follow the OSOV principle and among them 5 use a staggered board as a takeover defensive measure (see Figure 4). Due to BABA's super business scale, with raised funds of USD $21,767,000,000 and its current market capitalization of USD $198,449,000,000, the 26 companies with weighted voting rights take overwhelming dominance over the 18 companies with the OSOV principle in terms of raised funds and market capitalization (see Figures 5 and 6). Even when making comparisons between the 24 companies with DCSS in the strict sense (without BABA and LITB being considered) and the 18 companies with the OSOV principle (including the 5 companies with staggered board), the former overwhelms the latter by USD $5,575,000,000 to $1,057,000,000 and $78,237,000,000 to $3,278,000,000 in terms of raised funds and market capitalization respectively. The average raised funds and market capitalization of the former is USD $232,000,000 and $3,260,000,000 while the latter is USD $59,000,000 and $182,000,000. On these grounds, it could be seen that the mode of weighted voting rights, particularly DCSS, takes a dominant position in the 44 US listed Chinese companies.

C. TSAI. Yahoo will conduct its voting rights to support the nominees of Alibaba Partnership to be directors at the general meeting of shareholder in exchange for its cooperation with BABA in the field of intellectual property.

Figure 4: The Components of the 44 US Listed Chinese Companies by Number and Percentage

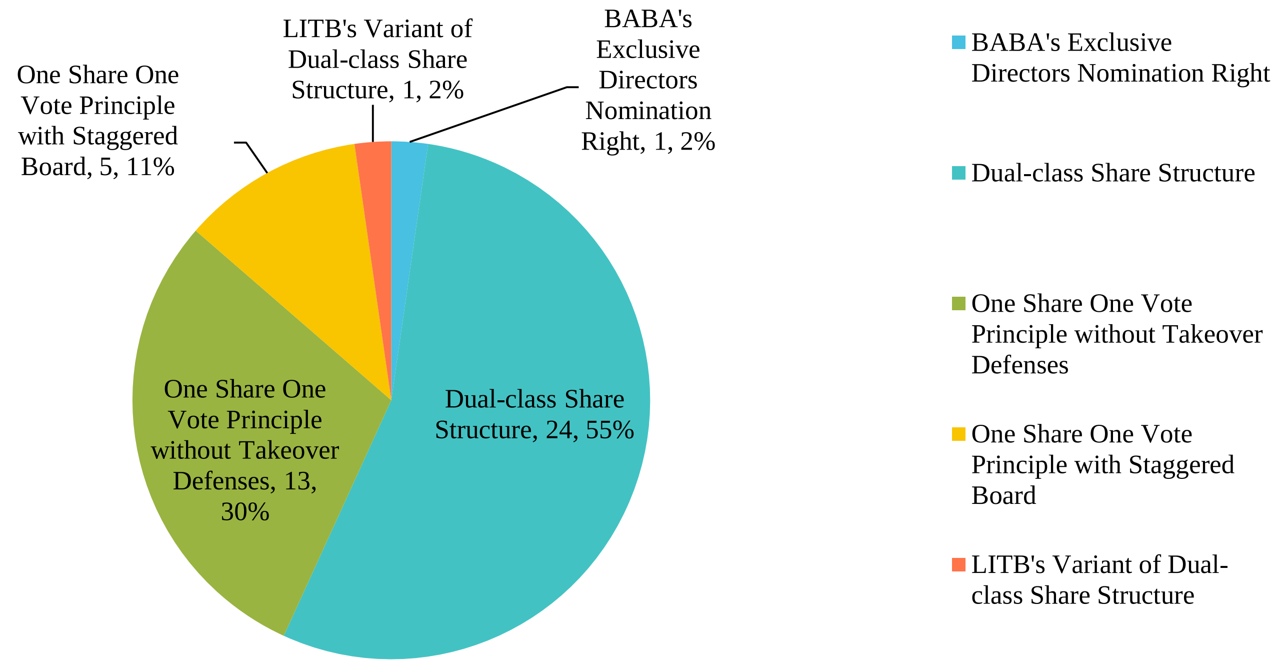

*Figure drawn up by the authors.

Figure 5: Funds Raised by the 44 Companies

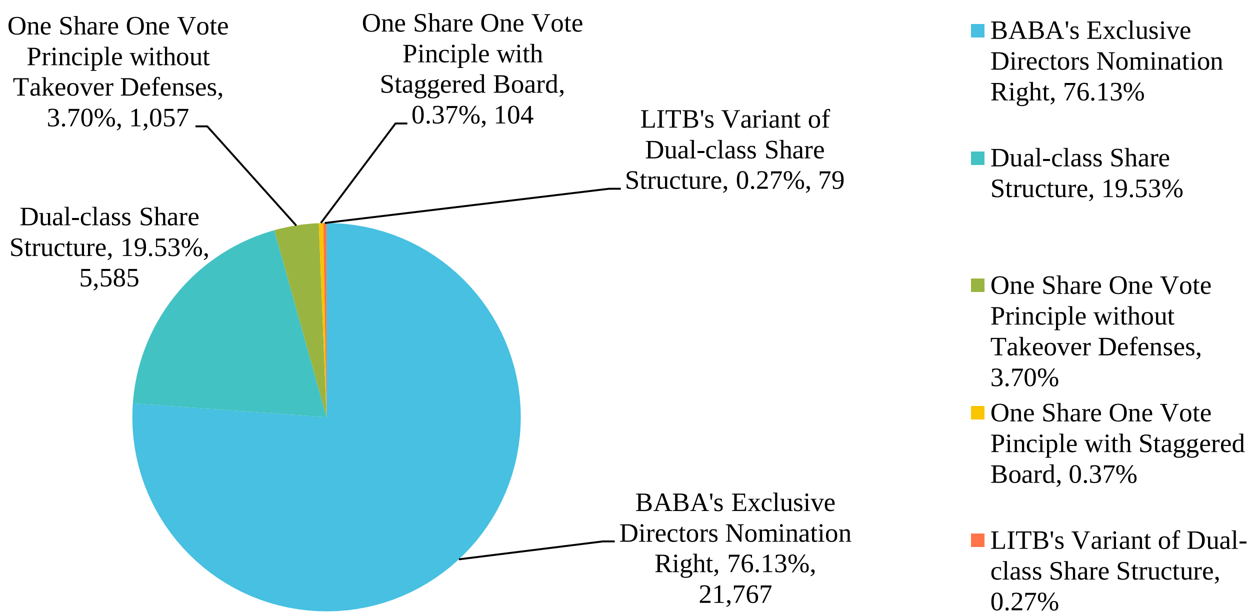

*Figure drawn up by the authors.

Figure 6: Market Capitalization of the 44 Companies

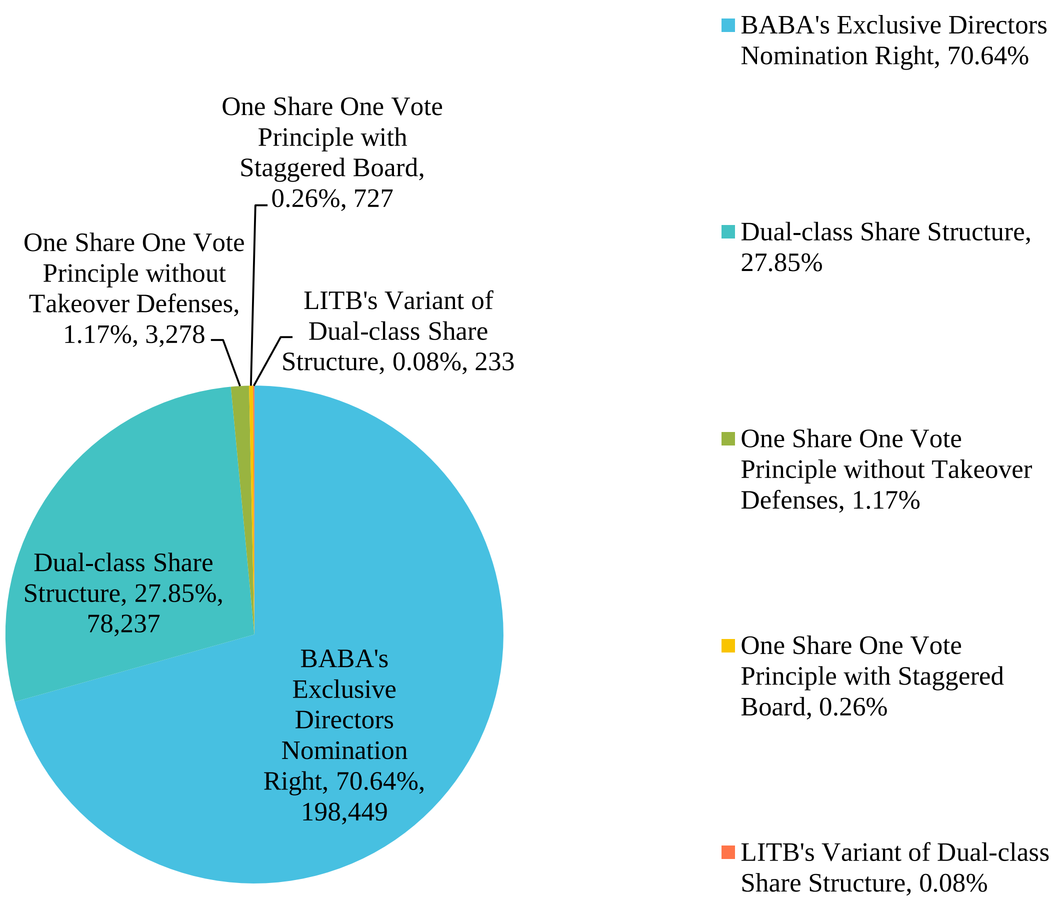

*Figure drawn up by the author

2.2 Venture Capital Limited Partnerships with the Chinese Characteristics

Authored by Dr Chi Zhang*

INTRODUCTION

If it is said that petroleum is the 'blood' for industries, capital can also be assimilated as the 'blood' for enterprises. With the development of technology innovation, the demands of venture capital (VC) is growing rapidly in China during the recent decade. The limited partnership as a kind of business organization was firstly introduced into the new Law of Partnership Enterprises of the People's Republic of China in 2006, which has been preferred by the investors of the Chinese VC market.

In a typical limited partnership, the general partner (GP) are commonly entitled to manage limited partnership exclusively, the limited partners (LP) are not allowed to participate in the management. Once the LP actively manage the enterprise, the limited liability protection of the LPs will be waived. Owing to the inherent shortcomings of the existing legislation of partnerships of China, however, the economic efficiency of limited partnerships under Chinese law is problematic: the limited partners (LPs) are commonly overly active in fund management which has led to serious failures in governance of VC funds. This article will briefly reveal the political and social factors that cause such problem.

GOVERNANCE STRUCTURE OF CHINESE VC LIMITED PARTNERSHIPS

In the Chinese VC market, the governance structure of venture capital limited partnerships (VCLPs) general consists of three sections, namely (i) partners' general meeting (PGM), (ii) LPs' meeting (LPM) and (iii) investment decision-making committee (IDMC), each of which has different functions throughout the entire process of fund management. Firstly, the PGM is composed of all the LPs and GPs, and in the circumstance where a partner is an incorporated body, its representative should be a member of the PGM. According to Art. 31 of the Partnership Law (2006 Revision), the matters regarding altering the name or business scope of the VCLP or assigning or disposing of the real estate and intellectual property of the VCLP should be subject to the unanimous consent of all the partners. Moreover, the issues in relation to (i) the admission of a new partner; (ii) the withdrawal of a partner(s); (iii) the transfer of shares between different

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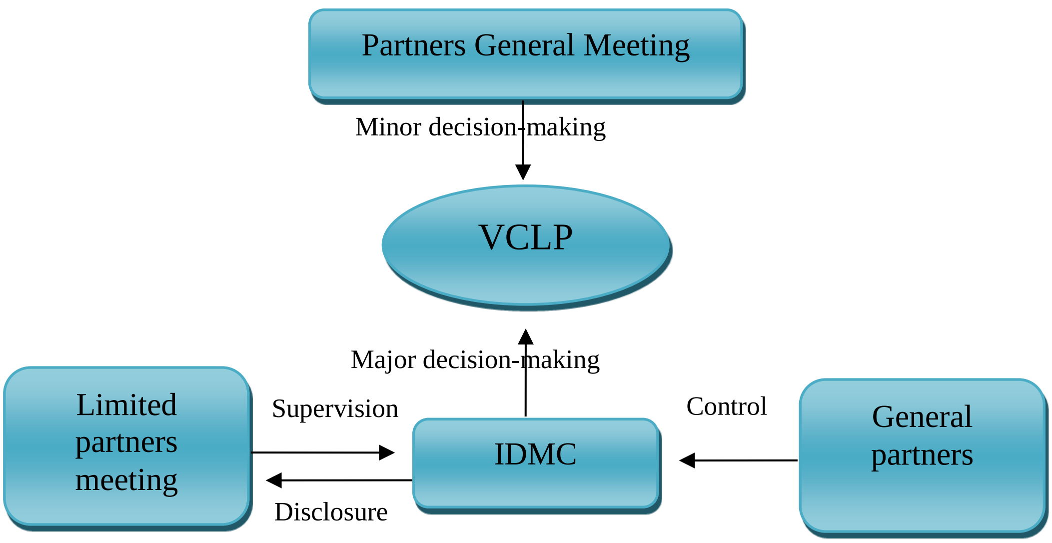
partners and (iv) mutual conversions of GPs and LPs are also commonly determined by all the partners of the VCLP. Generally speaking, the decision-making power of the PGM does not involve the specific investment or professional management affairs of VCLPs.

Secondly, for the purpose of the professional management of VC funds, the investment decision-making of VCLPs should be exclusively decided by GPs. However, some VCLPs in China also allow a limited number of LPs' representatives to be the members of the IDMC. For example, in the IDMC of the Oriental Fortune Capital Venture Capital Fund (2007), the largest domestic VCLP of China in 2007, any investment decision must be voted by three representatives from the GP and one representative from LPs, any of whom has a one-vote veto in any decision-making. Although the above practice may reduce the efficiency of fund management, such an alternative decision-making model, which can partly enhance the trust relationship between GPs and LPs, has been widely adopted in present-day China.

Additionally, if the representatives of LPs consider that there may be potential conflicts of interest, affiliated transactions or competitive businesses between GPs and LPs, then the representatives LPs have right to convene the LPM to determine the related issues. In most cases, the related matters should be passed by simple majority. It is not hard to see that the main function of the LPM of VCLPs is primarily a protective mechanism for LPs, but not a major decision-making body in fund management.



LPs' INTERFERENCE AND GPs' RESPONSE

Owing to the lack of trust between LPs and GPs, a large number of VC investors participate in the managerial affairs of VCLPs to enhance the protection of LPs' interest. However, indeed, such an alternative approach can hardly play a positive role in protecting investors' interests. In most cases, the GP is able to weaken LPs' active intervention by making a series of arrangements in the decision-making procedure of the IDMC. Firstly, the GP may employ several external experts mainly including lawyers and scholars for example, as members of the IDMC in the name of professionalizing decision-making process. Nonetheless, because most external experts are selected by the GP and do not represent the majority in the IDMC, the external members of the IDMC therefore may not independently make decisions even though they can provide professional and objective suggestions for investment decision-making, the final result of investment decision-making is still determined by the GP(s). In practice, however, the outstanding issue is that if an LP has substantively influenced the decision-making within the limited partnership, such as the selection of investment targets, once the certain investment fails, should the limited partner assume the same liability as a general partner? According to the current Chinese partnership law, the answer is not clear yet.

STATE CONTROL AND THE CHINESE PARTNERSHIP LAW

Ever since the limited partnership was adopted into the Law of Partnership Enterprises in 2006, the limited partnership rapidly replaced corporate VC funds as the dominant legal structure for VC investment in China. The local investors as LPs in Chinese VC limited partnerships (VCLPs) are mainly the local government, state-owned securities companies and state-owned banking groups, most of which use publicly-owned capital to invest in VC projects, and assume limited liability. Owing to the lack of domestic fund management firms, unlike western-style VC funds, the state-owned ones in China are always willing to get involved in fund management in the name of maintaining and appreciating the value of state assets.

It is not unreasonable to argue that the distorted governance structure of limited partnerships under Chinese law is closely related to the prioritized state-owned capital in VC market. Importantly, the powerful status of the Chinese government or SOEs as limited partners in market competition may continuously hinder the legal transplantation of the regime of 'piercing the veil of limited partners', because the direct interference in fund management will still be insisted by the state for the purpose of controlling the private sector of the Chinese economy and giving priority to the state-owned capital for making profit. As a result, the Chinese legislators' conservative attitude towards the rapid expanding private economy may continue to impede the development of limited partnerships in the Chinese commercial law.

3. Academic Frontier

The 'One Belt One Road' Initiative and its impact on shipping law in China

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'One Belt, One Road', is a Chinese Initiative for boosting multi-national economic cooperation and prosperity. First introduced by President Xi Jinping in 2013, the Initiative has its official interoperation elaborated in a domestic policy document entitled, Vision and Actions on Building the Silk Road Economic Belt and the 21st Century Maritime Silk Road, which was jointly issued by the National Development and Reform Commission, the Ministry of Foreign Affairs and the Ministry of Commerce in March 2015 (the 2015 Vision and Actions). Aimed at enhancing cooperation and promoting connectivity, the Initiative sets five priorities: to promote policy coordination, to enhance facilitates connectivity, to achieve unimpeded trade, to realize financial integration and to strengthen the bonding between the peoples. The 'Belt' and the 'Road' each refer to a geographical network for such economic cooperation. The former is mainly land-based, comprising rail routes, overland roads, oil and natural gas pipelines and other infrastructure projects. Stretching from Xi'an in central China, crossing Central Asia and ultimately reaching Moscow, Rotterdam, and Venice, it covers most of the countries in Northeast Asia, West Asia and North Africa, and Central and Eastern Europe. The latter is a maritime network of navigation routes, ports and other coastal infrastructure connecting South and Southeast Asia, East Africa and the northern Mediterranean Sea. It is believed that, the 'One Belt, One Road' Initiative would encourage all-round exchanges, win-win cooperation, regional development and prosperity, as well as an atmosphere of mutual understanding and trust.

The 2015 Vision and Actions, envisages the establishment of an integrated Eurasian economic zone, consisting of the New Eurasian Land Bridge, the China-Mongolia-Russia Economic Corridor, the China- Central Asia-West Asia Economic Corridor and the China-Indochina Peninsula Economic Corridor, which are supported by the China Pakistan Economic Corridor (CPEC) and the

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Bangladesh-China-India-Myanmar (BCIM) Economic Corridor. In terms of transport infrastructure, the Initiative anticipates the building and joining of land, air and sea-based transport channels. On the Eurasian continent, the existing railways will be connected to newly built structures, to form three major transport lanes: the Eurasian Land Bridge will be joined with the Trans-Siberian Railway; the New Eurasian Land Bridge with the Longhai-Lanxin Railway and the third Eurasian Land Bridge with the Yunnan–Burma Railway. New air routes will be introduced, to provide access to most of the major cities in Asia, Central and Eastern Europe and North Africa. In terms of maritime links, smooth, secure and efficient transport routes, connecting major sea ports along the 'Belt and Road', will be constructed. In particular, the port of Gwadar in Pakistan, the crux of the CPEC project, will function as the meeting point of China's maritime and overland silk routes.

Fulfilment of the goals, as set out in the, 'One Belt, One Road' Initiative, requires upgrading the means of transport. In particular, multimodal transport is deemed a key area, with great potential. Development of multimodal transport is integral to the rationale of the, 'One Belt, One Road' Initiative. The 'Belt and Road' is designed to be considered as providing two complementary components, that serve the integrated network for the exchange of resources. As is clearly indicated in the 2015 Vision and Actions, one of the priorities under the, 'One Belt, One Road' Initiative, is the inter-connection of transport infrastructure, including the organic connection of customs' clearance procedures, transhipment and multimodal transport; the establishment of harmonized transport rules and the building of unimpeded, multimodal transport channels by water and by land. Multimodal transport is the logical solution for the effective integration of the 'Belt and Road', while the Initiative provides a platform for holistic planning and management. Secondly, the 'One Belt, One Road' Initiative has, specified a number of favorable conditions for the development of multi-modal transport. As listed in the previous paragraph, the Initiative not only calls for inter-connection of their infrastructure construction, by the participating countries, in the building of international trunk lines across the Eurasian Continent but also, the harmonization of the technical standard systems, so as to further facilitate exchange and connectivity. Hence, both physical and technical foundations would be laid for the seamless and efficient functioning of multimodal transport in all the sub-regions of Asia, Europe and Africa. The recently adjusted transport policies in the participating countries are also oriented towards multimodal transport. One example in point is the increased number of freight trains to Central Asia and Europe, in the updated National Train Schedule in China, that entered into force in July 2015. Thirdly, multimodal transport offers the best practical encouragement for trade and cooperation among the 'One Belt, One Road' economies.

In addition to China, the 'One Belt, One Road' Initiative covers 64 States in Asia, Europe and Africa, of which 19 are landlocked States that primarily rely on land-based transport, 6 are island States, with maritime transport and 40 coastal States, which have multiple transport choices. Multimodal transport is the logical solution for integrated transportation, for all the participating countries. Meanwhile, infrastructure is only the rudimentary step for 'facilitates connectivity', on the basis of which convenience, efficacy and economic efficiency are more advanced requirements. Multimodal transport, especially one that combines land and sea carriage, provides an optimal solution, with high efficiency, low cost, effective management and enhanced adaptability.

The 'One Belt, One Road' Initiative has also encouraged greater academic enthusiasm towards revision of the Maritime Code and other laws, in relation to carriage of goods. It is argued that, the current laws and regulations on international commercial transport are out-of-step with the practical needs of the 'One Belt, One Road' Initiative. Currently, in China, provisions on multimodal transport are dispersed in the Maritime Code and Contract Law, as well as in administrative regulations, such as the Regulation on International Ocean Shipping, the Regulation on the Administration of the International Freight Forwarding Industry with its Rules of Implementation. The Maritime Code, which is still operating in its original form, as adopted in 1992, contains inconsistent or even contradictory provisions with those of Contract Law, the *lex generalis*, especially in terms of a definition of 'multimodal transport', basis for liability and limitation of liability. The Maritime Code adopts a maritime carriage-centred definition, which excludes those not involved in carriage by sea. Contract Law, while providing for 'multimodal transport' under the transport contract sector, has not provided a definition. In theory, this means that, multimodal transport, with at least one sea-based aspect, would fall within the scope of the Maritime Code, with the rest being subject to regulation by Contract Law. The result of such a dichotomy is a different basis for determining liability in the event that, the particular aspect of transport where a loss of or damage to goods occurred, cannot be ascertained.

Under the Maritime Code, presumed liability applies to such cases and the carrier is entitled to the appropriate defences regarding liability, as well as the relevant limits of liability. By way of contrast, under Contract law, the carrier would assume strict liability, with no possibility of limit thereof. Apparently, the current variety of provisions is incapable of providing consistent guidance to multimodal transport operators under the 'One Belt, One Road' Initiative. Moreover, neither the Maritime Code nor Contract Law has provided a comprehensive regulatory framework for multimodal transport. The provisions on multimodal transport in both laws are exclusively concerned with the liability of carriers. Relevant issues such as documents, insurance, time bars are either left to the general provisions on maritime carriage (under the Maritime Code) or are without specific regulation (under Contract Law). Thus, legal relationships between shippers and carriers in differing modes of transport, would struggle to find applicable provisions. Arguably, the insufficient regulation resulting from the over focus on carriers' liability, might result in an adverse impact on the proposed smooth transport operations under the 'One Belt, One Road' Initiative or the settlement of any dispute arising therein.

The relevance of the Rotterdam Rules, in addressing the regulatory needs for transport under the 'One Belt, One Road' Initiative, has drawn the attention of a number of researchers. First of all, it is widely recognized that, it is unlikely that China will sign and ratify the Rotterdam Rules in the near future, especially given its apparent lack of enthusiasm for all the existing international maritime carriage conventions. The Rotterdam Rules represent the first international maritime convention in which China has substantively participated throughout the entire drafting process. Nevertheless, its active role in treaty-making does not guarantee any final adoption thereof. A number of experts argue that, China is likely to remain cautious towards joining the Rotterdam Rules, as the latter's ambitious changes would bring substantial challenges to China's shipping industry and might be perceived as offering potential harm to China's national interests. Meanwhile, as the Rotterdam Rules has received only 3 ratifications in the 9 years since its adoption, it is unlikely that Chinese shipping operators would choose to adopt the Rotterdam Rules as the applicable law.

In comparison to the radical changes proposed by the Rotterdam Rules, most commentators hold that China is likely to take more modest steps, by incorporating some of the rules of other modern regimes into its Maritime Code. In particular, the Rotterdam Rules may be used as a reference in addressing several major defects in the current Maritime Code. For example, the definition of, 'actual carrier', under the Maritime Code leads to disputes over the legal status of port operators and other parties acting on the carrier's behalf; the concept of a, 'maritime performing party', would bring more certainty, as it adopts an objective criterion: those who perform the carrier's obligations, are subject to the corresponding liabilities and limitations. The differentiated carrier's period of liability, as between the carriage of containerized cargo and uncontainerized cargo, not only results in insufficient protection for shippers of un-containerized cargo but also, it lacks consistency with the carrier's liability for delayed delivery. The, 'receipt to delivery' system, with the possibility of party autonomy, devised by the Rotterdam Rules, not only strikes a better balance between the carrier and the shipper's interests but also facilitates the unification of period of responsibility for multimodal transport. Incorporation of such a regime would bring China's standard in line with international practice, as well as preparing for later expansion of the scope of the Maritime Code, to apply to modes of transport other than carriage by sea. In provision regarding defences to carrier's liabilities, China's Maritime Code not only exonerates, 'error in navigation' and 'fire not attributable to the carrier' but also requires the claimant to prove fault on the part of the carrier in the case of fire, which seems to offer over-protection for the carrier. By contrast, the Rotterdam Rules not only abolishes these two defences but also resolves the issue of the allocation of the burden of proof, between the claimant and the carrier. Alignment with the Rotterdam Rules is advisable, as this would achieve balanced protection for both parties, reflecting the background of the advancement of navigational technologies. It is suggested that, wordings from the Rotterdam Rules should be extracted for incorporation into Chinese legislation. The current Maritime Code does not contain any provisions as regards electronic documents. With the rapid development in online shipping service platforms, China could draw reference from provisions from the Rotterdam Rules, which were drafted on basis of comprehensive consideration of the current practices, as well as other existing legal instruments such the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures.

The Rotterdam Rules is especially ambitious, in that it attempts to provide a set of harmonized rules for the entire contract of carriage, as indicated by such revolutionary concepts as, 'performing parties' and 'transport documents'. While most Chinese scholars hold that it would be unrealistic to extend the Maritime Code into a more comprehensive format, to include land and air transport, they generally acknowledge that the current system, where multimodal transport is listed as a section under the Chapter on Contract of Carriage of Goods by Sea, is theoretically problematic and practically inadequate. It is suggested that multimodal transport be governed by an independent chapter, with enhanced coordination with other relevant domestic regulations, including the Port Law, the Regulation on Road Transport and the Regulation on the Administration of Domestic Water Transport, as well as international treaties, such as the Rotterdam Rules and the Rules for Multimodal Transport Documents. In this respect, provisions of the Rotterdam Rules concerning carriers and performing parties, transport documents, electronic transport records, period of responsibility and the liabilities of carriers, are sources of prime reference. To this end, it seems reasonable to propose that, in order for the 'One Belt, One Road' to succeed, a smooth, multimodal carriage regime is needed and that this can be obtained by China embracing the Rotterdam Rules.

Conclusions

The Rotterdam Rules is adopted, in the hope of promoting legal certainty, harmonizing and modernizing the rules governing international contracts of carriage, promoting the development of trade in an equal and mutually beneficiary manner and enhancing efficiency. Arguably, the

Rotterdam Rules has the potential to achieve most of those goals. The Rules creates a uniform regime for multimodal contracts of carriage and would, thereby, considerably enhance legal certainty in this respect. The Rules also establishes a more balanced liability regime, that takes into account new commercial practices and technological advances. Nonetheless, since the signing ceremony, the fact that only 3 further countries have indicated acceptance, would indicate that international recognition may be some way off. If one focuses on Asia, the picture is even less encouraging. The 25 signatories came from several different continents — Europe, North America and Africa but none were from Asia. Moreover, while the shipping industries in European countries have actively voiced their position as regards accepting the Rotterdam Rules, their Asian counterparts have largely remained silent on the issue. Analysis in the previous two sections also suggests that, currently at least, China is not seriously considering joining the Rotterdam Rules. It would appear that, the radical changes proposed by the Rotterdam Rules are considered as being impractical or that ratification might have an unfavorable impact on the Chinese domestic shipping industry.

While ratification by a particular country is ultimately a political decision and priorities may vary from one country to another, presumably, a deciding factor might be whether the country in question is mainly cargo or carrier-oriented. In addition, much may depend on the views and lobbying efforts of various stakeholders, such as shippers, carriers and insurers. Ratification of a treaty is, however, not necessarily the only way for the relevant rules to be applicable in a given jurisdiction. A state may model its domestic law on one or more international treaties, without being a party to them. This action would allow the state to maintain consistency with internationally recognized rules, without losing its freedom to make any alterations deemed necessary. A case in point is China's Maritime Code, which is essentially a combination of the Hamburg Rules and the Hague-Visby Rules. With respect to harmonization of shipping laws, it is evident that, a majority are reluctant to make substantive moves toward ratification of the Rotterdam Rules, for various reasons. The result of this is that, adopting amendments modelled on the Rotterdam Rules may serve as a preliminary step to unification. In this sense, China may be able to take the lead in the Asia region. Proposals for amendment of the Maritime Code have existed around for years. With the implementation of the ‘One Belt, One Road’ Initiative, there is, however, a greater need to bring the law in China up to date.

4. News in Brief

4.1 The People's Bank of China (PBOC), China Securities Regulatory Commission (CSRC) and China Banking Regulatory Commission (CBRC) jointly released the 'Guiding Opinion on Normalizing the Asset Management Business of Financial Institutions (exposure draft)' on 17th November 2017, preparing for establishing a uniform regulatory framework of various collective investment schemes in the Chinese financial markets. The 'Guiding Opinion' will be the first regulatory document defining all kinds of investment funds and collective investment schemes from a functionalistic approach.

4.2 China's National Maritime Conference & Exhibition of 2017 was held in Shanghai during 4-7th December 2017. More than 50 renowned scholars and practitioners in the shipping industry and maritime law delivered speeches. The theme of this event was focused on the 'One Belt One Road Initiative' and the prospect of the development of Chinese shipping industry. Especially, the innovation of financial law in supporting maritime business was emphasized as one of the key issues in both Chinese and international maritime industries.