

## Perfect the Corporate Governance Structure under the Philosophy of Low-carbon Development and Corporate Social Responsibilities

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**Abstract:** This paper discusses the context and huge influence of the globalization and climate crisis; it, analyzes the necessity of creating low-carbon development. It elaborates upon the corporation's role as an enterprise citizen that should bear social responsibility for playing an important role in the global climate crisis and low carbon development. It analyzes the general framework of corporate governance, focusing on how to blend in corporate governance structure and how to promote corporate governance structure to develop low carbon methods in the best way possible. Finally, it holds that incorporating low carbon concepts into the corporate governance process is necessary and feasible.

**Keywords:** low-carbon economics, corporate social responsibility, corporate governance

### Introduction

The achievements of the human race up until now have continually amazed human beings themselves. However, the rising of more and more problems and contradictions have, also, brought confusion to the future of human kind. Problems, such as global warming, the fuel crisis, and environmental pollution, have forced us to rethink our ways of developing and living in the environment.

To deal with such a dilemma, the sustainable development and low-carbon economic model is the ultimate choice for our generation. This requires us to completely give up the old, high-polluting, high-energy-consuming, immoderate development modes and to follow an energy-efficient, environment-friendly mode instead. In our modern economic society, companies have created tremendous wealth for human kind and played a vital role in the development of our economic society. The world-famous management expert, Holman Maynard, said: "The future belongs to enterprises, which is the center of society, nucleus and economic foundation of the society, the main power to affect the world" (Huo, 2008). Since companies have played such important roles in the development of human society, companies should assume their social responsibilities rather than emphasize self-interest, and they should change the old unsustainable high-carbon development mode in order to sustain the development of companies.

The Chinese government attaches great importance to the development of the ecological economy and a low-carbon economy by improving corporate social responsibility through legislation. In the Session of the 18th CPC Central Committee, Chinese former President HU Jintao proposed to vigorously promote the construction of an ecological civilization in China (Hu, 2012). At the Fourth Plenary Session of the 18th CPC Central Committee, the decisions on major issues concerning comprehensively advancing the rule of law point out that China should strengthen the legislation affecting corporate social responsibility (Xinhua News Agency, 2014).

This paper focuses on perfecting corporate laws and regulations, especially the regulatory and institutional ones. We hold that a company, being a good corporate citizen, should adjust the specific content of

its corporate governance structure to work with the philosophy of the ecological economy and low-carbon development; it should assume corporate social responsibilities and respond to social and stakeholders' messages about what the company should be doing, thereby regulating companies to do the right thing.

### **Why the Companies Should Assume Low-Carbon Development Responsibility**

Global warming and the environmental crisis have become unavoidable challenges in the survival and development of the human race. A survey conducted by the United Nations Environment Program (UNEP) in 1999 shows that 51% of the world environmentalists consider climate change as the main environmental problem for the human race right now (Ravindranath & Sathaye, 2002). Some scientists predict that global sea levels will rise 9-55 cm from 1900 to 2100 (IPCC, 2011).

Since the late 20<sup>th</sup> century, due to the influence of global consensus and countless environment-protection organizations, the international society has been discussing dealing with global warming, hoping to find a sustainable development road, which means creating fewer emissions, reducing lower energy-costs, and doing less polluting. In order to maintain the survival of human beings, all governments have to compromise and deal with this global crisis together by making different emission-reducing promises at all kinds of international conferences. From the United Nations Framework Convention on Climate Change to Kyoto Protocol, from the Bali Roadmap to the Copenhagen Conference to the Cancun conference, the Durban meeting, the Doha conference, the Warsaw conference, and then to the upcoming Lima Conference, global society has never given up on the energy-saving, emission-reducing, or the low-carbon economic development road. Megan Bowman holds that climate change can be conceived of as an economic issue as much as an environmental or ethical one. Moving from a fossil fuel-based global economy to a low-carbon economy will involve one of the largest market transitions in modern society. As with all market transitions, there will be corporate winners and losers, depending on which companies get on board, get ahead, or fall behind (Bowman, 2013). The president of China Beijing Equity Exchange (CBEX), Xiong Yan, said, "Low-carbon development is human being under dual pressure of financial crisis and climate change, have to take the challenge and look for opportunities of strategic decision" (Yan, 2010).

Implementing these promises requires the effort of all the citizens in this world. Companies, as critical corporate citizens in the process of globalization, play decisive roles in the development of modern society and create tremendous material wealth for human kind. However, it is the companies that consume a large quantity of un-renewable fuel, such as coal and oil, that are causing emissions of large quantities of CO<sub>2</sub> and other pollutions. Companies are definitely responsible for global warming, environmental deterioration and the energy crisis. George Stina and John Stina said, "Corporate influence refers to the power and intensity of a company for changing the society through its actions. The source of this influence is the authority given to company by the society, which is transforming resources into products and services needed by the society efficiently. In return for this transformation, the society gives companies the rights to take necessary and reasonable actions and allow company to gain investment profits" (George, 2002). Therefore, developing a low-carbon economy requires the efforts of companies. Companies shall assume their due responsibilities in the light of a low-carbon economy through relevant changes of external supervision and internal governance structures to realize low-carbon development.

### **Moving to Low Carbon Development, What's the Problem to the Existing Corporate Governance Structure**

Corporate governance, also called a corporate legal person governance structure or corporate supervision structure, comes from the separation of ownership and management in modern companies. Not only does corporate governance prescribe the responsibilities and rights of every stakeholder (including shareholders, directors, supervisors, management and etc.), it also provides the rules and procedures for the decision making process in order to maximize the interest of shareholders and other stakeholders (Li, 2009).

The existing corporate governance model mainly aims at maximizing the interest of shareholders and increasing capital value. However, in the light of low-carbon development, companies tend to have multiple goals. Since assuming low-carbon development and environmental protection responsibilities have become mandatory obligations for a company, instead of performing low carbon development passively following the mandatory rules of the government, a company can take the low-carbon road actively. In this way, a company can avoid being punished by the relevant laws and policies, transform low-carbon costs into growing motivation, ease the cost pressure brought by raw material price rises due to global warming and the environmental crisis, and seek new profit point and development pattern in order to become an ultimate winner in spite of fierce competition. So, an important field of corporate social responsibility is environmental protection and low-carbon development. Companies' move to low-carbon development is a strategic issue related to their future long-term competitiveness (Yan, 2010).

The corporate governance structure is based on the agency relationship between shareholders and the management team. The primary hypothesis of the agency theory is that conflicts exist between shareholders' goals and managers' goals (Solomon 2006). In the modern corporate agency relationship, shareholders, as a whole, constitute the most important authority mechanism. Managers, as agents, constitute a critical part in the corporate operation. The division of power to do business on behalf of the company between these two mechanisms is what we call the internal corporate governance structure (Li, 2001). To a certain extent, corporate internal governance plays a determinative part in the corporate governance structure. The fundamental content of corporate internal governance consists of the division of power among shareholders, directors, and managers. In today's society, as represented by the low-carbon responsibility, corporate social responsibility is the essence of corporate governance, and corporate governance should be integrated into the low-carbon development connotation of responsibility (Zheng, 2013). Moving to low-carbon development raises the following question: What's the problem to the existing corporate governance structure?

#### ***The Problems of the General Meeting of Shareholders***

As providers of the original capital of a company, shareholders are the motivation of corporate governance. The un-refundable character of their investment (during the life span of the company) determines that shareholders rely on the corporation to gain investment return (Wu, 2001). Shareholders are gathered together at the general meeting of shareholders for their strong capital integration order to develop and expand the company to maximize their common interest. However, in the light of low-carbon development, the general meeting of shareholders shall seek more than just increasing capital value and maximizing shareholder interest: they must redefine the strategic value of the company. Stakeholders, social responsibilities and environmental responsibilities under the low-carbon development idea should all be taken into consideration by the general meeting of shareholders. Nonetheless, the shareholders don't concern themselves with low-carbon

responsibilities in the current corporate governance structure, which means the existing structure cannot satisfy the demand or assuming the responsibilities of low-carbon development. Specifically, the problems of shareholder meetings are as follows: First, the article of association drafted at shareholder meetings fails to reflect the demand of low-carbon development. The article of association is of great guiding importance as the highest action standard in a company. However, existing articles of associations fail to reflect the demand of low-carbon development, thus making them unable to satisfy the demand to take the low-carbon development road and realize sustainable development.

Second, during the election and change of directors or supervisors, shareholders concerns are more about whether the candidates have relevant capacities or qualifications and whether they can satisfy the need to develop the company, but the concerns are not about whether they have a sense of low-carbon development.

Besides, when scrutinizing reports filed by boards of directors, supervisors, or financial budgets, final accounting reports, shareholders' meeting only consider profits of the company as their starting point. How to maximize the profits is the most significant standard in the decision-making process of shareholder meetings. Thus, there is no guarantee that all the major decisions of the company would satisfy the demands of low-carbon development.

As a matter of fact, assuming low-carbon responsibilities is not in conflict with maximizing the shareholders' interests. The appreciation of capital and maximization of shareholders' interest both require a long development process for the company, but in the light of low-carbon economy, the traditional development mode can hardly continue. If the shareholders' meeting still can't adapt to the needs of low-carbon development, shareholders will be unable to continue maximizing profits, which is ultimately detrimental to shareholders' interests.

### ***Problems of the Board of Directors***

The birth of the company system and the introduction of limited liability determine the separation of ownership from management power. The board of directors (hereinafter referred to as "BOD") is an organ elected at shareholders' meetings to make business and operational decisions collectively on behalf of shareholders using the power delegated by shareholders. As agents, directors shall have a fiduciary duty to shareholders and the company, protect the interest of the company, and maximize the interests of shareholders and other stakeholders. How to realize the effects of BOD, intensify the duties of the BOD, and improve the efficiency of BOD have been the core problems of corporate governance mechanisms (Li, 2001).

Under the existing structure of a board of directors (BOD), when the BOD carries out the resolutions from shareholders' meetings, it determines the corporation's business plans and investment priorities, establishes the corporation's fundamental management system and other significant matters, determines what its concerns and its liabilities for shareholders are, and decides how to better maintain shareholders' profits and realize the appreciation of capital. Apart from the interests of inner shareholders, executives, and etc., it doesn't consider other interests, such as the communities' or the environment's. Therefore, it does not meet the requirements of low-carbon development.

No matter whether it is under the single-level or double-level mechanisms, the establishing value of a BOD is to accept shareholders' trust and to maximize shareholders' interests. The shareholders' general meeting is authorized to appoint and dismiss the members of the BOD; thus the BOD trends to try its best to maintain the shareholders' interests when it performs its duties. However, in the philosophy of low-carbon

development, corporations shall be liable for the low-carbon developing liabilities to realize the joint prosperity and development of the corporations and society. The sustainable development of society is the basis and safeguard of corporations' sustainable development. Under the current corporation governance framework, the BOD is only responsible to shareholders, and low-carbon liability is not the corporations' statutory obligation, and, therefore, the way of low-carbon and sustainable development can only be hollow words. Retaining the corporations' objective only to the traditional small scale of shareholders and executives such as directors is not satisfactory for low-carbon development. Thus, under the background of low-carbon development, the duties of BOD shall be amended. Besides realizing the interests of shareholders and executives, such as directors, the duties shall be adjusted to meet the requirements of low-carbon development.

### ***Problems of the Board of Supervisors***

As a specialized supervisory organ, the board of supervisors (BOS) has the authority to supervise, including checking the corporation's financial affairs, supervising the conduct of executives, such as directors, when they perform duties, correcting the corporation's illegal and unreasonable acts, bringing in bills to shareholders' meetings, and other rights authorized by the corporation's charter.

Under the philosophy of low-carbon development, the existing duties of the BOS cannot satisfy the requirements of low-carbon development. Therefore, the duties of the BOS shall be amended against the background of low-carbon development. Besides the conventional duties, the BOS shall be liable for supervising the low-carbon liability as determined by corporation's ability and willingness to meet the requirements of low-carbon development.

Against the background of low-carbon development, the existing value of corporations is not only to maximize shareholders' interests, but also to consider the interests of many stakeholders to reflect the claims of stakeholders to realize the maximization of social and comprehensive benefits. As a result, the duties of the BOS in the current corporation's governance structure shall be also amended to adapt to development under the background. The current duties of the BOS do not reflect either the requirements of social or low-carbon responsibility. All of the corporate governance theory, corporate governance pattern, and corporate governance framework shall be prepared for low-carbon development to satisfy low-carbon requirements. In this situation, the corporate governance theory shall be amended constantly. Particularly, the Stakeholder Theory shall be raised to its due altitude and combined with the Agency Theory to prepare the theory framework for and leading to perfecting the corporate governance structure.

In conclusion, to meet the requirements of low-carbon development, the duties of the BOS in corporate governance shall be updated constantly. Meanwhile, the corporate governance structure shall be, also, perfected constantly to incorporate and systematize the low-carbon philosophy to reflect the philosophy and substance of low carbon. As the shareholders' interests are maximized, the stakeholders' interests are comprehensively balanced, and, thus, the sustainable development of corporations and society can be realized.

### **Restructure to the Substance of Corporate Governance Structure under the Philosophy of Low-Carbon Development Liability**

Conventionally, the objective and value of corporations are to realize the maximization of shareholders' interests and the appreciation of capital. Even if the corporation externalize the cost, it is not liable for social responsibility. But under the background of low-carbon development, the development of corporations shall

consider the interests of stakeholders and undertake social responsibilities. Therefore, the corporate governance structure shall be adjusted to meet the requirements of low-carbon development to provide systematic safeguards for low-carbon development of corporations.

Under the trend of low-carbon development, to make corporations undertake the low-carbon developing liabilities is meaningless if they only rely on the provisions of declaration in law. Although many large corporations have issued their social responsibility report, the social responsibility born by corporations to develop low-carbon economy are not mandatory provisions. There are still lots of corporations maintaining traditional high-carbon developing patterns, while their liabilities cannot be found. Therefore, the obligations that shall be undertaken by corporations in their low-carbon development must be stipulated in legislation. At the same time, the legal consequences and concrete measures against the violations shall be specified. In this way, the majority of corporations will, indeed, perform the social responsibility of low-carbon development. The perfecting progress of corporate internal governance structure shall start with blending the philosophy and liability requirement of low-carbon development into important corporate institutional organs, such as shareholders' meetings, the BOD, the BOS, and, finally, blend the concept of low-carbon into the corporate governance structure.

#### ***Suggestions on Adjustment of Shareholders' Meeting Governance Structure***

Low-carbon development raises new requirements for the perfection of corporate governance structure. Conventionally, shareholders only aim at realizing capital appreciation and the maximization of their own interests when they launch the establishment of corporations. However, under the background of low-carbon development, the shareholders' meeting shall consider the stakeholders' interests, such as resources, environment, and society. While pursuing the maximization of profits and appreciation of capital, the shareholders' meeting shall endeavor to create the development of stakeholders.

According to Corporation Law, as the highest authority in corporations, the shareholders' meeting has the final say on corporate decisions. Therefore, to perfect the corporate governance structure under low-carbon development, the primary thing is to improve the shareholders' meeting to satisfy the requirements of low-carbon development.

First, the legislation had better stipulate that the shareholders' meeting shall prescribe low-carbon development in the corporate articles. As the charter of a corporation, the articles have the leading and decisive significance on the development of the corporation. It's necessary to bring low-carbon into the articles. Thus, the law shall list low-carbon as an indispensable matter of the corporate articles. As the overall plan of corporate development, the articles are significant on directing corporations to low-carbon developing pattern.

Second, as the highest corporate authority, the shareholders' meeting has the right to vote and change the management organs, such as the BOD and the BOS, and to determine their rewards. Therefore, Corporation Law shall provide that when shareholders' general meeting votes and appoints executives, the shareholders' general meeting shall consider and require the appointed executives have low-carbon philosophies and objectives under the supervision and evaluation of shareholders' general meeting to provide organizational and structural safeguard for corporation's low-carbon development pattern.

Third, the shareholders' meeting shall review the reports of the BOD and the BOS, and corporate financial budgets, finalize settlement solutions by the criteria of low-carbon development, and consider and evaluate reports comprehensively, ensuring the investments and decisions are in conformity with low-carbon

development patterns on decision-making level.

Finally, the legislation needs to make mandatory provisions for shareholders. In case the shareholders' meeting doesn't perform its due low-carbon liabilities, the law shall give negative evaluations on corporate conducts, punishing and sanctioning the corporation appropriately to compel the corporations who perform low-carbon liabilities negatively to change to low-carbon development patterns.

### ***Suggestions on Adjustment of BOD Governance Structure***

Under the modern corporate system, shareholders entrust the power of business decision-making to the BOD, and the BOD is in control of decision-making authority of everyday business management. It is the ability of the BOD that combines (corporate) leadership and control power, (corporate governance) effectiveness and responsibility to ensure that the corporation accords with the expectation of society (Cadbury, 1993). The BOD voted on at the shareholders' meeting employs management to manage corporate everyday business and activities. Therefore, independent directors and BOD special committees shall be established in the BOD to supervise the management.

**Establish additional low-carbon directors.** The independent directors are always independent of the opinions and position of main shareholders, devoting themselves to being more aloof to corporate governance structure. Thus, the law shall provide that additional low-carbon directors shall be established in the BOD as dispensable members of the BOD to promote the low-carbon philosophy to be blended into corporate decision-making. Participating in the corporate governance, the low-carbon directors with the low-carbon philosophy supervise and urge the corporations to take the low-carbon development road in decision-making.

At the same time, the law shall provide strict legal liabilities for corporate BOD structures and the performance of low-carbon directors and require BOD to make reports to shareholders' general meeting and the public periodically. In this way, the public can supervise the corporations. Every citizen has the right to inform the administration if any corporation violates low-carbon obligations. The law also shall specify the requirements for administration on supervising the corporate low-carbon development.

**Establish additional low-carbon committee.** In the developed markets, such as the UK and the USA, a corporation usually establishes some special committees under the BOD, such as Board of Audits, Nominating Committee, Compensation and Evaluation Committee, Strategy Committee, and etc., to provide some specialized opinions for the BOD in decision-making. The affairs involved in by special committees of the BOD are usually important to corporations, and there may be some potential conflicts of interest. Therefore, the special committee of the BOD will come forward to manage these problems to make advantageous decisions for the corporation, avoiding the troubles and damages caused by conflicts of interest to the corporation governance.

As a result, it is worth considering requiring the establishment of a special committee – a low-carbon committee consisting of independent directors, when amending the company law. The low-carbon committee may give independent opinions to board of directors in relation to such matters as protecting the environment, resource utilization, energy saving and emission, to lead the company into the way of sustainable development. A low-carbon committee shall be a mandatory part of the company governance structure provided by law and be entitled to evaluate material strategy and decisions and to issue opinion independently; shareholders' meeting can rely on such opinion when making material decisions. Such opinions should be filed and subject to inspection from law enforcement agencies and reference and supervision from the public.

### ***Suggestions on Adjustment of Governance Structure of the Board of Supervisors***

Britain and America adopt the single-layer structure, Germany adopts the double-layer structure, while Italy, China, and Japan of Asia adopt the tri-angle structure and establish board of supervisors specializing in the duty of supervising. To perfect the company governance structure, involving some supervisors who represent low-carbon stakeholders on the board of supervisors is worth considering. On one hand, such supervisors can supervise the company in involving low-carbon ideas and rules into articles of association and relevant rules. Since articles of association are “the constitution” of the company, this can institutionalize the idea of low-carbon development and ensure that the company’s development and operation reflect requirements of low-carbon development; on the other hand, the board of supervisors can supervise, when appropriate, whether the company’s operating decision complies with law and requirements of low-carbon rules; it can also supervise performance of the board of directors and senior managers, and may require relevant directors or the board of directors to take responsibility when the board of directors makes decisions violating the low-carbon rules (articles of association of the company).

**Independent directors vs. the board of supervisors.** Historically, company law of China adopted the system of double-layer board of directors, which requires a company to establish both a board of directors and a board of supervisors, the latter in charge of supervision. In practice, however, the board of supervisors existed only in name and cannot perform its duty of supervision. As a result, China introduced the institution of independent directors, expecting they can perform the duty. But how to consolidate the respective duties of independent directors and the board of supervisors and determining which one of them the low-carbon duty should be assigned are two questions to be considered. Should the system of independent directors or the system of a board of supervisors be relied on to supervise the board of directors, or both?

The *Code of Corporate Governance for Listed Companies*, published by China Security Regulatory Commission, relied on both systems. This arrangement raises two questions: first, both the independent directors and the board of supervisors will perform the duty of supervision, which may have the positive result of double supervision and the negative result of increasing supervision cost and supervision duty overlap and conflict. Second, since both independent directors and the board of supervisors will perform the duty of supervision, how to distribute the authority between them will be a question which cannot be ignored.

Based on the demand of improving independence of the structure of the one-layer board of directors, Britain and America established the system of independent directors with the purpose of ensuring the independence of company’s board of directors from its managers so that the board of directors can supervise CEOs more effectively. In order to solve the problem of supervising corporate insider control action, the PRC introduced the system of independent directors (Shi, 2001). But what is undeniable is that, the existence of both the board of supervisors and independent directors will cause new problems in company governance. First is the question of how to divide the supervision power with two systems in charge of supervision. The supervision power cannot be divided very clearly, so these two systems may compete or shuffle off the power to supervise certain matters. Second, under the current background, neither board of supervisors or independent directors can actually perform the duty of supervision. What we should really consider is how to bring the two systems into full play. Third, the low-carbon economy has become the inevitable development mode for the government and companies. Should we deliberate on which system shall bear the duty of supervision, the board of directors, independent directors or both?



**Independent directors and board of supervisors collaborate to perform the low-carbon duty.** It is necessary to reconsider the position and function of the board of supervisors and independent directors in the current governance structure of PRC companies. As both the board of supervisors and independent directors exist in the current structure, to let them collaborate to undertake the low-carbon duty costs the least without changing the current structure. This way, the current structure can fully function, and it can realize the low-carbon development goal without incurring new costs for the company.

However, how to distribute the duty between them reasonably, to make them cooperate closely, and to undertake the supervision duty effectively is a question needs to be thought through. It is a question lying in front of most PRC companies. The only method working, in reality, is to make both undertake the low-carbon duty. They should cooperate and operate independently and undertake the duty of leading the company into the way of low-carbon development.

Under such circumstances, we should focus on the board of supervisors' duty of supervision to perfect the governance structure of the board of supervisors. Traditionally, the board of supervisors' duty mainly consists of inspecting a company's financial situation, supervising performance of directors and senior executives, and submitting motions to shareholders' meeting. Under the background of low-carbon development, the board of supervisors' duty of low-carbon supervision should be made clear in the company law. It should be the duty of board of supervisors to evaluate whether a company's material decision and performance of directors and senior executives comply with the requirement of low-carbon development, to report to the shareholders' meeting, and to cease any material action and decision which fails to meet the requirement of low-carbon development. The board of supervisors should undertake the duty of supervision. Otherwise, in the case that a company is punished as a result of breaching low-carbon requirements provided by laws, shareholders' meetings, the BOS shall make a negative evaluation of the board of supervisors' performance activity and replace supervisors who failed to perform their duty to urge the board of supervisors to undertake the duty of supervising company to take the way of low-carbon development.

### **Conclusion**

To sum up, with the resources crisis and the environmental crisis getting worse, low-carbon development has become a global consensus. Sustainable development is an inevitable choice for the human race. Whereas a company plays a major role in human society, it should make reasonable effort to turn the direction into the way of low-carbon development. In the light of low-carbon development, a company's previous governance structure is unable to meet the requirement of low-carbon development and appeals of other stakeholders. So, adjustment should be made to a company's governance structure to meet the requirement of low-carbon development. Under the current corporate governance structure, it is feasible and necessary to perfect a company's shareholders' meeting, board of directors, and board of supervisors to meet the requirement of low-carbon development.

As an important corporate citizen in society, a company is an important player in market economy, and its power cannot be ignored. It is impossible to fulfill the goal of low-carbon development without a company's participation. Each bill and policy enacted by countries needs to be realized by a company. Consequently, we must have company take its responsibilities of low-carbon development and make sure a company makes efforts to achieve low-carbon development through external supervision and internal governance.

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