LEGAL

March 2026

Vol.04 No.01

ISSN(print) 3069-2342 ISSN(online) 3069-2350

TAIHANG GROUP PUBLISHING

PUBLISHER

Legal is published by **Taihang Spring Group LLC**, Texas , USA ;Tel.： (626) 557-2777;E-mail: legal@taihangspring.com,For submission instructions, subscription and all other information visit://www.taihangspring.com

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Printed in Texas 2025

ISSN (print) 3069-2342

ISSN (online) 3069-2350

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Developing an Evaluation System Compatible with Internationally First-Class Law Firms

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Abstract: Evaluation systems for law firms play an important role in enhancing transparency and professionalism in the legal services market. At present, evaluations of international law firms are largely conducted by market-based ranking institutions such as Chambers and Partners and The Legal 500. In China, however, existing law firm assessment mechanisms are primarily associated with regulatory oversight and administrative review, and relatively limited attention has been given to the systematic evaluation of international legal service capacity. This paper employs comparative and institutional analysis to examine the development of law firm evaluation systems in both domestic and international contexts. It identifies several institutional characteristics and limitations in China's current evaluation mechanisms with respect to assessing internationally oriented legal services. Based on this analysis, the article proposes a conceptual framework for evaluating law firms engaged in international legal services. The framework is developed from three dimensions: evaluation subjects, evaluation objects, and evaluation indicators. Specifically, it suggests that market-based third-party institutions may serve as the primary evaluators, while judicial administrative authorities and bar associations provide supervisory and regulatory functions. The evaluation objects should reflect both the professionalism and the public-oriented nature of legal services. In addition, the article proposes a structured indicator system covering law firm service teams, international legal service business activities, and internal management. The framework developed in this study provides an analytical perspective for examining law firm evaluation mechanisms and contributes to the broader discussion on the institutional development of international legal services in China.

Keywords: Lawyer; Law Firm; International Law Firm; Foreign-Related Legal Services

Introduction

In 2023, the goal of "cultivating a number of internationally first-class arbitration institutions and law firms" was formally proposed.[1] As of January 2024, Chinese law firms have established 180 branch offices in 35 countries and regions.[2] These branch offices provide legal service support for international economic and trade exchanges in fields such as energy, infrastructure, intellectual property, and taxation.[3] However, China's evaluation system for internationally first-class law firms remains at a preliminary stage of development. It lacks sufficient attention to factors such as legal technology, client satisfaction, and the capacity to provide international legal services. As a result, it is difficult to meet the needs of assessing the level of internationalized development of law firms and to provide references for enterprises in selecting legal service providers. In this regard, it is necessary to strengthen research on the evaluation of internationally first-class law firms and to establish an evaluation system suited to the developmental characteristics of Chinese law firms.

1. Concept and System Overview

The evaluation system for internationally first-class law firms is a system used to determine whether a law firm has reached an internationally first-class level, whether it possesses the capacity to provide comprehensive services, and whether it facilitates clients in selecting legal service providers. Exploring such an evaluation system cannot be separated from clarifying the concept of internationally first-class law firms. However, it should be noted that the evaluation system concerning internationally first-class law firms is not isolated from the broader evaluation system for law firms. Rather, there exists a relationship of continuity and development between the two. Therefore, a discussion of the evaluation system for internationally first-class law firms may begin with existing evaluation systems in China and abroad.

On the one hand, existing academic research has discussed international law firms and internationally first-class law firms, addressing the question of what internationally first-class law firms should be like. For example, Li Xiguang argues that international law firms should possess "extensive industry experience, a vast global network, a professional level of management, and strong international competitiveness."[4] Wang Jinxi maintains that internationally first-class law firms should demonstrate a

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[1] Wang, Y. (2023). Xi Jinping emphasizes strengthening foreign-related rule of law during the tenth collective study session of the CPC Central Political Bureau: Creating favorable legal conditions and external environment. Chinese Government Official Website. Retrieved October 29, 2024, from https://www.gov.cn/yaowen/liebiao/202311/content_6917473.htm?jump=true.

[2] China Lawyer. (n.d.). Implementing the “Five Hopes” of the Ministry of Justice Party Group: Practice record – Industry trends. Retrieved October 30, 2024, from https://www.acla.org.cn/info/abb1c484050f433dbee37750edadfcad.

[3] Strengthening Rule of Law Construction to Serve High-Quality Development and High-Level Opening-Up. (2023). *China Law*, (6).

[4] Li, X. (2021). *Research on Legal Protection Mechanisms for China's Overseas Investment* (p. 116). China Social Sciences Press.

significant scale and revenue, specialized human resources and legal service products, governance and technology commensurate with their scale, as well as active engagement in cultural development and the fulfillment of social responsibilities.[5] Yuan Huazhi contends that the objective framework of international law firms includes first-class strategic support, professional services, governance capacity, a strong talent pool, innovation capability, and brand influence.[6] This view further proposes evaluation factors such as participation in the formulation of international and regional rules, the number of international corporate clients, the presence of professional managers, and intelligent and digital infrastructure.

At the same time, some Chinese law firms have also engaged in discussions regarding whether they qualify as "internationally first-class law firms." For example, DeHeng Law Offices employs a relatively large number of lawyers who are familiar with foreign laws and working languages, hold bar licenses in other countries, and are able to mobilize legal resources according to clients' needs to provide clients with one-stop, comprehensive legal services.[7]

On the other hand, both China and international jurisdictions currently have evaluation systems for law firms and internationally first-class law firms. By analyzing the evaluation factors of these systems, it is possible to address the questions of what internationally first-class law firms should be and what they actually are in practice.

First, evaluation institutions such as *Chambers and Partners*, Legal 500, Law.com Compass, and The Lawyers Global have conducted assessments of international law firms. For example, *Chambers and Partners* evaluates law firms across more than 200 jurisdictions worldwide based on factors such as legal capabilities in selected practice areas and jurisdictions, client service, quality of team members, commercial awareness, diligence, and efficiency.[8] Legal 500 ranks law firms in practice areas including antitrust, arbitration, capital markets, corporate restructuring, data protection, energy, intellectual property, mergers and acquisitions, private equity, and taxation.[9] *Law.com Compass* and *Law.com International* publish reports on the top 200 global law firms based on indicators such as law firm revenue, partner profits, and number of lawyers. They also evaluate U.S. law firms according to metrics including law firm revenue, revenue per lawyer, average partner compensation, and profits per partner.[10]

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[5] Wang, J. (2024). On cultivating internationally first-class law firms. *China Rule of Law*, (4).
[6] Yuan, H. (2024). Anchoring objectives and striving to be pioneers in creating internationally first-class law firms. *China Lawyer*, (5).
[7] Zhao, B., Cai, F., et al. (2017). *Supporting Chinese enterprises in going global: Landi International T hink Tank Report 2016* (Vol. 1, pp. 251–253). China Social Sciences Press.
[8] Chambers. (n.d.). Methodology. Retrieved March 9, 2026, from https://chambers.com/about-us/methodology.
[9] Legal 500. (n.d.). Worldwide practice areas. Retrieved March 1, 2026, from https://www.legal500.com/c/worldwide/practice-areas.
[10] Law.com. (n.d.). Rankings Hub. Retrieved October 29, 2024, from https://www.law.com/rankings/.

The Solicitors Regulation Authority of England and Wales issues the *Lexcel* standard, which covers "client care, risk management, personnel management, organizational structure and strategy, financial management, information management, and file and case management."[11] Evaluations by The Lawyers Global include law firms' professional standards, brand value, transaction value, number of transactions, personnel count, number of offices, global presence, total partners, revenue, social responsibility, and innovation.[12] Research from IE University indicates that evaluating law firms should focus on the capabilities of the lawyer team, client reputation, market share, and adaptability and innovation in technology—for example, whether artificial intelligence is used and whether technology training is conducted.[13]

Second, while China has domestic evaluation systems for law firms, it lacks a systematic and mature evaluation system for international law firms. In 2003, the *Standards for the Evaluation of National Excellent Law Firms* set requirements regarding environmental quality, comprehensive management, and service quality. In the 2007 version, "environmental quality" was revised to "basic conditions."[14] The 2010 *Annual Inspection and Assessment of Law Firms* included evaluation content such as lawyer team development, business activities, lawyer professional performance, internal management, administrative and industry-related rewards and penalties, and fulfillment of membership obligations.[15] Articles 7 to 10 provide detailed listings of the evaluation content for team development, business activities, professional performance, and internal management (see Table 1). These assessment factors already reflect attention to trends in the large-scale development of the industry, but they lack evaluation elements related to foreign-related legal services, international legal services, and branch offices.

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[11] The Law Society. (n.d.). Lexcel. Retrieved October 29, 2024, from https://www.lawsociety.org.uk/topics/firm-accreditations/lexcel/.

[12] The Lawyers Global. (n.d.). The World's Legal Industry Best Awards Program. Retrieved March 10, 2026, from https://www.thelawyersglobal.org/awards.

[13] IE University. (2026). Biggest law firms in the world 2026: Global leaders in legal services. Retrieved March 10, 2026, from https://www.ie.edu/uncover-ie/biggest-law-firms-in-the-world/.

[14] The basic conditions include modern office and communication facilities, information exchange platforms, Party-building activities, specialized division of labor, study of current political affairs, reserved funds for institutional development and social risk funds, professional liability insurance for lawyers, lawyers' social insurance, legal aid participation, and tax payment in accordance with the law. Comprehensive management includes archival management, mechanisms for democratic management and supervision, business management systems and conflict-of-interest review systems, financial management systems, regulations on legal service fees, personnel management systems, complaint handling and investigation systems, lawyer talent development programs, and the cultivation of law firm culture. Service quality includes service quality management systems, lawyers' study of professional ethics and practice discipline, reputation and recognition, awards and commendations received, as well as major contributions made. See Hunan Lawyers Association. (2016). Notice on the preliminary evaluation and recommendation of the National Excellent Law Firms and Lawyers 2011–2014.

[15] Article 6 provides that an annual inspection and assessment shall be conducted for law firms. The primary purpose is to examine and evaluate whether law firms comply with the Constitution and laws, fulfill their statutory duties, and implement self-regulatory management. The specific assessment items include: (1) the development and composition of the lawyer workforce; (2) the conduct of business activities; (3) lawyers' professional practice performance; (4) internal management; (5) administrative rewards or penalties and industry disciplinary actions received; (6) the fulfillment of membership obligations to the lawyers' association; and (7) other matters that judicial administrative authorities of provinces, autonomous regions, and municipalities directly under the central government deem necessary to inspect and assess.

This gap reflects the lag in the development of China's foreign-related legal service system. This lag is further evidenced by the fact that the Measures for the Administration of Law Firms include provisions for the management of branch offices,[16] but lack regulations concerning overseas branches. Although the 2016 Opinions on the Development of Foreign-Related Legal Services attempted to set out provisions for foreign-related legal institutions, provide guidance for their establishment, and support law firms in setting up practice entities,[17] judicial administrative authorities and bar associations have also actively conducted selection of foreign-related law firms, collected cases of foreign-related legal services, established talent and resource databases for foreign-related services, and carried out pilot programs for joint law firms.[18] However, overall, evaluations of international law firms conducted by third parties remain limited. Compared with international law firm evaluation systems, China's law firm evaluation system is still at an early stage of development and has limited industry influence.[19]

Team Development	Business Activities	Professional Practice Performance	Internal Management
Number, quality, and structure of lawyers	Number and types of cases handled; expansion of practice areas; service quality; business revenue	Compliance with laws and regulations, professional ethics, practice discipline, and professional conduct rules	Practice management systems
Education on political	Compliance with laws and	Legal aid, social services, and other	Fee, financial, and distribution

[16] Ministry of Justice of the People's Republic of China. (2018). *Measures for the Administration of Law Firms* (2018 amendment).

[17] Article 9 provides that efforts should be made to further develop foreign-related legal service institutions. A group of foreign-related legal service institutions with strong international competitiveness in terms of professional fields and service capabilities should be cultivated, and national and local demonstration institutions (or projects) for foreign-related legal services should be established. Guidelines for the development of foreign-related legal service institutions should be formulated in order to improve their internal organizational structures and systems for quality control, risk prevention, and profit distribution, thereby continuously enhancing the management capacity of legal service institutions. Domestic law firms should be supported in establishing practice institutions in countries and regions of major global economies through means such as setting up overseas branch offices, overseas mergers and acquisitions, and joint operations. Bar associations should adopt measures such as facilitating connections and providing key recommendations to create favorable conditions for domestic law firms to establish overseas branches. See Opinions of the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Commerce, and the Legislative Affairs Office of the State Council on the Development of Foreign-Related Legal Services (2016).

[18] Ministry of Justice of the People's Republic of China. (2017). Notice of the General Office of the Ministry of Justice on the Selection of 100 National Demonstration Institutions for Foreign-Related Legal Services; All China Lawyers Association. (2017). Notice of the All China Lawyers Association on Soliciting Cases for the Book "Typical Cases of Chinese Lawyers' Foreign-Related Legal Services"; Hunan Provincial Department of Justice. (2024). Hunan releases work plan for foreign-related legal services. Retrieved October 30, 2024, from https://sft.hunan.gov.cn/sft/xxgk_71079/gzdt/xtyw/202408/t20240826_33438611.html; Guangdong Provincial Department of Justice. (n.d.). Notice on issuing the Implementation Measures for the Pilot Program of Joint Operations between Chinese and Foreign Law Firms in the Qianhai Shenzhen–Hong Kong Modern Service Industry Cooperation Zone. Retrieved November 7, 2024, from https://qh.sz.gov.cn/gkmlpt/content/10/10476/post_10476187.html#25295.

[19] Central Committee of the Communist Party of China. (2024). Decision on further comprehensively deepening reform and advancing Chinese-style modernization.

ideology, professional ethics, and practice discipline	regulations	public-interest activities	systems
Professional study and vocational training	Representation in major or collective cases	Administrative or industry rewards and penalties	Tax payment in accordance with the law
Party-building activities	Supervision of lawyers' practice and handling of complaints	Annual assessment of professional practice	Practice risk management and institutional development funds
	Legal aid, social services, and other public-interest activities		Management of employed staff and support personnel
	Commendations received and complaints		Management of branch offices
			Management of internship programs
			Business records and practice files
			Firm charter and partnership system

Table 1. Relevant Provisions of the 2010 *Annual Inspection and Assessment of Law Firms* issued by the Ministry of Justice of the People's Republic of China.

2. Establishing an Evaluation System for Internationally First-Class Law Firms

An essential aspect of the foreign-related rule of law is the construction of a first-class foreign-related legal service system. As an important component of this system, internationally first-class law firms influence the effectiveness of foreign-related legal services. Against this background, establishing an evaluation system for internationally first-class law firms can provide law firms with clear guidance on their development direction. The following primarily designs a law firm evaluation system from three aspects: evaluation subjects, evaluation objects, and evaluation indicators.

2.1 Evaluation Subjects: Emphasizing Market-Based Third-Party Evaluation

At present, the evaluation systems for law firms in China—particularly with respect to both domestic and international law firms—are mainly conducted by several types of evaluators, including judicial administrative authorities and law firm self-evaluations, evaluations by clients, evaluations by peer lawyers, as well as assessments by other third-party market institutions. Judicial administrative authorities and bar associations have conducted evaluation activities such as annual inspections of law firms and the National Excellent Law Firms assessments. However, their primary responsibilities are supervision and management of law firms. Except in cases such as government procurement of public legal services, they are generally not recipients of legal services, and therefore have not personally experienced the services of law firms, making it difficult for them to conduct substantive evaluations of law firm services.

Clients, as the primary recipients of law firm legal services and the counterparties to engagement contracts, have direct experience of both the service process and its outcomes, providing a basis for evaluating law firms. Currently, evaluations by Chambers and Legal 500 take client feedback into account. For example, *the Legal 500* evaluation includes indicators of client satisfaction.[20] In the Chambers evaluation, law firms participating in the assessment are required to submit information on key clients so that researchers can interview these clients.[21] However, most clients interact with a limited number of law firms, and their experiences with legal services are relatively fragmented. Therefore, although clients can evaluate the services of the law firms they have engaged with, it is difficult for them to provide a comprehensive and objective assessment of a larger number of law firms.

Third, peers in the legal profession, because they engage in similar legal service work, share practical experience, modes of thinking, and professional discourse, providing them with the knowledge and capability to evaluate the services of other law firms. However, unorganized peer evaluations are often fragmented, with limited coverage, making it difficult to form a systematic and comprehensive assessment of legal services.

Fourth, based on the three types of evaluation subjects mentioned above, it is proposed that evaluations of internationally first-class law firms be conducted by market-based third-party evaluation institutions that fully incorporate client and peer feedback and operate independently of judicial administrative authorities and bar associations. These third-party evaluation institutions mainly include universities, newspapers and media, and market-oriented third-party evaluation organizations. For example, the Law Firm Research Center of China University of Political Science and Law conducts nationwide evaluations of legal service products, which include

[20] Legal 500. (n.d.). Company overview. Retrieved March 1, 2026, from https://www.legal500.com/about-us.

[21] Chambers. (n.d.). Methodology. Retrieved March 10, 2026, from https://chambers.com/about-us/methodology.

foreign-related legal services provided by law firms. In addition, international evaluation institutions such as Chambers and the *Asian Legal Business (ALB)* have already carried out a substantial number of law firm evaluations, accumulating significant experience.

Finally, whether universities of political science and law, newspapers and media, or commercially operated third-party evaluation institutions, all may be influenced by profit-driven motives. Therefore, particular attention must be paid to the neutrality and credibility of evaluations. To overcome the limitations of third-party evaluation subjects, the supervisory role of judicial administrative authorities and bar associations should be fully utilized. In this context, bar associations can issue evaluation guidelines concerning internationally first-class law firms and carry out accreditation of evaluations conducted by market-based third-party institutions, thereby exercising supervisory functions over the evaluation process. Judicial administrative authorities supervise the performance of industry self-regulatory duties by bar associations, reviewing their accreditation rules to prevent situations in which bar associations protect the interests of the profession at the expense of the public interest. At the same time, judicial administrative authorities and bar associations should, within an appropriate scope, share statistical data and other information on the legal profession to provide data support for market-based third-party evaluations. Finally, judicial administrative authorities and bar associations should offer mechanisms for supervision and feedback on evaluations, overseeing any evaluation activities that may disrupt the competitive order of the legal services market.

2.2 Evaluation Objects: Focusing on the Professionalism and Public Nature of Legal Services

Internationally first-class law firms primarily provide services to the international legal services market, which, to a certain extent, can be considered a "*society of strangers*." In other words, the factors maintaining the relationship between law firms and clients are not primarily based on personal connections characteristic of a "*society of acquaintances*," but on the quality of legal services. Legal services link law firms and clients at both ends, and the primary purpose of a legal services contract is the smooth delivery of those services. Such delivery is inseparable from the professionalism of legal services, which is manifested in multiple aspects.

First, the internal management system of a law firm should be standardized and scientific, capable of providing resource allocation support and incentive mechanisms for lawyers' cross-border services. In 2018, the Ministry of Justice issued the Measures for the Administration of Law Firms, which specify management systems including case management, fee structures, allocation systems, legal aid management, decision-making procedures, conflict of interest review, dismissal and disbarment procedures, personnel welfare protection, fund management, continuing professional education, annual practice assessments, and accountability mechanisms.[22] These

[22] Ministry of Justice of the People's Republic of China. (2018). *Measures for the Administration of Law Firms* (2018 amendment).

systems cover the basic matters of law firm management but still lack provisions related to the use of social media, online business promotion, and client data management. Evaluations of law firms in the context of internationally first-class law firms should take these aspects into account.

Second, law firms should have high-level teams capable of delivering high-quality legal services. For example, members of the law firm should be proficient in international legal rules and commercial practices and possess advanced foreign language skills, interpersonal communication abilities, and teamwork capabilities.

Finally, law firms should have sufficient financial strength and liquidity, providing the capacity to absorb operational costs. Legal services are not products in a "self-service vending machine"; rather, they emphasize handling specific matters and applying professional experience. In the relatively unfamiliar environment of the international legal services market—characterized by legal rules, commercial practices, and government policy management—the process of providing legal services is full of uncertainty and challenges, requiring law firms to maintain adequate financial and liquidity capacity.

In addition to professionalism, internationally first-class law firms should possess a certain degree of public nature. Article 13 of the *Law of the People's Republic of China on Lawyers* (2017) stipulates: "No person who has not obtained a lawyer's practicing certificate shall engage in legal services under the name of a lawyer; except as otherwise provided by law, no person shall act as a litigation or defense agent."[23] Compared with other non-lawyer legal service providers, internationally first-class law firms are, to a certain extent, protected under national law. This legal protection confers legitimacy on lawyers to provide services such as litigation and defense representation. While the law grants legitimacy to lawyers' services, it simultaneously imposes requirements concerning their public-oriented role. Furthermore, although internationally first-class law firms represent the interests of their clients, such representation may conflict with the public interest. Law firms that provide legal services to high-pollution enterprises, tobacco companies, or companies producing addictive drugs, while loyal to their clients, act in ways that may be contrary to the interests of the general public.

Chinese lawyers are not merely legal entrepreneurs seeking private gain. The 1980 *Provisional Regulations on Lawyers* stipulated that lawyers are legal workers of the state.[24] The 1996 *Law of the People's Republic of China on Lawyers* defined lawyers as practitioners who provide legal services to society.[25] Thus, the professional identity of Chinese lawyers has developed through stages as "state legal service workers" and "practitioners providing legal services to society," inherently possessing a certain degree of public-oriented character. On this basis, the 2007 *Law of the*

[23] *Law of the People's Republic of China on Lawyers* (2017 revision), Art. 13.
[24] *Provisional Regulations on Lawyers* (1980), Art. 1.
[25] *Law of the People's Republic of China on Lawyers* (1996), Art. 2.

People's Republic of China on Lawyers explicitly stipulated that "lawyers shall safeguard the legitimate rights and interests of clients, ensure the correct implementation of the law, and uphold social fairness and justice."[26] This provision has been maintained in the 2017 *Law of the People's Republic of China on Lawyers*, indicating that lawyers are required not only to possess professional competence but also to bear the obligation of protecting the public interest.

3. Evaluation Indicators: Establishing an Indicator System Focused on International Legal Services

Quantifiability is one of the key characteristics of conducting evaluation activities. [27] The evaluation indicator system for internationally first-class law firms should include indicators that can be quantitatively scored. At present, China has already established relatively well-developed evaluations such as the National Excellent Law Firms assessment and annual inspections of law firms, but there remains a gap compared with the goal of cultivating internationally first-class law firms, requiring the addition and optimization of indicators based on existing standards. Academic and practical discussions have considered factors such as the development of specialized talent teams, the quality and capacity of global legal services, and internal governance and management systems.[28] However, in specific evaluation activities, relying solely on these broad evaluation factors is far from sufficient. It is necessary to further design concrete, quantifiable indicators that can be scored, thereby establishing a systematic and complete indicator system. In this regard, the following discussion proposes several evaluation indicators that can be assigned scores and used to calculate a total score. The specific point values and calculation methods for these indicators remain subjects for further research.

3.1 Law Firm Service Team Indicators

Lawyers are the primary resource of a law firm and one of the key indicators for evaluating a law firm's level. To enhance cross-border legal service capacity, law firms need to actively cultivate talent for foreign-related legal services. Currently, "there are only slightly more than 7,200 lawyers in China who are proficient in handling foreign-related legal matters," and "only slightly more than 300 lawyers are capable of independently handling cases before the World Trade Organization Appellate Body,"[29] reflecting a serious shortage in China's foreign-related legal workforce.

To emphasize the importance of foreign-related legal talent and to use evaluation as a driver for talent development, the evaluation indicators for internationally first-class law firms should include specific metrics on the development of international legal

[26] *Law of the People's Republic of China on Lawyers* (2007 revision), Art. 2.
[27] Weber, M. (2010). *Economy and Society* (Vol. 2, trans. Yan Kewen, p. 1114). Shanghai People's Publi shing House.
[28] Excerpts from the Symposium on "Actively Developing Foreign-Related Legal Services and Cultivatin g Internationally First-Class Law Firms." (2023, December 13). *Legal Daily*, p. 12.
[29] Xi, J. (2025). Advancing the comprehensive rule of law in a solid manner (February 25, 2019). In *Se lected Works on Xi Jinping's Rule of Law* (Vol. 1) (p. 249). Central Literature Publishing House.

service teams. For example, these indicators may include: the number of lawyers with overseas educational backgrounds, the number of lawyers holding licenses in multiple jurisdictions, the number of lawyers with practice experience in multiple jurisdictions, the number of lawyers with experience providing legal services across multiple jurisdictions, the number of lawyers engaged in international legal service research with demonstrable research outputs, and the proportion of lawyers holding multi-jurisdictional licenses relative to the total number of lawyers in the firm.

In addition, in 2017, the Ministry of Justice conducted evaluations of lawyers' professional competence, covering areas such as criminal law, family law, corporate law, finance, securities and insurance, construction and real estate, intellectual property, labor law, foreign-related legal services, and administrative law.[30] Since then, judicial administrative authorities and bar associations in various regions have carried out professional competence assessments of lawyers, with evaluations also covering foreign-related legal services. On this basis, evaluation indicators for international law firms can consider "the number of lawyers specializing in foreign-related legal services."

3.2 Law Firm Business Indicators

Traditional business development indicators for law firms include the annual volume of legal services provided, legal service revenue, types of legal services offered, awards received by lawyers related to their practice, publication of practice-related journal articles by lawyers, and participation in seminar presentations. For the development of international law firms, additional specific indicators can be established under the category of law firm business indicators.

First, revenue and types of services. The scale and revenue of international legal services are key indicators for assessing a law firm's capacity for international legal practice and an important measure of the foundational development of an internationally first-class law firm. Specific metrics include: revenue from a law firm's international legal service practice, the proportion of international legal service revenue relative to the firm's total revenue, the types of international legal services the firm can provide, the number of jurisdictions covered by the firm's international legal services, the duration over which the firm has provided international legal services, and representative cases of the firm's international legal service work.

Second, service influence. A law firm's and its lawyers' ability to engage with international institutions is a key indicator.[31] The influence of a law firm's international legal services can be observed through metrics such as: the firm's participation in international commercial cooperation, awards or recognition received from governments or professional associations across multiple jurisdictions, collaboration with foreign law firms in practice, establishment of overseas branch offices, and awards received from other legal service evaluations.

[30] Ministry of Justice of the People's Republic of China. (2017). Pilot plan on establishing lawyer profes sional competence evaluation system and assessment mechanism.
[31] Wang, J. (2024). On cultivating internationally first-class law firms. *China Lawyer*, (12).

The quality of a law firm's international legal services is also an important indicator. This can include, for example, the alignment of the firm's international legal services with the government policies, court regulations, and professional association oversight of the relevant jurisdictions. Other indicators may include the typical response time for providing international legal services, clarity and transparency of fee rules and standards, clarity of dispute resolution mechanisms regarding fees, compliance with jurisdiction-specific anti-money laundering regulations, and whether the firm pays special attention to differences in rules such as lawyer confidentiality across jurisdictions.

Client satisfaction with the law firm's international legal services. Currently, evaluations of law firms conducted by China's judicial administrative authorities and bar associations primarily rely on expert assessments by government officials or industry association personnel, with limited incorporation of feedback from individual or organizational clients. Although some evaluations have begun to consider client feedback, the proportion of client input is generally low, limiting its influence on the assessment of legal services. Existing evaluation indicators tend to focus on the law firm's "hardware and software" aspects, often overlooking client perspectives. [32]Accordingly, indicators could include: client evaluation scores of the international legal services provided, clients' willingness to recommend the law firm, the duration of the client-law firm legal service relationship, clients' intention to reuse the law firm's services, and complaints lodged by clients against the law firm.

3.3 Law Firm Internal Management Indicators

Internationally first-class law firms should possess professional management systems and technologies commensurate with their scale and revenue.

First, law firms should have a mature and systematic lawyer practice management and evaluation system. In addition to assessing lawyers' compliance with the Constitution of China, laws and regulations, professional ethics, and practice discipline, law firms should also consider lawyers' understanding of and compliance with international treaties, international practices, rules of professional conduct in different countries, and commercial transaction customs, as well as their ability to handle multi-jurisdictional legal conflicts.

Second, law firms should have a scientific governance structure. This includes internal decision-making mechanisms, profit allocation systems, career development mechanisms, and conflict and dispute resolution procedures related to the provision of international legal services. It also encompasses the compliance and normative quality of decision-making in foreign-related legal services.

Third, law firms should maintain a systematic risk management system. International legal services involve diversified risk types, increased complexity of risk levels, and

[32] Wang, J., Zhou, W., & Gao, Y. (2019). Research report on legal service certification standards. *China Justice*, (1).

potentially severe consequences. Law firms should fully consider practice-related risks, improve lawyer professional liability insurance, ensure compliance in cross-border legal services, maintain separation between firm and personal funds, and consistently retain sufficient solvency capacity.

Finally, law firms should establish management and incentive systems related to lawyers' public service obligations.

4. Conclusion

This article examines the institutional design of law firm evaluation systems in the context of the growing development of international legal services. By comparing domestic evaluation mechanisms with the practices of international ranking institutions such as *Chambers and Partners* and *The Legal 500*, the study identifies a key limitation in the current framework in China: existing law firm assessment mechanisms are still largely associated with regulatory oversight and administrative review, while relatively limited attention has been given to the systematic evaluation of law firms' capacity to provide international legal services. In response to this gap, the article proposes a conceptual framework for evaluating law firms engaged in international legal services and analyzes the evaluation system from three dimensions: evaluation subjects, evaluation objects, and evaluation indicators.

Within this framework, the study suggests that market-based third-party institutions may serve as the primary evaluators, while judicial administrative authorities and bar associations perform supervisory and regulatory functions. In terms of evaluation objects, the assessment of law firms should take into account not only the professional competence involved in legal services but also the public-oriented nature associated with the legal profession. Regarding evaluation indicators, the article proposes a structured system that includes indicators related to law firm service teams, international legal service business activities, and internal management. By integrating these elements, the proposed framework offers an analytical perspective for understanding the institutional design of law firm evaluation mechanisms in the context of international legal services.

At the same time, the framework proposed in this article remains primarily conceptual. Issues such as the quantification of evaluation indicators, the weighting of different indicators, and the operationalization of evaluation criteria require further empirical and methodological research. Future studies may examine the application of the proposed framework through empirical data, comparative case studies of law firms engaged in international legal services, or quantitative analyses of evaluation indicators. Such research may contribute to a more comprehensive understanding of law firm evaluation mechanisms in the evolving global legal services market.

Fostering Trust with Prudence: A Judicial Trust Model in the Era of Artificial Intelligence

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Abstract: Judicial trust serves as the micro-foundation for the formation of judicial credibility, as well as the process of its concretization. Against the backdrop of the intelligent transformation of the judiciary, judicial trust manifests a novel model of "fostering trust with prudence." This model does not simply replace traditional ones but represents a complex evolution driven by the dual forces of technological empowerment and technological risks. Examining its underlying logic must not be confined to the dichotomous perspective of "human" versus "institution"; rather, it requires placing "technological systems" and their interactions with humans at the core of analysis. On the one hand, the "fostering trust with prudence" model positions technology as a "facilitator" of judicial fairness and efficiency, accumulating public trust in technology by enhancing transparency, reliability, and procedural regularity. On the other hand, this trust model also guards against technology becoming a new source of judicial bias and injustice, mitigating risks through algorithmic governance, checks and balances, and the enhancement of judicial personnel's capabilities. While these two aspects may appear contradictory on the surface, they are ultimately aligned with the fundamental goal of "ensuring that technology serves judicial fairness."

Keywords: Judicial trust; Artificial Intelligence; Fostering trust with prudence; Technology trustworthiness

Introduction

The advent of artificial intelligence (AI) is precipitating a profound transformation across the judicial landscape. Technologies such as smart adjudication, AI-assisted sentencing, and case law recommendation systems are reshaping the operational dynamics of judicial power, altering not only procedural efficiency but also the very foundations upon which public trust in the judiciary is built. Historically, judicial trust has been cultivated through interpersonal interactions between judges and litigants, as well as systemic confidence in legal institutions and procedures—a paradigm often summarized as establishing trust while maintaining necessary skepticism.

However, the integration of AI as a participant, assistant, and influencer within judicial processes fundamentally expands and complicates this trust equation. The object of trust extends beyond judges and institutions to encompass the technology systems themselves, and the interaction shifts from purely human-to-human dynamics to include complex human-computer interactions and collaborations. This evolution raises critical questions: In a justice system deeply embedded with technology, how is trust generated? What form does skepticism take, and how does it function as a vital safeguard?

The following discussion will first elaborate on the new propositions of judicial trust in the AI era. It will then dissect the dual logic of this model: the "establishing trust" logic focused on constructing the credibility of technology, and the "harboring concerns" logic dedicated to preventing technological risks. Through this exploration, the document argues that a mature and wise digital justice system must expertly balance these two seemingly contradictory yet fundamentally unified stances, ensuring that technological advancement ultimately serves the core judicial value of justice.

1. The Proposition of Judicial Trust in the Era of Artificial Intelligence

Trust is a key cornerstone for the stability of human society, a social phenomenon that emerged alongside human social interactions. Individuals exhibit significant differences in their modes of trust, a phenomenon rooted in the diversity of geographical environments and cultural backgrounds, particularly the divergence in educational levels and value systems. Human trust models continuously evolve with the expansion of interpersonal interactions and the transformation of social structures, as evidenced by the shift from interpersonal trust based on kinship ties to institutional trust gradually constructed with the development of industrial society, both highlighting the dynamic nature of trust models. [1]In the judicial field, as big data and artificial intelligence technologies are applied deeply and extensively (e.g., intelligent adjudication, sentencing assistance, similar case recommendation, and judicial management), new technologies are reshaping the operational posture of judicial power. Consequently, the model of judicial trust is undergoing a transformation, "shifting from a singular institutional trust towards a composite trust that integrates both institution and technology." [2]

In traditional research, the production of judicial trust primarily revolves around interpersonal and systemic interactions between judges and parties, as well as between courts and the public. Its core logic lies in judges employing strategies such as role-playing, discourse dominance, and emotion management to "build trust," while simultaneously "maintaining suspicion" based on professional characteristics and risk prevention. This constitutes the dualistic logic of action described as "fostering trust while upholding prudence." [3] However, when artificial intelligence becomes a participant, assistant, and even a partial influencer in judicial decision-making, the

[1] *See* Han Ye, *A Holistic Study on the Transformation of Trust Models in the Digital-Intelligence Era*, Academic Exploration, No. 3, 2025.
[2] Zhao Yang, *Judicial Trust in the Era of Artificial Intelligence and Its Construction*, Journal of the East China University of Political Science and Law, Vol. 4, 2021.
[3] *See* Huang Rui, *Fostering Trust While Upholding Prudence: The Logic of Producing Judicial Trust from the Judge's Perspective*, Jurist, No. 2, 2023.

structure of judicial trust production undergoes a fundamental transformation: the object of trust expands from "humans and institutions" to include "technology and systems," and trust interactions partially shift from "human-human interaction" to "human-machine interaction" and "human-machine collaboration."

In the era of artificial intelligence, the production of judicial trust involves at least three dimensions: first, the public's trust in courts or technology companies that serve as technology providers and operators; second, the trust and acceptance of AI technological tools by judicial participants such as judges and parties; third, mediated by technology, the public's and parties' trust in the final judicial decisions that incorporate technology-assisted judgments. [4]The traditional connotation of "system trust" is now infused with the reliability and ethics of technological systems, and the perception of "procedural justice" is profoundly influenced by technical features such as algorithmic transparency and explainability. Therefore, exploring the logic of judicial trust in the AI era must address a core question: in a judicial process deeply embedded with technology, how is trust produced, and in what form does necessary suspicion exist and function?

The author argues that in the era of artificial intelligence, judicial trust manifests a novel logical form characterized by "fostering trust with prudence." This does not constitute a mere replacement of traditional trust models but rather represents a complex evolution under the dual context of technological empowerment and technological risks. Its dimension of "fostering trust" can be viewed as the judicial system's purposeful construction and demonstration of the trustworthiness of intelligent technology. Conversely, its dimension of "prudence" is reflected in a clear awareness of the inherent limitations of technology, the establishment of institutional safeguards against potential risks in its application, and vigilance against the strategic gaming of litigation tactics facilitated by technology. While these two aspects may appear contradictory, they are ultimately unified under the paramount goal of "ensuring that technology serves judicial fairness."

2. The Logic of "Fostering Trust" in Judicial Trust in the AI Era: Constructing Technological Trustworthiness

From a traditional perspective, judges build public judicial trust through "on-stage" performances such as courtroom conduct and reasoning in legal documents, combined with their professional competence. In the era of artificial intelligence, however, measures for "fostering trust" within the judicial system have largely shifted towards cultivating and demonstrating the trustworthiness of technology. This is not an abandonment of the human factor, but rather an effort to establish technological systems as trustworthy "agents" or "assistants." In this process, trust-production strategies exhibit new characteristics.

2.1 The Role of Technological Systems: Demonstrating Explainability and Reliability

The role undertaken by artificial intelligence in the judicial field resembles that of a "digital assistant" with professional functions. To establish trust in AI-assisted judicature, the primary requirement is its successful fulfillment of the role of a fair, reliable, and practical assistant. The construction of its trustworthiness relies on the

[4] *See* Guo Chunzhen & Huang Sihan, *Trust in Artificial Intelligence for Criminal Justice and Its Construction, Jilin University Journal Social Sciences Edition*, No. 2, 2023.

strategic, conscious operation by judicial institutions. In practice, judicial institutions employ various strategies to enhance the perceived trustworthiness of the technological role:First, proactive transparency initiatives. Judicial organs actively manage public perception by disclosing the scope, principles, and inherent limitations of technological applications. A landmark example is the civil ruling (2025) Min 72 Min Te No. 76 by the Xiamen Maritime Court, which, for the first time in a judicial ruling, explicitly required litigation representatives to fully and continuously disclose their use of AI technology during litigation. This measure brings AI application under the supervision of procedural transparency, directly addresses public concerns about the "algorithmic black box," and represents an institutional exploration in constructing trust in intelligent judicial technology. Second, proof of reliability. Demonstrating empirical data on how technology-assisted systems enhance efficiency, unify standards, and reduce errors, thereby basing trust on quantifiable performance improvements. For instance, the AI-assisted adjudication system launched by the Shenzhen Intermediate People's Court in June 2024 reportedly reduced the average case-closing time for civil and commercial cases by 25.6% within six months of operation.[5] Systems like Beijing courts' "Judge Rui," by integrating legal knowledge bases and similar-case recommendations, assist judges in unifying adjudication standards.[6] Third, ceremonial demonstration of human-machine collaboration. Publicly or to the parties involved, demonstrating how technology provides assistance and how judges make final decisions, thereby re-emphasizing the "human-centric" principle of "technology reviews, judge decides." This further establishes the judge's authoritative image as the ultimate responsible subject and master of the technology, making the trustworthiness of intelligent technology a new foundation for the extension of judicial credibility.

2.2 Reconstruction of the Discourse System: The Fusion and Dominance of Legal and Computational Language

In the process of judicial digital transformation, a portion of discursive authority is shifting from traditional legal interpretation logic towards technological logic. Algorithms, by translating elements such as legal provisions and case characteristics into computable data models to generate predictions, classifications, and recommendations, have created a new form of "computational discourse." Faced with this transformation, the key for judges to establish trust lies in becoming effective "translators" and "directors" of this discourse, which is manifested in the practice of two core competencies. On one hand, it is necessary for judges to comprehend the conclusions output by technology, such as analyses of disputed issues and alerts for evidentiary contradictions, and to judiciously integrate them into legal reasoning, thereby enhancing the logicality and persuasiveness of judgments. An example is the innovative measure by the Jianshan District People's Court in Shuangyashan City, Heilongjiang Province, which introduced the Implementation Measures for the "Appending Effective Similar Case Judgments" Work Mechanism, deeply integrating similar-case judgments into the entire process before, during, and after litigation. The presiding judge conducts legal interpretation and reasoning based on the results of similar-case judgments. [7] This initiative not only aligns with the requirements of the Supreme People's Court's Guiding Opinions on Unifying the Application of Law and Strengthening Similar-Case Retrieval (for Trial Implementation) for responding to

[5] *See* Li Feiyan, *Security Dilemmas and Governance Pathways for Large Language Model Applications in Judiciary*, People's Tribune · Academic Frontiers, No. 7, 2025.
[6] *See* Lao Jiaqi, *AI Assistance for More Efficient Judicial Justice*, Guangming Daily, April 26, 2025, at p.5.
[7] *See "Meticulous Cultivation, Responding to Public Expectations,"* People's Court Daily, March 3, 2026, at p.1.

parties' demands regarding similar cases, but also enhances the scientific nature and credibility of judgments by demonstrating consideration for a broader spectrum of legal practice. On the other hand, judges need to control the direction of the discourse to prevent intelligent technology from "usurping the leading role." This requires judges to possess the ability to critically examine algorithmic suggestions, identifying potential biases or logical flaws therein, and to adjust and correct them using professional legal terminology. Through such integration and direction, judges can leverage technology to strengthen the "scientific" nature of their own judgments to gain trust, while simultaneously retaining core authority over legal interpretation and discretion, preventing trust from becoming entirely reliant on uncontrollable technological output.

2.3 Optimization of Process Control: Enhancing the Perceived Fairness of Procedure

Through mechanisms such as process standardization, node-based reminders, and real-time recording, artificial intelligence technology has significantly increased the standardization, traceability, and predictability of judicial proceedings. For instance, intelligent case complexity stratification and distribution systems automatically categorize cases as "complex" ,"standard" or "simple" using pre-defined factors such as the cause of action, amount in dispute, number of parties, and complexity of claims. These systems then direct cases to corresponding trial teams. This algorithmic application aims to make procedural choices more objective and standardized, thereby reducing the arbitrariness of human discretion. [8]Another example is the fully paperless case handling model adopted by Shanghai courts, which achieves "end-to-end digital traceability" from the submission of materials by parties to the generation of judgments. Through real-time recording and visual supervision of each procedural node, this system ensures that the process is both immutable and reviewable, thereby constructing the "infrastructure" for technological trust. [9] Furthermore, intelligent judicial technology possesses the capability to generate legal documents from standardized templates, which can unify output formats, minimize formatting errors, and reduce variations between individuals, thereby enhancing the stability and predictability of judicial outputs. The meticulous and granular control over the procedure itself creates and establishes a critical foundation for institutional trust. By virtue of its impersonal nature, intelligent judicial technology transforms into a "rigid" guarantor of procedural fairness, allowing parties to more readily perceive a stable, equitable, and strictly enforced judicial process, which in turn substantially strengthens their sense of judicial trust.

3. The Logic of "Prudence" in Judicial Trust in the AI Era: Guarding Against Technological Risks

Unreserved trust in technology is perilous. The inherent conservatism of the judiciary and its relentless pursuit of justice necessitate an instinctive caution towards every new technology. The logic of "prudence" in the AI era is grounded in the inherent limitations of technology itself, the latent risks in its application, and the potential for its misuse. It leverages this prudence to regulate technology and defend against risks.

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[8] *See "Case Complexity Stratification and Distribution: Accelerating the 'Realization of Justice',"* sourced from the Supreme People's Procuratorate official website, at https://www.spp.gov.cn/spp/zdgz/202501/t20250107_678735.shtml, (last accessed March 5, 2026).

[9] *See* Ge Xiang, *The Reality and Prospects of Artificial Intelligence Application in Judicial Practice: Referring to the Intelligent Case Handling Assistance System for Administrative Cases in Shanghai Courts,* Journal of the East China University of Political Science and Law, No. 5, 2018.

3.1 Distrust in Technology Itself: Algorithmic Risk Prevention and Control

The judiciary's institutional-level cautious stance and prudence logic towards AI technology constitute an indispensable prerequisite for preventing the potential systemic risks posed by AI. This prudence does not stem from a rejection of technology but from a clear and thorough understanding of its inherent limitations and external risks. In practice, such prudence manifests primarily in three areas: algorithmic bias and discrimination, the inexplicability of the "algorithmic black box," and technological failures and security risks. Accordingly, the judicial system transforms the stance of "prudence" into a series of proactive risk prevention and control mechanisms aimed at delineating safe boundaries for the application of technology. For example, in the State v. Loomiscase in Wisconsin, where the COMPAS tool was used for sentencing, the defendant challenged the procedural due process and appealed for the disclosure of the algorithm. Thus, judicial organs should establish mechanisms for algorithmic auditing and compliance review, conducting independent assessments of a technology's fairness, security, and effectiveness prior to its deployment. Furthermore, it is essential to ensure that judicial personnel retain ultimate decision-making authority, clearly defining AI's role as an assistive tool whose outputs serve only as references, while the ultimate decision-making power and corresponding responsibility for judgments must remain with human judges. The case where an Indian judge was held accountable for relying on AI to generate fictitious precedents serves as a typical negative example of blind trust in AI output and the abdication of independent review duties. [10] Simultaneously, the judicial system should construct a full-process data governance and security protection system. The Gansu Provincial People's Procuratorate formulated the Rules for Data Security Useand the Implementation Measures for Building a Data Sharing System, establishing a data classification and hierarchical protection system and a "four-layer accountability framework," achieving end-to-end security control from legality review at data collection to compliant disposal upon destruction. This provides an operational normative model for cross-departmental data sharing.[11] In addition, the judicial system should establish contingency plans for technological failures, promote the development of "Explainable Artificial Intelligence" (XAI) technologies, and explore pathways such as introducing expert assistant systems. The intent of this institutionalized prudence and its corresponding prevention and control system is not to hinder technological innovation, but to build an immune mechanism for the healthy and sustainable integration of technological innovation into the judicial system. A mature judicial system does not readily trust statements from parties but relies on rigorous rules of evidence and cross-examination. Similarly, a rational digital judicial system should not readily trust algorithmic outputs but must depend on a stringent set of rules for technical scrutiny, procedural checks and balances, and accountability attribution.

3.2 Distrust Towards Litigants' Use of Technology: Countering Strategic Gaming

While intelligent judicial technology enhances the efficiency of judicial operations, it

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[10] *See Indian Judge to Face Consequences for Using AI in Case Adjudication, sourced from Guangming Online*, at https://m.gmw.cn/2026-03/05/content_1304365188.htm, (last accessed March 5, 2026).

[11] *See "Top Ten Data Rule of Law Incidents in China 2025 (Digital Procuratorate Category), One from Gansu Selected",* sourced from the official website of the Gansu Provincial People's Procuratorate, at https://mp.weixin.qq.com/s?__biz=MjM5OTg3ODkwNw==&mid=2689509632&idx=1&sn=8bbac75ba944c1c8714bbc2299ec66cc&chksm=83cf2b77b85f475072393837c86c2c78b056a599ce98b78acd072cc32cec632dd0d7e0d2d40d#rd,(last accessed March 5, 2026).

also profoundly reconstructs the capability composition of litigation participants, granting parties and their representatives unprecedented technological empowerment. This empowerment manifests not only in efficiency gains for procedural tasks such as document generation and evidence organization but also extends to the formulation and execution of litigation strategies. For instance, leveraging Generative Artificial Intelligence (AIGC) can rapidly produce highly formatted legal documents, intelligently catalog and analyze large volumes of evidentiary materials, and even utilize big data models to predict the adjudicative tendencies of specific judges, thereby devising more targeted litigation strategies. Confronted with such "technology-empowered" litigation participants, judges must possess and maintain a professionally-oriented cautious attitude and sense of distrust. Firstly, regarding the potential for evidence contamination and information distortion arising from technological empowerment, judges' review duties must expand beyond traditional "formal authenticity" to encompass "substantive authenticity" and "technological credibility." Practical cases indicate that technological forgery has evolved from crude to sophisticated, necessitating an upgrade in scrutiny methods. [12] This requires judges to not only evaluate evidence content based on logic and experience but also to possess the technical literacy to identify technological forgeries and algorithmic hallucinations. Secondly, judges must remain vigilant against the cognitive inertia and narrowed thinking induced by technological tools. Technological empowerment can not only forge "evidence" but may also attempt to influence or even "predict" the adjudicator's thinking, inducing "automation bias." Regardless of technological advancements, the core of judicial adjudication remains value judgment and interest balancing. It is imperative to penetrate the veneer of technology, persist in substantive review, and ensure the subjectivity and irreplaceability of the judge as a human agent. [13]Thirdly, when technological empowerment devolves into technological fraud, the judiciary must demonstrate stringent regulatory power, sanctioning the abuse of technology to uphold judicial order, fairness, and justice.

3.3 Leveraging Distrust for Procedural Control: Pacing the Judicial Process

In traditional judicial practice, judges could control the pace of proceedings (for example, employing deliberate deliberation) to facilitate mediation or the ascertainment of facts. The development of intelligent judicial technology, while providing new tools and possibilities for procedural control, also triggers a judicial strategy known as "technological conservatism" due to its inherent uncertainties. Judges do not unconditionally embrace the efficiency brought by technology; they often deliberately choose relatively more traditional, time-consuming yet controllable procedural options to offset the hidden risks of technological application. For instance, when encountering cases involving complex and specialized issues, a judge may retain skepticism towards AI-generated evidentiary opinions, preferring to revert to traditional forensic appraisal procedures coupled with the expert assistant system for cross-examination and checks and balances, even if this may reduce procedural efficiency. Fundamentally, this deliberate choice of relative inefficiency stems from a reasonable suspicion regarding the current reliability of technology. Its aim is to maximize the exposure and filtration of errors through "redundancy design" within the procedure, thereby avoiding the risk of miscarriages of justice caused by

[12] *See Alert! AI-Generated False Judicial Precedents Have Emerged, sourced from China Court Network*, at https://www.chinacourt.cn/article/detail/2025/10/id/9043677.shtml (last accessed March 6, 2026).
[13] *See* Wu Xiyu, *The Practical Demand for AI-Based Adjudication and Its Chinese Mission*, Oriental Law, No. 2, 2018.

technology. [14]Therefore, within the context of intelligent judicature, procedural control is no longer merely simple time management; it has evolved into a composite strategic approach. It integrates technological understanding, risk assessment, and the safeguarding of fair procedures, endowing the exercise of procedural power with more complex and sophisticated strategic characteristics. This is not resistance to technology, but rather an art of exercising procedural power developed to protect the substantive fairness of adjudication when judicial authority confronts highly complex and uncertain technological systems. Through this art, judges delineate safe procedural boundaries for the judicial application of technology, ensuring that technological advancement assists judicial work without undermining the bedrock of judicial justice.

4. Conclusion: Confronting the Judicial Trust Model of "Fostering Trust with Prudence"

Within the context of the artificial intelligence era, the generative mechanism of judicial trust manifests a dialectical development characterized by the dual logics of "fostering trust" and "prudence." Traditionally, this logic was primarily reflected in interpersonal interactions at the individual judge level, where a judge would build a trustworthy image while maintaining "due suspicion" towards other parties. In the technological age, it has evolved into the judicial system's systemic response, at an institutional level, to the effects generated by technology and its social application. On one hand, it is necessary to actively construct the trustworthiness of technology to gain efficiency benefits and extend public credibility; on the other hand, institutional caution must be consistently maintained, using prudence as a shield to prevent and control technological risks and defend core judicial values. In this process, technology is no longer merely a passive and neutral tool but has become a key variable reshaping the mode of judicial trust production.

Therefore, research on judicial trust must break free from the old dichotomy of personal trust versus institutional trust, and place the "technological system" itself and its complex interactions with humans at the core of analysis. In the context of intelligence, this distrust of technology is not a negative rejection of technological progress, but a form of preventive risk governance wisdom. Future research and practice should delve into the dynamic balancing mechanism of the dual logics of "fostering trust" and "prudence" in specific judicial contexts such as case filing, trial, adjudication, and execution, and explore how to organically integrate this dialectical logic into the process of judicial intelligent development through the design of legal rules, ethical guidelines, and technical standards, ultimately achieving the synergistic advancement of "Technology for Good" and the enhancement of judicial credibility.

[14] *See* Ma Guoyang, *The Dual Risks in the Application of Artificial Intelligence Evidence and Their Regulation*, Journal of Dalian University of Technology (Social Sciences), Vol. 4, 2023.

Analysis of the Balancing Mechanism Between the Jurisdiction of the International Court of Justice and the Legal Effect of Sovereign States' Optional Clause Reservations: The 1995 Fisheries Jurisdiction (Spain v. Canada) Case

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abstract: Using the International Court of Justice's 1995 case Fisheries Jurisdiction (Spain v. Canada) as a practical vantage point, this paper focuses on the Court's central question of whether it possessed jurisdiction over the dispute. Integrating relevant theories of international law and the regime governing reservations (including reservations to treaties), it examines how the ICJ, in exercising its jurisdiction, seeks to reconcile state sovereignty with international judicial practice. The paper explores the balance between the International Court of Justice's jurisdiction and the legal effect of sovereign States' Optional Clause Reservations, and offers a preliminary inquiry into the ICJ's jurisdictional mechanism and into how future international law might better accommodate the relationship between respect for the principle of State consent and the compulsory and universal character of adjudicatory jurisdiction.

keywords: International Court of Justice; Jurisdiction; Sovereign States Optional; Clause Reservations

Introduction

As an international judicial organ, the International Court of Justice (ICJ) has played an increasingly pivotal role in settling international disputes and upholding the international rule of law. An ever-growing number of States, relying on the authority and compulsory character of the Court's jurisdiction, have chosen to make voluntary declarations accepting the ICJ's jurisdiction, including declarations under Article 36(2) of the Statute. From the Court's own practical perspective, however, the exercise of jurisdiction must both secure the implementation of international law and respect the autonomous will of sovereign States—that is, take into account the principle of reservations invoked by States when accepting treaty obligations. The quest to balance the compulsory reach of the ICJ's jurisdiction with the sovereign autonomy of States has thus become a central issue for effective international adjudication. The dispute between Canada and Spain concerning fisheries jurisdiction on the High Seas offers a paradigmatic case for examining this problem. A close analysis of this case helps illuminate how the ICJ calibrates the scope of its jurisdiction when confronted with States' voluntary reservations, as well as the extent to which the Court asserts the compulsory force of its jurisdiction when managing the relationship between State sovereignty and international judicial practice, thereby seeking to address the complex practical difficulties of implementing judgments.

1. Case Summary

1.1 Factual Background

On 9 March 1995, the Canadian Coast Guard intercepted and seized the Spanish fishing vessel Estai on the High Seas approximately 245 nautical miles from Canada's coast, in NAFO Division 3L within the NAFO Regulatory Area, alleging violations of Canadian law and overfishing of Greenland Halibut (Turbot). Canadian officers boarded the vessel, arrested the captain, confiscated the catch, and towed the vessel to a Newfoundland port. Spain lodged a strong protest, arguing that Canada's high-seas enforcement lacked any basis in international law and exceeded the scope of rights conferred on coastal States by the "United Nations Convention on the Law of the Sea" (UNCLOS).

1.2 Legal Issues

Relying on the "Optional Clause" of compulsory jurisdiction under Article 36(2) of the "Statute of the International Court of Justice", Spain instituted proceedings alleging that Canada had violated the principle of the freedom of the High Seas; breached UNCLOS provisions governing the management of fisheries resources beyond the Exclusive Economic Zone; and abused force and enforcement powers. Canada, in turn, invoked its Declaration of 10 May 1994, contending that the case fell within the exclusion created by its Reservation under paragraph 2(d)—namely, "disputes arising out of conservation and enforcement measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area"—and that the International Court of Justice therefore lacked jurisdiction.

1.3 Judgment

By twelve votes to five, the Court held that it had no jurisdiction. It reasoned that Canada's Reservation was clear and lawful; that Spain had not objected at the time of filing; and that, under the principle of reciprocity, the scope of Spain's acceptance of compulsory jurisdiction must be read subject to Canada's Reservation, thereby excluding the dispute from the Court's jurisdiction.

1.4 Types of ICJ Jurisdiction Addressed in This Case

The International Court of Justice exercises two principal forms of jurisdiction: contentious jurisdiction and advisory jurisdiction. Contentious jurisdiction concerns the Court's authority to adjudicate specific legal disputes between States and render binding judgments. Advisory jurisdiction, by contrast, is exercised pursuant to Article 96 of the "Charter of the United Nations", under which the General Assembly, the Security Council, and other organs and specialized agencies may request advisory opinions on legal questions arising within the scope of their activities. As the Canada–Spain dispute plainly did not involve the exercise of advisory jurisdiction, the analysis here focuses on the Court's contentious jurisdiction.

2. The International Court of Justice's Reasoning Balancing "Voluntary Acceptance" and "Compulsory Character"

2.1 The "Voluntary Acceptance" Reflected in Permitting Sovereign States to Enter Reservations

2.1.1 The meaning and function of permitting sovereign States to formulate "Reservations" under International Law

In the field of the Law of Treaties, a "Reservation" is precisely defined as a unilateral statement made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it seeks to exclude or modify the legal effect of certain provisions of the treaty in their application to that State.[1] Whatever its wording or designation, any statement that pursues this purpose constitutes a Reservation. The purpose of a State in formulating a Reservation is to determine, with respect to the application of specific treaty provisions to itself, whether it consents to the jurisdiction of the International Court of Justice and, if so, the specific scope of that acceptance, thereby modifying or excluding, in part, the legal effect of the treaty vis-à-vis that State. This constitutes an important means by which a sovereign State exercises its sovereignty and gives effect to its national will.

2.1.2 The Theoretical Basis for the International Court of Justice's Adherence to the Principle of Respecting Sovereign States' "Voluntary Acceptance"

2.1.2.1 The Institutional Nature of International Organizations

From the perspective of the International Court of Justice's nature, as a typical International Organization, its legal personality is derivative and, relative to Sovereignty, limited. The ICJ's scope of activity, legal status, and dispute-settlement functions all depend on authorization by Sovereign States. Accordingly, the prerequisite for the ICJ to acquire jurisdiction over a dispute is the voluntary acceptance of the parties; only within the bounds of State consent can the ICJ establish and exercise Optional Jurisdiction. This reflects the necessity of the ICJ's respect for State Sovereignty.

2.1.2.2 Historical Experience in Achieving Effective

Compliance with Judgments Compliance with ICJ judgments is often affected by State interests, domestic policy, international relations, and, at times, the ambiguity or incompleteness of the judgment itself. Most States, in consideration of maintaining the dignity of International Law, facilitating future international relations and international cooperation, and preserving their international reputation, choose to take measures to fulfill the obligations determined by the judgment even in the absence of

[1] **[UK]** J. G. Starke, *Introduction to International Law*, translated by Zhao Weitian; revised by Wen Guangjun, Beijing: Law Press (China), 1984, p. 368.

coercive enforcement comparable to that of domestic courts. In practice, instances in which parties to a dispute do not fully comply with ICJ judgments are not uncommon. For example, in Nicaragua v. United States (1986), the United States refused to comply with the judgment and, when votes were held in the United Nations Security Council and the United Nations General Assembly on resolutions calling for immediate payment of compensation to Nicaragua, it exercised its veto or voted against. This demonstrates that, to ensure the effectiveness of its judgments, the ICJ still relies on the autonomous cooperation of the Sovereign States concerned.

2.2 The Legal Basis for the "Compulsory" Character of the International Court of Justice's Contentious Jurisdiction

From the perspective of the International Court of Justice, "Compulsory" denotes that the Court possesses binding authority to adjudicate certain legal disputes without, in every instance, relying on a special agreement between the parties.

The legal source of this "Compulsory" character is found in Article 36(2) of the Statute of the International Court of Justice: "The States Parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: (a) the interpretation of a treaty; (b) any question of International Law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation." Focusing on Article 36(2), a State may at any time declare that, with respect to matters such as the interpretation of treaties, any question of International Law, any fact constituting a breach of an international obligation, and the nature or extent of the reparation to be made, it recognizes the ICJ's jurisdiction as compulsory in relation to any other State accepting the same obligation.[2]

In the present case, Spain submitted its dispute with Canada to the International Court of Justice pursuant to that provision. In its Application, Spain contended that Canada's conduct in the Estai incident not only violated the "Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries of 1978" but also constituted a serious and flagrant breach of a series of international principles and norms, falling within the category of "the existence of any fact which, if established, would constitute a breach of an international obligation".It should be particularly noted that the Principle J invoked by Spain derives from Article 27 of the 1969 "Vienna Convention on the Law of Treaties", which emphasizes that States may not invoke provisions of their domestic law as a justification for non-compliance with international norms in force that are binding upon them. In the context of this case, Spain contends that the domestic law advanced by Canada in fact refers to Canada's reservation to the "Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries" and to subsequent domestic legislation concerning fisheries harvesting.

2.3 The International Court of Justice: Balancing Criteria and Approach Reflected in the Present Case

2.3.1 Special Rules of Interpretation

In its final Judgment, the International Court of Justice noted that "in such

[2] Li, Lianglin. *Reservations to the Optional Clause and the International Court of Justice's Compulsory Jurisdiction under the Optional Clause: An Analysis of the Fisheries Jurisdiction (Spain v. Canada) Case*. Wuhan University International Law Review, 2006, 5(02): 414–426.

circumstances, the Court has, in earlier cases, elaborated in detail the appropriate rules for the interpretation of declarations and reservations." At the same time, the Court held that a State's declaration accepting the Court's compulsory jurisdiction is a unilateral act of a sovereign State, and that the rules governing its interpretation differ from those established by the "Vienna Convention on the Law of Treaties."

2.3.1.1 The 1957 Certain Norwegian Loans case and the "Principle of Reciprocity in Interpretation"

Between 1885 and 1909, the Government of Norway and two Norwegian banks issued public loans on foreign markets stipulating that principal and interest would be payable in gold or in currency convertible into gold. In 1914 Norway ceased payment in gold, and in 1923 enacted legislation providing for repayment in Norwegian currency (kroner) on a conversion basis. The French Government, acting on behalf of French bondholders, brought a claim against Norway and sought to refer the dispute to the International Court of Justice, invoking Article 36, paragraph 2, of the "Statute of the International Court of Justice" and the respective declarations by Norway and France accepting the Court's compulsory jurisdiction, and argued that the Court had jurisdiction. Norway, however, contended that the dispute fell within its exclusive domestic jurisdiction and did not fall within the types of disputes provided for in the Statute. Norway further pointed out that, although it had accepted the Court's compulsory jurisdiction without reservation, France's declaration contained a reservation excluding matters essentially within its domestic jurisdiction. The Court held that its jurisdiction depends upon the declarations made by the Parties on the basis of reciprocity. Norway's declaration accepted the Court's compulsory jurisdiction without reservation, whereas France's declaration did so subject to reservations excluding, inter alia, matters essentially within its domestic jurisdiction. The scope of France's acceptance of jurisdiction was therefore narrower than Norway's. Under the principle of reciprocity, Norway was entitled to invoke the reservation contained in France's declaration to exclude the relevant dispute from the Court's jurisdiction.

This case demonstrates that, in determining jurisdiction, the International Court of Justice considers the mutual consistency and reciprocity of the Parties' declarations accepting jurisdiction. Where one Party's declaration contains a reservation, the other Party may invoke that reservation to preclude the Court's jurisdiction. This reflects the Court's respect for State sovereignty and its application of the reciprocity principle when exercising its compulsory jurisdiction.

2.3.1.2 The 1984 case "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)" reflects rules that pursue the stability and fairness of the international legal order while accommodating flexibility

In "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)," the International Court of Justice, when determining its jurisdiction, relied not only on the United States' declaration accepting the Optional Clause under Article 36, paragraph 2, of the "Statute of the International Court of Justice," but also took into account provisions in various bilateral and multilateral treaties concluded by the United States that contemplated referring disputes to the Court. For example, the 1956 "Treaty of Friendship, Commerce and Navigation" between the United States and Nicaragua. Although, at the merits stage, the Court primarily applied customary international law in light of the United States' "Multilateral Treaty Reservation," the existence of that Treaty and any

dispute-settlement clause it contained were considered as part of the broader treaty context at the jurisdictional phase, indicating that the United States had, in its bilateral relations with Nicaragua, previously envisaged and arranged for the judicial settlement of related disputes. Ultimately, the Court interpreted and assessed the relevant treaty instruments in their entirety and concluded that it had jurisdiction over the case.

The proper limits of the right to formulate reservations must be assessed in the light of State practice. In terms of its original rationale, the reservation mechanism was established to address the tension between the generally undifferentiated conferral of treaty benefits and the divergence of States' interests; to remedy and reconcile differences arising from unequal power, varying capacities for risk mitigation, and distinct interests and concerns; and thereby to better maintain the international order. The interpretive approach adopted by the International Court of Justice in this case aligns with that practical purpose. This holistic, multi-factor method enables the Court to determine its jurisdiction more comprehensively and accurately, and to safeguard the stability and fairness of the international legal order.

2.3.2 The International Court of Justice's inclination to respect the voluntary character of sovereign States' undertakings

Revisiting the "Fisheries Jurisdiction (Spain v. Canada)" dispute, the International Court of Justice held that a State's declaration accepting the Court's compulsory jurisdiction is a unilateral act of a sovereign State, and that the rules governing its interpretation differ from the general treaty-interpretation rules established by the "Vienna Convention on the Law of Treaties." The Court tends to interpret declarations accepting its compulsory jurisdiction, and any accompanying reservations, by starting from the accepting State's contemporaneous intention and adopting a natural and reasonable reading.[3]

In the present case, the International Court of Justice, having comprehensively examined materials such as Canada's ministerial statements, parliamentary debates, legislative intent, and official gazettes, declined to adopt the interpretative methods proposed by Spain, such as the principle of contra proferentem and the principle of effectiveness. Upon review, the dispute submitted by Spain was determined to be one arising from and concerning the conservation and management measures taken by Canada against vessels fishing in the Regulatory Area of the Northwest Atlantic Fisheries Organization as established by the 1978 "Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries," as well as the enforcement of such measures, thereby falling within the scope of the fourth reservation listed in Canada's declaration of May 1994. Consequently, the International Court of Justice determined that it had no jurisdiction over the dispute.

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[3] Zhang, Fayang. *A Study on the Issue of Reservations to the Optional Jurisdiction of the International Court of Justice*. Master's thesis, Guangdong University of Foreign Studies, 2021. DOI: 10.27032/d.cnki.ggdwu.2021.000143.

3. The Theoretical Significance of the Balance between the Jurisdiction of the International Court of Justice and the Validity of Voluntary Reservations by Sovereign States

From the perspective of the International Court of Justice (ICJ), according to Article 36, paragraph 2 of the "Statute of the International Court of Justice," although the Court possesses compulsory jurisdiction over certain legal disputes and does not need to rely on a special agreement between the parties for every adjudication, the exercise of such compulsory jurisdiction has specific prerequisites. It is not entirely free from the constraints of state will but is based on declarations made in advance by the parties concerned.

The textbook "International Public Law" (Marxist Theory Research and Construction Project) also points out that state consent remains the foundation of the source of the ICJ's jurisdiction. States decide autonomously whether and to what extent to accept the compulsory jurisdiction of the Court. The exercise of this jurisdiction is limited by the scope of the voluntary declarations of acceptance made by states, often referred to as "reservations." This reflects the fundamental principle of respect for state sovereignty in international law, namely, the right of states to autonomous decision-making in international affairs. On the one hand, the stability and fairness of the international legal order require the ICJ to actively exercise jurisdiction to resolve disputes and uphold the authority of international law; on the other hand, the maintenance of state sovereignty requires the Court to carefully consider the reservations and will of states when exercising jurisdiction. This contradiction necessitates that the Court carefully weigh these factors in every case to find an appropriate balance.

This balance not only helps maintain the authority and legitimacy of the International Court of Justice but also facilitates the development and implementation of international law. By respecting state sovereignty, the Court can obtain the cooperation and support of states, thereby resolving international disputes more effectively. At the same time, the Court's jurisdiction can also prompt states to comply with their international law obligations and safeguard the common interests of the international community.

4. Conclusion

Through an in-depth analysis of the dispute between Canada and Spain, it is clearly evident that the International Court of Justice upholds the principled stance of respecting sovereign states when facing disputes regarding reservations and the interpretation of the origins of optional compulsory jurisdiction. The Court prioritized interpreting the reservation based on the declarant's original intent and the context of the reservation clause, confirming the validity of the reservation and thus choosing not to exercise jurisdiction. Overall, this helps safeguard the stability and uniformity of the international order.

However, this process also highlights the complex challenges the ICJ faces in practice: namely, how to seek a delicate balance between respecting state sovereignty, maintaining the international legal order, and ensuring international judicial fairness and effectiveness. Although whether a state accepts the jurisdiction of the Court

belongs to its autonomous prerogative, states must nevertheless bear corresponding responsibility for acts infringing upon the rights and interests of other states in international interactions. All disputes should be resolved by peaceful means. As to whether disputes are resolved according to the methods prescribed in Article 33 of the "Charter of the United Nations," this is to be determined through consultation by the parties concerned. This case provides a valuable practical example for the field of international law, helping to deepen the understanding and recognition of issues such as the jurisdictional mechanism of the ICJ and the relationship between state sovereignty and international justice. It offers useful reference for the resolution of similar international disputes in the future, promoting the continuous improvement and progress of international law amidst the evolving international situation.

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Research on the Alignment of China's Government Procurement System with CPTPP High-Standard International Rules

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Abstract: The evolution of international rules on government procurement is essentially a dynamic balance between the "attributes of public funds" and the "demands for trade liberalization." Since the 21st century, high-standard rules represented by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) have been characterized by the expansion of coverage, refinement of procedural norms, and modernization of value concepts. Chapter 15 of the CPTPP establishes a comprehensive framework of government procurement rules encompassing both substantive obligations and procedural requirements. It demonstrates its high-standard nature by expanding the scope of procuring entities, incorporating new forms of procurement, strengthening the principle of non-discrimination, detailing transparency requirements, improving independent remedy mechanisms, and integrating sustainable development concepts.

While China's current Government Procurement Law aligns with CPTPP rules in terms of public policy goals and the basic principles of transparency and fair competition, disparities remain in areas such as the scope of procuring entities, coverage of procurement methods, refinement of non-discrimination obligations, degree of information disclosure, constraints on technical specifications, efficiency of remedy mechanisms, and the establishment of legal liabilities. In light of the revision process of China’s Government Procurement Law and the practical needs for CPTPP accession, China should achieve effective alignment with international high standards by expanding the scope of procuring entities to include public-interest State-Owned Enterprises (SOEs), enhancing the operability of transparency, improving independent supervision and diversified remedy mechanisms, and implementing modern concepts such as green development and support for Small and Medium-sized Enterprises (SMEs). Such alignment will not only safeguard national economic security and public interests but also elevate the level of institutional opening-up in the field of government procurement.

Keywords: Government Procurement; CPTPP; Alignment with High-Standard Economic and Trade Rules; Institutional Opening-up

Introduction

In the era of economic globalization and digital trade, government procurement has evolved into a core institution bridging the dual attributes of national governance and international economic and trade issues. From the initial plurilateral consensus of the Agreement on Government Procurement （GPA）to the high-standard rules of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), international procurement rules have consistently sought a dynamic balance between the "attributes of public funds" and the "demands for trade liberalization." Chapter 15 of the CPTPP, representing these high-standard rules, has reshaped the institutional landscape of international government procurement. It is characterized by high discipline, transparency, and inclusiveness, achieved through expanding procurement coverage, strengthening non-discrimination principles, and refining remedy mechanisms.

As China actively seeks accession to the CPTPP, the alignment of government procurement rules has emerged as a central negotiation issue. However, gaps remain between China’s Government Procurement Law and CPTPP requirements regarding procuring entities, transparency, and remedy efficiency. In light of the ongoing revision of the domestic Government Procurement Law and the research into the concept of "public-interest SOEs," exploring alignment paths between China’s system and international high-standard rules is of significant importance. This paper aims to analyze the normative characteristics of the CPTPP, identify institutional disparities, and propose systematic alignment strategies, such as expanding entity coverage, enhancing transparency, and improving supervision and remedy mechanisms, to provide a decision-making reference for China’s CPTPP accession and the deepening of its government procurement reform.

1. Evolution and Development of International Government Procurement Rules

1.1 Generative Logic and Theoretical Foundations of International Government Procurement Rules

Government procurement refers to the purchasing activities conducted by a government or its agents as consumers for their own use, rather than for commercial resale.[1] Government procurement not only reduces public expenditure and stimulates the vitality of the market economy but also safeguards the implementation of macro-control policies and fosters the prosperity of domestic industries.[2] Since government procurement utilizes taxpayers' money characterized by the attribute of "public funds," its policy starting point is the protection, encouragement, and support of the "public interest." Consequently, it functions to nurture and support domestic enterprises in terms of fund utilization.[3] Therefore, whether in the General Agreement on Tariffs and Trade (GATT 1947/1994) or the General Agreement on Trade in Services (GATS), government procurement has long remained an exception

[1] Jianming Cao & Xiaoyong He, World Trade Organization, *Law Press* (1994), p. 229.
[2] Haitao Ma, Government Procurement Management, *Economic Science Press* (2003), p. 56.
[3] Xiaoyong He, "Legal Recommendations for China's Early Accession to the Agreement on Government Procurement," *Economic and Trade Law Review*, No. 6 (2019), p. 14.

to the National Treatment principle.[4]

With the advancement of international trade and the deepening awareness of trade liberalization, the international community has placed greater emphasis on the fairness and transparency of government procurement, bringing negotiations on this issue to the forefront. In the early 1960s, GATT initiated negotiations on government procurement; however, due to the difficulty in coordinating the interests of various parties, no substantive results were achieved. Nevertheless, the momentum did not cease. On April 12, 1979, the Agreement on Government Procurement was signed during the Tokyo Round, marking the world's first international agreement on the subject. The 1987 Uruguay Round revised the 1979 agreement, and a new cooperative intent was reached in 1993 based on these revisions, eventually culminating in the 1994 Uruguay Round GPA. In 1994, the United Nations Commission on International Trade Law (UNCITRAL) released the Model Law on Public Procurement, providing a domestic legislative template for developing countries while emphasizing competition, fairness, and anti-corruption. Regional rules also continued to emerge: the European Union harmonized procurement requirements among member states through its Public Procurement Directives, and the North American Free Trade Agreement (NAFTA) established a dedicated chapter on government procurement.

The evolutionary trajectory of international government procurement rules reflects the international community's growing focus on the "public nature" of procurement. Foreign academia explored this topic early on. S. Arrowsmith argued that government procurement represents government participation in market activities; thus, fulfilling public functions is its primary purpose, a view that ultimately defined the scope of the European Union (EU) 's Public Procurement Law. [5]American scholar Dobler, in the book Purchasing and Supply Management, provided a profound analysis of the distinctions between government procurement and private procurement: since government procurement funds originate from taxes and donations, public procurement departments essentially serve as fund managers acting on behalf of taxpayers and donors.[6] From this perspective, while private procurement aims to satisfy consumption needs using personal assets, government procurement utilizes fiscal funds to better perform governmental functions and meet societal demands. Regarding the role of government procurement, Thai and Grimm suggested that governments fulfill their functions through income distribution and the production or purchase of goods and services.[7] D. Connell posited that government procurement facilitates the development of SMEs. It not only provides policy support for emerging high-tech enterprises but also promotes international trade activities by increasing overseas investment, thereby laying a solid economic foundation for further narrowing the gap between the rich and the poor.[8]

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[4] See *General Agreement on Tariffs and Trade* (GATT 1994), Art. III:8; *General Agreement on Trade in Services* (GATS), Art. XIII.

[5] S. Arrowsmith，The Entity Coverage of the EC Procurement Directives and UK Regulations，*Public Procurement Law Review*，2004，p. 59.

[6] Donald·W·Donbler., Purchasing and Supply Management, *The Mc Graw –HillCompanies*,1986,p. 63.

[7] Khi ·V ·Thai，Rich Grimm，Government Procurement：Past and Current Developments , Journal of Public Budgetin （Accounting &Financial Management），2000，12(2)，PP. 231-247.

[8] D. Connell, Using Government Procurement to Help Grow New Science and Technology Companies: Lessons from the US Small Business Innovation Research (SBIR) Programme, Innovation Management Policy & Practice, Vol. 11, No. 1 (2009), pp. 127–134.

1.2 Evolution and High-Standardization Trends of International Government Procurement Rules since the 21st Century

Entering the 21st century, international government procurement rules have increasingly reflected characteristics aligned with contemporary development. Following further negotiations and market access offers, the latest version of the GPA was finalized in 2012. This version expanded coverage, introduced new rules such as e-procurement and SME participation, and incorporated environmental and social policy objectives for the first time. Similarly, the 2011 revision of the UNCITRAL Model Law on Public Procurement integrated mechanisms for electronic reverse auctions and online complaint procedures. The EU's Public Procurement Directives were also revised in 2014 to promote e-procurement, account for environmental and social standards, and establish support policies for SMEs. In 2016, the Trans-Pacific Partnership (TPP) was signed; despite lingering issues such as the definition of SOEs and the risk of abusing national security exception clauses, the agreement demonstrated a commitment to high-standard openness, transparency, and fairness. After the U.S. withdrawal in 2017, the remaining 11 nations resumed negotiations to form the CPTPP, while fully retaining the government procurement chapter. As a representative of high-standard international rules, the CPTPP has become the first high-standard procurement regulatory framework covering major Asia-Pacific economies.

In summary, the generation and evolution of international government procurement rules are essentially a process of seeking a dynamic balance between the "attributes of public funds" and the "demands for trade liberalization." This dual nature allows the government procurement system to serve simultaneously as a "national governance tool" and an "international economic and trade issue." Its theoretical foundation is rooted in the public interest orientation and the fiscal nature of procurement funds, initially safeguarding regulatory autonomy through national treatment exceptions. However, with the further advancement of international trade, the focus of these rules has gradually shifted toward common values such as fair competition and transparency. This has resulted in a diversified development pattern ranging from global agreements to regional rules, and from basic structural frameworks to detailed institutional specifications.

Currently, the global landscape is undergoing profound transformation and restructuring. Amid the rise of unilateralism and intensifying trade protectionism, the process of economic globalization faces severe stagnation and volatility. China's active application to join the CPTPP presents both the practical challenge of aligning with high-standard procurement rules and a significant opportunity to refine its domestic procurement system and deeply integrate into the global trade governance system. The characteristics of high-standard openness, transparent operation, and integration of diversified values embodied in the CPTPP procurement rules not only represent the development trend of international rules but also provide clear guidance for the reform of China's procurement system. Therefore, systematically reviewing the evolutionary logic of international rules, analyzing the core requirements and institutional innovations of the CPTPP, and exploring alignment paths for China's system are of profound theoretical and practical significance. Such research facilitates China's CPTPP negotiation process, elevates the level of institutional opening-up in procurement, and safeguards national economic security and industrial development interests.

2. Normative Analysis and High-Standard Characteristics of CPTPP Government Procurement Rules

2.1 Normative Structure and Textual Requirements

Chapter 15 of the CPTPP provides a systematic regulatory framework through a comprehensive system of articles. It addresses the definition and scope of government procurement, general obligations, procurement methods and procedures, publication and disclosure of information, conditions for supplier participation, rules for limited tendering and negotiations, time periods, technical specifications, domestic review mechanisms, facilitation of SMEs participation, and cooperation among parties. This forms an integrated framework covering both substantive and procedural norms, with the core philosophy centered on establishing an open, transparent, and competitive government procurement system.[9]

In the general provisions, the CPTPP stipulates the principles of National Treatment and Non-discrimination. National Treatment requires each party and its procuring entities to immediately and unconditionally accord to the goods, services, and suppliers of any other party treatment no less favorable than that accorded to its own or any other party's goods, services, and suppliers. Non-discrimination encompasses both "equity non-discrimination" and "origin non-discrimination," meaning no differential treatment shall be applied based on a supplier's degree of foreign affiliation or ownership, or the proportion of foreign content in its services or goods. To ensure the substantive efficacy of these obligations, the CPTPP adopts a negative list management model. By explicitly enumerating prohibited measures, such as technical specifications acting as trade barriers, complex registration requirements, or overly stringent qualification criteria, it eliminates discriminatory barriers that could create "unnecessary obstacles" or exclusionary effects.[10]

Regarding specific content, the CPTPP further expands its coverage: it incorporates Build-Operate-Transfer (BOT) contracts and public works concession contracts into its scope. Procuring entities include not only central and sub-central government agencies but also certain SOEs, public utility enterprises, and other entities controlled by the government. The threshold values for goods and services are lower than those in the GPA; for instance, the threshold for central government goods procurement is 130,000 Special Drawing Rights (SDRs), compared to the GPA's 200,000 SDRs. Simultaneously, the agreement emphasizes the balance and protection of supplier interests, SMEs, and the environment, such as by strengthening supplier rights and remedy mechanisms, allowing suppliers to challenge procurement results and seek redress. Exception clauses are also established for national security, developmental policies, and the protection of public interests.

2.2 High-Standard Characteristics

CPTPP government procurement rules are regarded as the benchmark for international high standards, significantly strengthening disciplines beyond the GPA framework. They not only accelerate the international standardization of procurement procedures but also enhance the depth of market openness and synergy among

[9] Hongrui Chen & Miaomiao Li, Government Procurement System of CPTPP: Characteristics, Challenges and China's Response, *Intertrade*, No. 12 (2022), pp. 23–31.
[10] Hongrui Chen & Miaomiao Li, Government Procurement System of CPTPP: Characteristics, Challenges and China's Response, *Intertrade*, No. 12 (2022), pp. 23–31.

members through institutional spillover effects.[11] These characteristics can be further elaborated through the lens of coverage, transparency, and rights remedies.

2.2.1 Expanding Coverage Beyond Traditional Boundaries

Firstly, regarding the scope of procuring entities, the CPTPP extends coverage from traditional government agencies to "government-controlled SOEs and public utility enterprises" in pivotal sectors such as energy, postal services, and finance. It mandates that the procurement activities of these entities adhere to core principles such as non-discrimination and transparency, thereby dismantling the traditional convention of "SOE procurement exemptions."[12]

Secondly, regarding contract types, the CPTPP incorporates BOT contracts and public works concession contracts into its scope. This ensures that procurement rules encompass not only direct purchasing but also adapt to the transformative demands of modern public service delivery models.

Lastly, regarding threshold values, the threshold for central government goods and services is set at 130,000 SDRs, substantially lower than the GPA's 200,000 SDRs standard. Thresholds for sub-central and other entities have been lowered accordingly, markedly expanding the range of projects subject to international rules.

2.2.2 Safeguarding and Refining Core Principles

The CPTPP imposes more rigorous obligations for non-discrimination and national treatment than mere principled advocacy, ensuring substantive enforcement through explicit prohibitory clauses and exception review mechanisms. Beyond "origin-based non-discrimination," it introduces "equity-based non-discrimination," which prohibits differential treatment predicated on a supplier's degree of foreign ownership or affiliation. Simultaneously, it employs a "negative list" to enumerate eight categories of prohibited obstacles, such as unreasonable technical specifications or excessive experience requirements, to prevent de facto discrimination behind a facade of de jure compliance.

To prevent the abuse of exception clauses, the CPTPP denies parties the "self-judging authority" over national security and public policy exceptions. Instead, it requires that any exception measures satisfy the principles of necessity and proportionality, supported by objective evidence demonstrating the absence of less trade-restrictive alternatives. Such measures are also subject to scrutiny by dispute settlement bodies.[13]

2.2.3 Standardizing and Implementing Transparency Obligations

Transparency is a hallmark of the CPTPP. Procuring entities are required to disclose information via unified electronic platforms. The procurement process must be transparent, with strict timeframes for tender notices and contract awards. For instance, Article 15.17 requires that tender documents, evaluation criteria, and award results be publicized; upon request, entities must "promptly provide" information regarding the relative advantages of the winning supplier. Furthermore, it strictly defines the boundaries of confidential information to balance transparency with the protection of business secrets. The use of non-competitive methods, such as limited

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[11] Chenglong Guo, Synergistic Effects of FTA and GPA on International Government Procurement Market Opening: A Case Study of CPTPP and RCEP, *Asia-Pacific Studies*, No. 2 (2022), pp. 57–62.
[12] Zhongmei Wang, "Challenges and Responses of CPTPP Government Procurement Rules to China," *International Economics and Trade Research*, No. 7 (2023), pp. 89–105.
[13] Hui Zhang, "Regulation of Exception Clauses in High-Standard Economic and Trade Agreements on Government Procurement: A Perspective of CPTPP," *Studies in Law and Business*, No. 4 (2023), pp. 176–188.

tendering or negotiations, is rigorously restricted, requiring written justification to prevent the circumvention of competition.

2.2.4 Substantiating Rights Remedies and Supervision

The CPTPP establishes comprehensive requirements for remedy and supervision. Article 15.19 mandates that parties establish a "neutral administrative or judicial review authority independent of the procuring entity," thereby precluding "self-judgment" by procurement bodies. The framework provides flexible remedy channels, such as "rapid interim measures" that allow review authorities to suspend procurement activities pending a final ruling to preserve supplier opportunities. It also clarifies compensation for violations, including reasonable costs for bid preparation and protests, reducing the financial barrier to rights assertion.[14] Additionally, Article 15.18 requires criminal or administrative measures to combat corruption, including the potential debarment of fraudulent suppliers and mandatory conflict-of-interest management (e.g., recusal and asset disclosure).

2.2.5 Integrating Sustainable Development and Fair Competition

The CPTPP incorporates modern governance concepts, such as environmental protection, labor welfare, and SME participation, into its regulatory framework. For example, entities are permitted to include requirements for "environmental protection and human/animal health" within technical specifications and may mandate labor protection compliance as a prerequisite for participation.[15] Furthermore, SME facilitation is a distinctive feature. Article 15.21 stipulates specific measures, including the centralized electronic publication of SMEs-specific procurement information, free provision of tender documents, and the allowance for subcontracting. This transforms "SME support" from a principled slogan into an operational institutional framework, safeguarding the fairness of market competition.[16]

3. Comparative Analysis of CPTPP Rules and China's Government Procurement System

3.1 Convergences in Core Concepts

China’s Government Procurement Law is currently undergoing a revision process. Although the existing law was enacted during an earlier period, some of its underlying philosophies demonstrate significant convergences with CPTPP rules.

Firstly, from the perspective of macro-policy objectives, both systems share a consistent understanding of the public attributes and public policy functions of government procurement. Under Article 15.3, paragraph 1 ("Exceptions") of the CPTPP, it is stipulated that the procurement provisions shall not prevent a procuring entity from implementing measures necessary to protect public morals, order, or safety; human, animal, or plant life or health; and intellectual property. It also allows for measures relating to the goods and services of persons with disabilities, philanthropic or non-profit institutions, or prison labor. These constitute "legal exceptions" to procurement rules, meaning that entities may adopt measures inconsistent with mandatory obligations to uphold these values. Correspondingly,

[14] Zhongmei Wang, "Challenges and Responses of CPTPP Government Procurement Rules to China," *International Economics and Trade Research*, No. 7 (2023), pp. 89–105.
[15] Hui Zhang, Regulation of Exception Clauses in High-Standard Economic and Trade Agreements on Government Procurement: A Perspective of CPTPP, *Studies in Law and Business*, No. 4 (2023), pp. 176–188.
[16] Sun Liu & Mengya Li, Comparison of Government Procurement Rules Between CPTPP and GPA and China's Accession Path, *Legal Forum*, No. 2 (2024), pp. 112–124.

Article 9 of China’s Government Procurement Law posits that "government procurement should facilitate the achievement of national economic and social development policy goals, including environmental protection, supporting underdeveloped and ethnic minority areas, and promoting the development of SMEs." Both frameworks recognize that government procurement is not a mere "market transaction" but a national governance tool designed to safeguard public interests and implement public policies. They share a conceptual consensus on core values such as protecting public safety, the ecological environment, and the rights of specific vulnerable groups.

Secondly, both systems establish "Openness, Transparency, and Fair Competition" as fundamental principles, emphasizing the prevention of power abuse and the protection of equal participation rights for market subjects through standardized procedures. The opening sections of Chapter 15 of the CPTPP establish the principles of transparency and non-discrimination, requiring the disclosure of procurement information throughout the entire process and strict standardization of procedures. It safeguards suppliers' right to know and participate through mechanisms such as electronic platforms and mandatory time limits. Similarly, Article 3 of China’s Government Procurement Law explicitly lists "openness, transparency, fair competition, justice, and good faith" as its basic principles. It requires information on procurement projects, standards, and results to be disclosed in designated media, using public bidding as the primary method to construct a competitive market environment.

Furthermore, regarding specific rules, the two systems exhibit similarities in certain detailed requirements. For instance, both frameworks support electronic procurement methods and include requirements aimed at facilitating participation by SMEs. Regarding communication, both systems impose an obligation on procuring entities to respond to inquiries from suppliers. Although the specific technical details have not yet achieved full identity, the convergence in these institutional directions indicates that China's government procurement rules and international high-standard rules share a compatible foundation at the core operational level, rather than being two entirely disconnected systems.

3.2 Divergences in Specific Provisions

3.2.1 Scope of Procuring Entities

Article 2 of China's Government Procurement Law defines procuring entities as "government organs, institutions, and public organizations at all levels," which notably excludes two major categories: SOEs and the military. In contrast, the CPTPP only excludes "international assistance" and "special procedures or conditions under international agreements related to the stationing of troops or joint execution by project signatory countries." Comparatively, the CPTPP provides a much broader coverage of procuring entities. The CPTPP allows members to list specific entities via annexes, categorized into central entities, sub-central entities, and "other entities." In the "other entities" section, many countries have included public-interest SOEs, such as Australia’s Export Finance and Insurance Corporation, the Grains Research and Development Corporation, Canada Post, and Atlantic Pilotage Authority. Furthermore, the CPTPP imposes additional constraints by requiring procuring entities to comply with Article 19.3 regarding "Labor Rights" as a condition for supplier participation.

3.2.2 Procurement Methods and Coverage

Currently, China's Government Procurement Law stipulates six procurement methods, with public bidding as the default. Invited bidding is used for specialized or high-cost

projects; competitive negotiation for technically complex or urgent needs; single-source procurement for sole suppliers or emergencies; inquiry for standardized goods; and other methods recognized by the State Council. Although public bidding is primary, non-bidding methods are frequently applied. Conversely, the "covered procurement" in CPTPP encompasses goods, services, or combinations thereof, involving purchases, leases, rentals, BOT contracts, and public works concession contracts. In contrast, China defines procurement as the acquisition of goods, works, and services for consideration through contracts, including purchase, lease, entrustment, and employment. A key disparity is that China has not yet explicitly incorporated BOT and public works concession contracts into its statutory procurement framework.

3.2.3 Divergence in Non-discrimination Obligations

Section 4, Chapter 15 of the CPTPP explicitly establishes the principles of "Equity Non-discrimination" and "Origin Non-discrimination." From the outset, the "General Principles" mandate that parties comply with National Treatment in committed areas: each party and its procuring entities must immediately and unconditionally accord to the goods and services of any other party treatment no less favorable than that accorded to domestic or other parties' goods and services. Article 15.4(2) further clarifies that this treatment prohibits discrimination based on the degree of foreign affiliation/ownership or the source of products/services. While Article 22(2) of China’s law prohibits "unreasonable conditions" and "discriminatory treatment," and various regulatory documents list specific discriminatory means, the systematic classification and scope in China remain distinct from the CPTPP’s rigorous framework.[17]

3.2.4 Guarantees for Information Disclosure

China’s government procurement transparency currently faces challenges of fragmented legislation and low systemic integration. Compared to the CPTPP, while China's "Openness and Transparency" principle echoes the international requirement, gaps remain in specific rules. Current laws and regulations, such as the Government Procurement Information Publication Measures, focus on procedural management and platform norms but lack detailed standards for post-award disclosure of documents and results. In practice, local units often rely on scattered normative documents like the 2020 Format Specifications issued by the Ministry of Finance. This lack of centralized alignment leads to procedural redundancy and administrative burdens.[18] In contrast, the CPTPP provides granular rules on the scope, content, timing, and platforms for disclosure, exceeding China's current operational standards for high-level transparency.

3.2.5 Guarantees for Technical Specifications

China’s law lacks robust prohibitive rules against the misuse of technical specifications, making it difficult to balance specific agency needs with fair competition in non-standardized projects, thereby creating "hidden technical barriers." The CPTPP requires parties to adopt international standards where possible and employs a "negative list" to explicitly prohibit requirements for specific trademarks, models, or origins in tender documents. This detailed institutional arrangement mitigates the lack of constraints on discretionary power in domestic legislation and enhances the predictability of rules.

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[17] Zeming Zhang, Alignment Paths Between CPTPP Procurement Rules and China's Practices, *China Bidding*, No. 12 (2025), pp. 32–37.

[18] Hongrui Chen & Miaomiao Li, Government Procurement System of CPTPP: Characteristics, Challenges and China's Response, *Intertrade*, No. 12 (2022), pp. 23–31.

3.2.6 Objection and Remedy Mechanisms

Regarding rights remedies, CPTPP Article 15.19 establishes a system emphasizing promptness, transparency, and non-discrimination, aimed at safeguarding suppliers' right to action through administrative or judicial paths. While parties can choose the path based on national conditions, they must uphold judicial independence and due process, ensuring even non-judicial rulings remain impartial. The CPTPP encourages prior consultation to resolve disputes but breakthroughly grants suppliers standing for procedural litigation even in the absence of a domestic law basis. It provides diverse remedies, including "rapid interim measures" to suspend procurement and substantive correction mechanisms to compensate for bidding and protest costs. Conversely, China's remedy system is highly administrative, following a hierarchical path from challenges and complaints to administrative reconsideration or litigation, thereby increasing the threshold and opportunity costs for market subjects.

3.2.7 Legal Consequences and Liabilities

China's law imposes clear fines (20,000 to 200,000 RMB) and administrative sanctions (e.g., debarment for 1–3 years) for violations by procuring entities, agencies, or officials. CPTPP Chapter 26 (Transparency and Anti-Corruption) and Article 15.18 focus on combating corruption through criminal and administrative means, encouraging international cooperation and civil society participation. While the CPTPP delegates the power to define specific penalties to each party, it mandates that such measures must effectively ensure integrity and combat fraud in procurement practices.

4. Recommendations for Aligning Domestic Rules with Government Procurement under the CPTPP Framework

4.1 Expanding the Scope of Procuring Entities

The inclusion of SOEs remains a primary point of contention. The CPTPP adopts a flexible approach, allowing members to list entities in annexes. Under Annex 15-A, many nations include public-interest SOEs (e.g., Australia's Export Finance and Insurance Corporation). For China, the legal status of SOEs in procurement law has long been a focal point of debate, balancing the "source of funds" argument (public funds necessitate regulation) against "market subject independence."

The 2022 Draft Revision of China's Government Procurement Law introduced "other procuring entities," defining them as public-interest SOEs engaged in public utilities or infrastructure for public purposes. This marks the first legislative inclusion of SOEs. To achieve alignment, China must first recognize the necessity of this inclusion: currently, many SOEs follow the Tendering and Bidding Law or localized management measures, leading to inconsistent legal application and potential "regulatory voids" prone to corruption or bid-rigging. Internationally, as seen in the GPA and CPTPP, public-interest SOEs are de facto regulated entities.[19]

In practice, China should not rely solely on shareholding structures but should adopt a comprehensive criteria model involving the purpose of procurement, fund usage, and industry distribution. In the initial stage, it is advisable to limit the scope to wholly state-owned enterprises in key public sectors, with a dynamic adjustment mechanism

[19] Aihua Jiang & Mian Wei, Reflections on Including Public-interest SOEs into the Scope of Government Procurement Entities, *China Bidding*, No. 11 (2023), pp. 44–46.

to reflect the progress of mixed-ownership reforms.[20] Finally, the inclusion must balance international alignment with national security and industrial interests.

4.2 Enhancing Transparency Levels

The principle of transparency in the CPTPP Government Procurement Chapter is manifested as a set of highly standardized disclosure procedures. Parties are not only obligated to publish macro-level legal systems and policy procedures but are also required to conduct prompt and timely information disclosure throughout the entire lifecycle of specific procurement projects, particularly in key stages such as tendering, bid evaluation, and contract award.[21] Article 3 of China's Government Procurement Law stipulates that government procurement shall adhere to the principles of openness and transparency, fair competition, justice, and good faith, which is consistent with the transparency requirements of the CPTPP. Regarding specific rules, it only prescribes that information be promptly disclosed to the public via media designated by the supervisory and administrative departments, with an exception for trade secrets.[22] While procurement standards and methods must be made public,[23] the Government Procurement Law lacks explicit provisions concerning the specific content and timeframes for such disclosures. Furthermore, there is a deficiency in clear standards for technical specifications in procurement. This not only potentially increases the bidding costs for enterprises but also creates loopholes for "power rent-seeking," which fails to meet the requirements of the principle of fair competition.

Currently, due to the fragmented nature of legislation, the disclosure of procurement information in China lacks systematicity and rigor, making it difficult to provide clear guidance to participants in procurement activities.[24] Therefore, to meet international standards, government procurement information disclosure requires further refinement of its content and clarification of relevant technical standards, providing a guarantee for the information disclosure system through systematic regulations. Furthermore, Chinese law provides "exception space" for information disclosure, namely trade secrets. In practice, many procurement participants circumvent disclosure requirements by citing reasons such as "trade secrets," "procedural information," or "internal information." Consequently, in the process of rule-making, special attention should be paid to the balance between the protection of trade secrets and the requirements for information disclosure.

4.3 Improving Supervision and Dispute Resolution Mechanisms

Effective supervision of government procurement is vital to its impartiality. In China, the current supervisory body is the Ministry of Finance, which is primarily responsible for inspecting procurement activities and evaluating centralized procurement agencies on matters such as procurement prices, fund-saving effects, service quality, reputation, and compliance, with regular public disclosure of these results.[25] However, under the existing system, the Ministry of Finance assumes multiple roles, integrating functions of budgeting, approval, and regulation. This role

[20] Haijing Yang & Zihui Ma, Expansion of Government Procurement Entities from the Perspective of the Evolution of 'Public-interest SOEs': A Commentary on Article 12 of the Government Procurement Law (Draft for Comments), *China Bidding*, No. 9 (2023), pp. 49–51.
[21] Hongrui Chen & Miaomiao Li, Government Procurement System of CPTPP: Characteristics, Challenges and China's Response, *Intertrade*, No. 12 (2022), pp. 23–31.
[22] *Government Procurement Law of the People's Republic of China*, Art. 11.
[23] *Government Procurement Law of the People's Republic of China*, Art. 63.
[24] Hongrui Chen & Miaomiao Li, Government Procurement System of CPTPP: Characteristics, Challenges and China's Response, *Intertrade*, No. 12 (2022), pp. 23–31.
[25] *Government Procurement Law of the People's Republic of China*, Arts. 65 & 66.

overlap is highly prone to causing power imbalances. Especially at the local level, supervisory bodies are often deeply intertwined with procuring entities or specific projects, creating unavoidable conflicts of interest or institutional entanglements.[26] Consequently, greater emphasis should be placed on whether supervisory departments maintain an objective and impartial stance and whether the effectiveness of such supervision is fully realized. Currently, China has established a supervisory framework encompassing audit supervision by auditing organs, supervision by supervisory authorities, and oversight by organizations and individuals. In the future, China could explore more paths to leverage social forces, such as integrating supervision from industry associations and ensuring the timely publication of supervisory information, thereby perfecting the oversight of government procurement.

The provision of remedies for suppliers is also a crucial component of the government procurement system. The smoothness and timeliness of dispute resolution mechanisms directly affect procurement efficiency. Chinese law provides the following protections for suppliers: suppliers may file inquiries with the procuring entity regarding procurement matters;[27] if they believe their rights have been infringed, they may submit a written challenge to the procuring entity within seven working days from the date they knew or should have known of the infringement.[28] If the procuring entity fails to respond or the supplier is dissatisfied with the response, a complaint may be filed with the supervisory department at the same level.[29] If dissatisfied with the complaint ruling or if the department fails to act, the supplier may apply for administrative reconsideration or initiate administrative litigation in a people's court.[30]

It can be observed that China’s remedy path for suppliers adopts a hierarchical model, progressing from inquiries and challenges to complaints, and ultimately to administrative reconsideration or litigation. This differs significantly from the diverse, optional remedy paths offered by the CPTPP. Under the CPTPP, internal administrative protest procedures are not mandatory; the agreement supports dispute resolution through consultation. Parties may independently decide whether to pursue consultation, litigation, or apply for an initial review by an administrative organ, with the right to litigate if dissatisfied with the initial review.[31] Evidently, CPTPP rules are more multi-dimensional and pluralistic, which helps reduce the costs of rights assertion for suppliers, saves time in the protest process, and resolves disputes efficiently and timely. Furthermore, the CPTPP stipulates rapid interim measures to suspend procurement activities and corrective measures to compensate for complaint costs, ensuring that the protection of supplier interests is more timely, effective, and substantive. Therefore, constructing a dispute resolution mechanism that meets the actual needs of procurement activities is critical; likewise, perfecting supervisory and remedy mechanisms that align with both international requirements and China's procurement practice is essential for supplier confidence and overall fairness. Continuous exploration and improvement of these systems remain vital.

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[26] Hongrui Chen & Miaomiao Li, Government Procurement System of CPTPP: Characteristics, Challenges and China's Response, *Intertrade*, No. 12 (2022), pp. 23–31.
[27] *Government Procurement Law of the People's Republic of China*, Art. 51.
[28] *Government Procurement Law of the People's Republic of China*, Art. 52.
[29] *Government Procurement Law of the People's Republic of China*, Art. 55.
[30] *Government Procurement Law of the People's Republic of China*, Art. 55.
[31] *CPTPP*, Art. 15.9.

4.4 Integrating Modern Value Concepts

Beyond specific rules, the CPTPP reflects institutional pursuits encompassing higher value-based concepts, such as environmental protection, labor interest safeguards, SMEs participation, and the promotion of electronic means. Specifically, the CPTPP encourages procuring entities to implement measures necessary for the protection of human, animal, or plant life or health.[32] It does not prevent a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or the protection of the environment.[33] Subject to the requirements of Chapter 26 (Transparency and Anti-corruption), it does not preclude Parties from adopting measures related to labor protection. Parties are also required to facilitate SME participation and cooperate in this regard.[34] Furthermore, Parties shall seek to provide opportunities for covered procurement to be conducted through electronic means, including the publication of procurement information, notices, and tender documents, as well as the receipt of bids.[35]

These rules reflect the CPTPP's focus on environment, social benefits, and new technological requirements; moreover, the support for SMEs further fosters a fair competition environment. China’s Government Procurement Law also embodies policy goals for economic and social development, including environmental protection, support for underdeveloped and minority ethnic regions, and the promotion of SME development.[36] However, these provisions remain principled declarations and lack specific implementing rules. Therefore, in perfecting China’s procurement rules, emphasis should be placed on operationalizing the aforementioned concepts. In the tendering stage, factors such as environmental protection, labor rights, and the use of electronic means could be integrated as reference standards for suppliers, with subsequent inclusion in the scope of supervision. For SMEs, when formulating procurement plans and schemes ex-ante, purchaser conditions and reasonable thresholds should be set in light of SME circumstances to facilitate their access to documents and policy information. During the tendering process, a fair competition review mechanism could be established, incorporating systematic management systems such as supervisory warnings, price monitoring, and integrity evaluations as a "second line of defense" to safeguard SME participation.[37] Ex-post, supervisory departments should timely evaluate and oversee whether procuring entities have provided necessary support to SMEs during the process. Additionally, cross-departmental and cross-regional cooperation mechanisms could be explored regarding technological innovation, financing, and information integration for SMEs.

5. Conclusion

The transition of government procurement toward a high-standard international regime is irreversible. As a benchmark, the CPTPP provides a critical reference for China’s institutional reform. While China possesses a solid foundation for alignment, substantive gaps remain in entity coverage, transparency, and remedy efficiency.

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[32] *CPTPP*, Art. 15.3.
[33] *CPTPP*, Art. 15.12.
[34] *CPTPP*, Art. 15.21&15.22.
[35] *CPTPP*, Art. 15.4.
[36] *Government Procurement Law of the People's Republic of China*, Art. 9.
[37] Shan Huang, Smart Cloud Platform for Government Procurement Enhances the Convenience for SMEs to Participate in Government Procurement, *China Government Procurement*, No. 10 (2021), pp. 62–63.

Facing the strategic opportunity of CPTPP accession, China should leverage the revision of the Government Procurement Law to achieve a high-level alignment.

First, China must scientifically define the inclusion criteria for public-interest SOEs and establish dynamic adjustment mechanisms to bridge the gap in procuring entities. Second, a systematic disclosure regime should be built, explicitly defining the content and timeframes of disclosure to balance transparency with trade secret protection. Third, the establishment of independent oversight bodies and diversified remedy paths is essential to simplify procedures and strengthen supplier protection. Fourth, modern governance concepts, such as green procurement, labor rights, and SME support, should be transformed from principled declarations into operational norms.

Through these paths, China can align with international trends while safeguarding national economic security. This evolution will not only fulfill the obligations of high-standard agreements like the CPTPP but also provide solid institutional support for China's deep integration into global trade governance and the advancement of its institutional opening-up. Future research should focus on the practical experiences of CPTPP contracting parties to provide further operational insights for China's regulatory alignment.

Legal Regulation of Stablecoins: International Experience and China's Response

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Abstract: Stablecoins possess dual attributes as both payment instruments and settlement assets. While their cross-border circulation and network externalities enhance payment efficiency and financial inclusion, they also raise concerns regarding currency substitution, regulatory arbitrage, and systemic risks.The international community is gradually forming a regulatory philosophy centered on "same risks, same regulation; technology neutrality; and cross-border collaboration." The U.S. GENIUS Act establishes a unified federal framework, the EU's MiCA builds a tiered classification and differentiated regulations, while Hong Kong's Stablecoin Ordinance creates a compliance testing ground based on the benchmark of "one coin, one license" principle and 100% reserve requirements. Against the backdrop of RMB internationalization and the steady advancement of digital RMB, China should seize development opportunities while upholding national monetary sovereignty and financial security. It should implement integrated domestic and international oversight, establish systems including licenses issuance, capital and reserve constraints, mandatory disclosure and audits, and utilize regulatory sandboxes for limited piloting and gradual rollout. This approach will harness the institutional functions of stablecoins while maintaining controllable risks.

Keywords: stablecoin; international regulation; regulatory sandbox

Introduction

With the iteration of blockchain infrastructure and mechanism design, stablecoins—anchored to fiat currencies and characterized by "payment-as-settlement plus on-chain programmability"—have rapidly embedded themselves in emerging domains such as cross-border micro-payments, digital trade, and asset settlement. They have become a crucial vehicle for digital finance's transition from an information internet to a value internet.

Stablecoins possess dual attributes as both payment instruments and settlement assets, blurring boundaries between traditional e-money, prepaid value instruments, deposits, and securities. Their network externalities and cross-border accessibility amplify procyclical volatility and regulatory arbitrage transmission channels. Undeniably,

stablecoin expansion is reshaping understandings of monetary sovereignty, safety margins, and payment jurisdictions.Taking recent U.S. stablecoin legislative direction as an example, the enactment of the Guiding and Establishing National Innovation for U.S. Stablecoins Act ([1] , hereinafter referred to as the "GUNIUS Act")not only legitimizes stablecoins from a risk perspective but also embeds U.S. dollar cash and short-term Treasury bonds into an on-chain reserve system within the "digital finance-monetary power" framework. By "tokenizing the dollar," it extends its rule-supply capabilities in cross-border payments and the Web3 ecosystem, aiming to maintain the dollar's monetary hegemony. Hong Kong SAR, China, has enacted the Stablecoin Ordinance ([2]), establishing a compliance testing ground through stringent licensing and ongoing prudential oversight. This gradually shapes the international baseline of "same risks, same regulation; technology neutrality; cross-border collaboration." China's stance toward cryptocurrencies has evolved alongside its understanding of their nature.Compared to the cautious regulatory stance toward cryptocurrencies in the China Financial Stability Report (2023)[3] , the China Financial Stability Report (2024) emphasizes that within the existing framework of financial security and capital account management, high-risk activities will be continuously addressed while strengthening penetrative and ongoing supervision. Digital financial infrastructure centered on the digital yuan (e-CNY) is advancing steadily, with new pathways for cross-border clearing being explored through multilateral central bank cooperation platforms.[4] If the economic functions of crypto assets and global stablecoins are identical to traditional financial services, they should be subject to the same regulatory requirements. How to construct a rule system that aligns with China's institutional environment and complements the functions of the digital yuan within the objective sequence of sovereignty-stability-innovation, enabling stablecoins to operate within the rule of law and be subject to continuous assessment, has become a shared challenge for policy-making and academic research.

1. Fundamental Legal Attributes and Regulatory Requirements of Stablecoins

1.1 Basic Conceptual Analysis of Stablecoins

A stablecoin refers to a cryptographic value carrier issued by a specific entity on a distributed ledger, anchored to the value of fiat currency, commodities, or other verifiable assets. It suppresses nominal price volatility through redemption and reserve arrangements to fulfill payment and settlement functions.[5] Its "stability" does not stem from algorithmic self-sufficiency but from the verifiability and enforceability of its anchoring mechanism and governance structure.International organizations typically classify arrangements with multi-jurisdictional reach and cross-border

[1] United States, *Guiding and Establishing National Innovation for U.S. Stablecoins Act* (GENIUS Act), e nacted July 18, 2025.

[2] Legislative Council of the Hong Kong Special Administrative Region: The Stablecoin Ordinance, Ordin ance No. 17 of 2025, Chapter 656 of the Laws of Hong Kong, effective August 1, 2025.

[3] People's Bank of China: China Financial Stability Report (2023), compiled by the Financial Stability B ureau of the People's Bank of China, December 2023, http://www.pbc.gov.cn/jinrongwendingju/146766/1467 72/5177895/2023122217072818365.pdf,Last accessed: August 24, 2025.

[4] People's Bank of China: China Financial Stability Report (2024), compiled by the Financial Stability B ureau of the People's Bank of China, December 2024, http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/ 5547040/2024122816044339215.pdf,Last accessed: August 24, 2025.

[5] F. Cengiz, *Stablecoins and their regulation: a Hayekian approach*, *Journal of International Economic L aw*, Vol. 28, No. 2 (2025), p. 204. The article begins by defining "Stablecoins are digital currencies that operate on a blockchain whose value is pegged to another asset to prevent volatility."

network effects as global stablecoins based on scope and spillover effects, establishing regulatory baselines of "same business, same risks, same regulation," technology neutrality, and cross-border cooperation.[6] The EU's Markets in Crypto-Assets Regulation (MiCA) further categorizes stablecoins based on their anchoring objects and functions into Electronic Money Tokens (EMT, pegged to a single fiat currency) and Asset-Referenced Tokens (ART, pegged to multiple assets or commodities), applying differentiated access and prudential rules accordingly.

Further typology based on operational mechanisms and governance structures yields two complementary dimensions: First, by pegging and stabilization methods: (1) Fiat-collateralized: Fully or highly reserved with high-liquidity assets (cash, deposits, short-term government bonds, etc.) of the same currency equivalent to the issuance scale, enabling one-to-one conversion with fiat currency upon holder redemption requests;(2) Crypto-asset collateralized: Overcollateralized with mainstream crypto assets, supplemented by liquidation and auction mechanisms to maintain peg (e.g., smart contracts automatically managing collateral ratios);(3) Algorithm-based: Stabilized through supply adjustments or dual-token structures, but prone to contagion risks during liquidity squeezes or confidence shocks; (4) Commodity-backed: Reserves backed by physical assets like gold, representing variants of "real-world assets" mapped onto the chain. Second, based on governance and custody structures, stablecoins are categorized as centralized issuance (where issuers centrally manage minting, redemption, disclosure, and reserve custody—offering strong auditability but high credit dependency) and decentralized protocols (where smart contracts automatically enforce listing rules, with governance tokens or DAOs voting to adjust parameters—reducing single points of failure but introducing significant complexity and stability risks during extreme market conditions).[7]

Within China's legal framework, defining stablecoins requires addressing three questions: "Is it currency?", "Is it a deposit or payment balance?", and "Is it virtual property?" This paper argues that stablecoins are not legal tender. Under current law, the Renminbi is the sole legal tender within China. Stablecoins lack legal tender status and compulsory circulation, and cannot be issued, exchanged, settled, or used for wealth management as currency substitutes within the country.Stablecoins differ from bank deposits and payment account balances. Per the Administrative Measures for Online Payment Services of Non-Bank Payment Institutions, customer balances held by third-party payment institutions constitute prepaid value. These balances must be held in dedicated bank accounts under segregated management, independent custody, and purpose restrictions. Payment institutions may only initiate fund transfers to banks upon customer instruction. Thus, the balance held by payment institutions fundamentally represents a custodial relationship for customer funds.[8] This differs legally from stablecoins issued as redeemable tokens. Stablecoin transactions do not flow synchronously with bank deposits; their "1:1" promise stems from the issuer and independent custodian's obligation to fulfill counterparty payments per issuance terms. Without safety mechanisms like licensing, dedicated reserves, independent custody, and full disclosure, the redeemable value certificate nature of stablecoins struggles to

[6] Douglas Arner, Raphael Auer, and Jon Frost, “Stablecoins: Risks, Potential and Regulation,” *BIS Working Paper* No. 905 (Bank for International Settlements, November 2020), pp. 1–2, 11–13.
[7] Hafner, M., Pereira, M.H., Dietl, H., & Beccuti, J. (2024). The four types of stablecoins: A comparative analysis. *Ledger*, (09), 109–111.
[8] See Article 7 of China's Administrative Measures for Online Payment Services of Non-Bank Payment Institutions.

meet China's compliance baseline for payment settlement activities.Stablecoins should be presumed as virtual property and regulated according to functional risk-based intensity.[9] Article 127 of the Civil Code has established a legal protection pathway for "data and virtual property on the internet." In individual cases, legally acquired stablecoins meet the property criteria of "existing in electronic record form, possessing disposability and exclusivity, and being recognized by the community." The holder shall be entitled to the rights of possession, use, benefit, and disposition, but the exercise of these rights must comply with the boundaries set by financial regulation and public order management.[10]

1.2 Analysis of the Necessity for Stablecoin Regulation

1.2.1 Functional Value of Stablecoins

Within the crypto asset trading sphere, stablecoins have become the de facto crypto dollar standard, settling over 90% of Bitcoin transactions. Investors leverage stablecoins to conduct dollar-denominated transactions in digital markets, significantly enhancing market liquidity and trading convenience. In certain emerging economies (such as Argentina and other high-inflation economies), stablecoins are viewed as digital safe-haven assets for the general populace due to their stable value. They account for approximately 72% of local crypto trading volume, serving as an alternative store of value.[11] By anchoring their value to fiat currencies, stablecoins have rapidly evolved from marginal experiments into vital bridges connecting the fiat monetary system with the crypto ecosystem, with their market influence growing daily.

Combining traditional monetary credit with blockchain technology, stablecoins deliver high efficiency and low costs in payment settlements. Compared to cross-border wire transfers that take days and incur high fees, stablecoins enable peer-to-peer near-real-time settlements with negligible transaction costs. While approximately 30% of traditional micro-remittances take over a day to complete, stablecoin transactions can be settled within an hour, with a $200 transfer costing only about $0.00025.[12] Stablecoins eliminate intermediaries and reduce costs, enabling "payment as settlement" to enhance capital flow efficiency. Simultaneously, they decrease reliance on USD clearing, providing participation opportunities for SMEs and the unbanked in underserved regions, thereby promoting financial inclusion. Consequently, they have garnered significant attention in cross-border payments and e-commerce scenarios.

The widespread adoption of stablecoins has not only streamlined payments but also reshaped the landscape of global digital finance, becoming a cornerstone of the cryptocurrency market and decentralized finance (DeFi). As a vehicle for "value anchoring," stablecoins enable investors to temporarily hedge against risks or lock in gains during crypto transactions, serving as liquidity pools within digital markets.[13]

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[9] Qi, A.M., & Wang, L. (2024). Global trends in legal regulation of stablecoins and prospects for China's rule of law path. *Journal of Xinjiang Normal University (Philosophy and Social Sciences Edition),* (06), 90.

[10] Ibid., p. 90.

[11] David Murakami & Ganesh Viswanath-Natraj, *Cryptocurrencies in Emerging Markets: A Stablecoin Sol ution?*, Journal of International Money and Finance, Vol. 156, p. 2, 17 (2025);Chainalysis, *The 2024 Geo graphy of Cryptocurrency Report*, at https://www.chainalysis.com/ (Last visited on August 24, 2025), p.36.

[12] Barry, E.E., & Viswanath-Natraj, G. (2025). Stablecoins in digital payouts: Bridging traditional and bl ockchain-powered systems. European Journal of Computer Science and Information Technology, (14), 10–1 1.

[13] Gupta, A. (2025). The role of stablecoins in tokenomics: Economic anchors and volatility reduction. I nternational Journal of Trend in Scientific Research and Development, (03), 1038.

Due to their price stability, stablecoins effectively perform the payment and pricing functions of fiat currency within the crypto ecosystem. Various decentralized exchanges and lending protocols widely adopt stablecoins as both the unit of account and collateral, thereby enabling diverse financial applications such as on-chain lending and decentralized exchanges. Without the stable pricing benchmark provided by stablecoins, highly volatile crypto assets would struggle to be directly utilized in complex financial contracts. This underscores stablecoins as foundational infrastructure supporting the entire digital finance ecosystem.[14] According to a BCG report, global stablecoin transaction volume reached $26.1 trillion by the end of 2024. Other analyses indicate even higher figures: McKinsey estimates volume exceeding $27 trillion, while outlets like CoinTelegraph report $27.6 trillion in stablecoin transactions—surpassing the combined volume of Visa and Mastercard for the first time.[15] Stablecoins have rapidly emerged as a high-frequency transaction medium and value exchange infrastructure in the digital economy era. Not only individual investors but also large institutions and multinational corporations have begun utilizing stablecoins for fund transfers and cross-border settlements. Statistics show that over the past year, the total value of business-to-business (B2B) payments far exceeded peer-to-peer (P2P) payments: B2B payments reached an annualized transaction volume of approximately $3.6 billion, accounting for 50% of total volume, while P2P payments reached an annualized volume of about $1.8 billion.[16] Stablecoins are expanding beyond the crypto sphere into broader commercial domains, unlocking new innovation opportunities for financial markets. These include supply chain finance (using stablecoins for goods settlement to shorten capital turnover cycles) and the tokenization of securities and physical assets (enabling 24/7 trading of tokenized assets denominated in stablecoins). Furthermore, stablecoin account systems and the programmability of smart contracts offer vast potential for future financial product innovation and FinTech regulatory applications.[17]

1.2.2 Regulatory Implications of Stablecoins

As stablecoins rapidly expand in scale, their impact on the macro-financial system has become increasingly prominent, making them a regulatory focus for nations worldwide. USD-denominated stablecoins (such as USDT and USDC) have formed a global "USD-stablecoin-crypto market" cycle, reinforcing the USD's dominant role in digital asset transactions.U.S. financial giants and tech companies are actively expanding into stablecoins. Visa and Mastercard have launched cross-border clearing pilots, while PayPal introduced the dollar-pegged PYUSD in 2023, leveraging on-chain settlement technology to capture the digital dollar payment market. Take Tether as an example: with approximately 165 employees, the company achieved over $13 billion in net profit in 2024—nearly matching Citigroup's performance—demonstrating the high-yield potential of stablecoin operations.[18]

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[14] Naifar, N. (2025). Mapping systemic tail risk in crypto markets: DeFi, stablecoins, and institutional in vestors. Journal of Risk and Financial Management, 18(6), 329.

[15] Boston Consulting Group, *Stablecoins: Five Killer Tests to Gauge Their Potential*, BCG Report, 2024, p. 15; CoinTelegraph, *Stablecoins Processed $27.6 Trillion in 2024, Surpassing Visa and Mastercard Co mbined*, at https://cointelegraph.com/news/stablecoins-beat-visa-mastercard-2024-volume (Last visited on Aug ust 3, 2025).

[16] PYMNTS, *Stablecoins Fuel $36 Billion in B2B Payments as Issuers Eye Mature Markets*, at https://w ww.pymnts.com/news/b2b-payments/2025/stablecoins-fuel-36-billion-dollars-b2b-payments-issuers-eye-mature-m arkets (Last visited on August 3, 2025).

[17] Zhang, L.Y. (2025, August 4). SoK: Stablecoins for digital transformation—Design, metrics, and applic ation with real world asset tokenization as a case study. arXiv, p. 4.

[18] Tether, *Tether Hits 13 Billion Profits for 2024 and All-Time Highs in U.S. Treasury Holdings, USDT Circulation and Reserve Buffer in Q4 2024 Attestation*, at https://tether.io/news/tether-hits-13-billion-profits-f or-2024-and-all-time-highs-in-u-s-treasury-holdings-usdt-circulation-and-reserve-buffer-in-q4-2024-attestation (L

Tether obtains interest-free funds by issuing USDT against user deposits of U.S. dollars, then invests its reserves in U.S. Treasury bonds and repurchase agreements to earn interest spreads. In Q4 2024 alone, this business generated approximately $7 billion in quarterly interest income.[19] By the end of 2024, Tether held about $113 billion in U.S. Treasuries, ranking among the world's largest holders of U.S. debt. This high profitability and financial influence attract diverse capital, prompting major Chinese tech companies to actively pursue stablecoin licenses and expand into cross-border payments and global operations. Both JD.com and Ant Group have entered Hong Kong's stablecoin regulatory sandbox and plan to submit applications, once the Stablecoin Ordinance takes effect, reflecting their confidence in stablecoins' potential for payment clearing, supply chain finance, and international settlements.[20]

Stablecoins present both challenges and opportunities within sovereign currency systems. Under proper guidance, they can serve as a beneficial complement to the digitization of fiat currencies, supporting national strategic objectives. On one hand, stablecoins can expand cross-border channels for sovereign currencies, enhancing internationalization. The global prevalence of dollar-pegged stablecoins further solidifies the dollar's dominance. The U.S. Treasury views reliable dollar stablecoins as a supplement to cash and bank deposits, facilitating digital transactions in other countries and thereby reinforcing dollar hegemony.[21] Consequently, some developed economies have adopted a dual approach of openness and regulation, integrating stablecoins into their financial strategies rather than imposing blanket bans. On the other hand, the rise of stablecoins has spurred nations to accelerate the development of central bank digital currencies (CBDCs) to safeguard monetary sovereignty and control over payment systems. China has launched the digital yuan, but its cross-border applications remain limited; meanwhile, USD-pegged stablecoins leverage their first-mover advantage to dominate international payments and cryptocurrency markets. Allowing foreign currency stablecoins to permeate domestic economies could erode the status of local currencies. Regulatory solutions may encourage commercial banks or large institutions to issue compliant, locally-pegged stablecoins for cross-border trade and investment, achieving a win-win for digital currency adoption and financial oversight. A dual-track system of central bank digital currencies alongside private stablecoins may become the new normal for sovereign digital monetary frameworks.[22] However, while stablecoins enhance payment efficiency and financial innovation, they also carry significant risks. Their circulation not only exhibits inherent structural vulnerabilities—such as dependence on anchoring and redemption capabilities—but may also generate spillover shocks to the macro-financial system. As market scale and transaction volumes grow, regulatory oversight and risk assessment must comprehensively cover stablecoin issuance,

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ast visited on September 3, 2025); Bloomberg, *Tether Reports $13 Billion in 2024 Net Profits as It Rival s Citigroup's $14.3 Billion Earnings*, at https://www.bloomberg.com/news/articles/2025-01-31/stablecoin-issue r-tether-says-profit-was-13-billion-last-year (Last visited on September 3, 2025).

[19] CoinTelegraph, *How Tether Made $5.2B in 2024: Here's How Stablecoins Make Money*, at https://coin telegraph.com/explained/tether-made-52b-in-2024-heres-how-stablecoins-make-money (Last visited on Septem ber 3, 2025).

[20] Reuters, *China's tech giants lobby for offshore yuan stablecoin, sources say*, at https://www.reuters.com /world/china/chinas-tech-giants-lobby-offshore-yuan-stablecoin-sources-say-2025-07-03 (Last visited on Septe mber 3, 2025).

[21] U.S. Secretary of the Treasury Scott Bessent, *Statement on Enactment of the GENIUS Act*, at https://h ome.treasury.gov/news/press-releases/sb0197 (Last visited on September 3, 2025).

[22] Bank for International Settlements (BIS), "III. The next-generation monetary and financial system," BI S Annual Economic Report (June 24, 2025), Chapter III, pp. 26–28.

reserve management, cross-border circulation, and systemic financial impacts. This ensures stablecoins serve the real economy in the digital finance era without threatening financial stability.

1.3 Inherent Risks of Stablecoins and Challenges to Macro-Financial Stability

1.3.1 Mechanisms of Inherent Risks in Stablecoins

Stablecoins achieve value anchoring through asset collateralization, yet their operational mechanisms carry risks related to reserve assets and credit dependency. Issuers may allocate portions of reserves to high-risk or illiquid assets in pursuit of returns. Should market or interest rate fluctuations cause asset devaluation, reserve pool security is compromised, holder interests are impacted, and market confidence rapidly erodes. When redemption requests surge, stablecoins lacking deposit insurance or lender-of-last-resort support can enter a "run" cycle, causing price anchoring to fail and potentially triggering a short-term collapse. In May 2022, UST lost its peg under extreme market pressure, plummeting from $1 to near zero within days and evaporating hundreds of billions in market value—a classic case study.[23] In March 2023, the major stablecoin USDC briefly fell below its peg to $0.87 after the sudden collapse of Silicon Valley Bank, where part of its reserves were held, triggering global market panic in the stablecoin sector.[24] This demonstrates that both algorithmic failures and damage to reserve assets can undermine stablecoins' ability to deliver on their promise of value stability.

Stablecoin operations heavily rely on blockchain smart contracts and network systems, where technical vulnerabilities or operational errors can trigger systemic failures. Severe bugs within the stablecoin system could even cause the entire network to collapse. Externally, hacker attacks threaten the security of stablecoin ledgers and funds. In 2021, the cross-chain bridge Poly Network was exploited by hackers due to a program vulnerability, resulting in the theft of approximately $600 million in crypto assets within a short period and causing significant economic losses for global cryptocurrency investors. Should stablecoin smart contracts face similar attacks, user funds and the stablecoin's peg would suffer severe impacts. Furthermore, stablecoin pricing relies on on-chain and off-chain interaction mechanisms like oracles. Technical failures could trigger price volatility and transaction disruptions, introducing operational risks. Thus, technological security and system robustness form the foundation for stablecoin circulation. Once technical risks materialize, maintaining stablecoin value becomes challenging.[25]

Simultaneously, stablecoins issued through internet platforms exhibit pronounced "platform attributes," enabling rapid expansion via network effects to establish monopolistic positions. Large tech companies entering the stablecoin space fundamentally leverage their vast user bases and data advantages to expand into financial domains like payments. Once a stablecoin platform gains first-mover advantage, it may exclude competitors by sealing off data and interfaces, undermining

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[23] Jiageng Liu, Igor Makarov, and Antoinette Schoar, *Anatomy of a Run: The Terra–Luna Crash*, MIT S loan Research Paper No. 6847-23, NBER Working Paper No. 31160 (April 11, 2023), p. 1.

[24] The Guardian, *USD Coin value falls after revealing $3.3bn held at Silicon Valley Bank*, at https://ww w.theguardian.com/technology/2023/mar/11/usd-coin-depeg-silicon-valley-bank-collapse (Last visited on Septe mber 3, 2025).

[25] Sung-Shine Lee, Alexandr Murashkin, Martin Derka, and Jan Gorzny, *"SoK: Not Quite Water Under t he Bridge: Review of Cross-Chain Bridge Hacks*," *Proceedings of the IEEE Symposium on Security and Privacy Workshops (SPW)* (2022): p. 2.

fair competition in the payments sector.More critically, if a platform-monopolized stablecoin spirals out of control, its destructive impact could ripple across the entire market. Platform-based stablecoins, controlling vast amounts of data and capital, can easily balloon to become "too large to fail" and interlinked to such an extent that they become "too wide to fail."

1.3.2 External Risks of Stablecoins

Widespread circulation of stablecoins may introduce external risks to the macro-financial system. Stablecoins pegged to foreign currencies like the US dollar circulating globally could trigger "currency substitution," undermining the status of a nation's sovereign currency. The International Monetary Fund refers to this as "monetary cryptoization," where residents use stablecoins instead of domestic currencies for transactions, circumventing legal tender systems and foreign exchange controls. This weakens monetary policy transmission and central bank regulatory capabilities. Simultaneously, cross-border circulation may exacerbate disorderly capital flows and foreign exchange volatility, complicating capital inflow/outflow management and increasing outflow pressures.[26]

The widespread adoption of stablecoins may also reshape the payment and clearing ecosystem, introducing new systemic risks. By bypassing traditional banks and payment institutions, they establish peer-to-peer value transfer networks, enabling "payment as settlement" in cross-border transactions and reducing transaction costs. However, the parallel circulation of multiple private stablecoins could fragment the payment system. Incompatibility between different chains necessitates reliance on crypto exchanges or bridging technologies for cross-chain transfers, introducing additional costs, operational vulnerabilities, and security risks.[27] Moreover, the predominantly enterprise-maintained closed networks result in low transparency of transaction data and fund flows, making real-time monitoring difficult for regulators. Malicious actors may exploit these networks for illicit activities such as money laundering and terrorist financing, amplifying financial crime and regulatory arbitrage risks.[28] The convergence of these factors enables stablecoins to disrupt existing payment systems, erode central banks' control over payment terminals, and introduce new sources of financial instability.

At the financial market level, once stablecoins become widely integrated into the system, their credit and market risks can propagate through multiple channels, triggering systemic issues. Although pegging mechanisms claim to maintain value stability, they rely on issuers' sustained redemption capacity. Should market doubts arise regarding solvency or reserve adequacy, holder confidence could rapidly collapse, triggering concentrated redemptions—a classic run crisis.[29] Stablecoins are increasingly interconnected with traditional financial institutions, such as banks or funds involved in reserve custody or investments in related assets. Should the credit of a major stablecoin collapse, it would impact the balance sheets of financial institutions, triggering broader financial turmoil. Market volatility could also affect

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[26] Le, A. H., Neiman, B., & et al. (2023, December 5). Macro-financial impacts of foreign digital mone y. *IMF Working Paper*, pp.1–2, 10.

[27] Bank for International Settlements (BIS), "Cross-border regulatory and supervisory issues of global sta blecoin arrangements," in *Cross-border Payments* (BIS/FSB Report, July 23, 2024), pp. 1–2, 32–33.

[28] Anthony Owen, Grace Dawson, and Joyce Walker, *"The Role of Stablecoins in Money Laundering an d Financial Crime,"* Journal of Financial Crime 32, no. 1, p. 48. (2025).

[29] Gorton, G. B., & Zhang, J. Y. (2023). Taming wildcat stablecoins.*The University of Chicago Law Rev iew*, 90(3), 909, 913.

the real economy through wealth effects and confidence channels: diminished investor wealth and shaken confidence would lead to reduced consumption and investment, while substantial capital stagnating in crypto speculation would divert credit resources away from serving the real economy. The International Monetary Fund has recommended implementing prudential regulation commensurate with the risks posed by stablecoins to prevent them from evolving into a "grey rhino" event that threatens financial stability.[30]

In summary, stablecoins exhibit both endogenous mechanisms and technological vulnerabilities while posing cross-market and cross-border spillover risks. From currency issuance and policy transmission to payment systems and financial stability, private stablecoins may erode the status of national sovereign currencies and disrupt existing financial order. While reaping the benefits of stablecoin innovation, regulators worldwide must remain vigilant against potential risks, refine regulatory frameworks, and ensure financial innovation remains on a sound development trajectory.

2. Research on Regulatory Approaches for Stablecoins from a Comparative Law Perspective

2.1 Promoting Payment Jurisdictionalization and Regulatory Division of Labor Coordination—The United States

In recent years, U.S. stablecoin regulation has shifted from a fragmented multi-agency approach toward unified federal legislation. As a novel payment instrument, stablecoins previously lacked dedicated legal frameworks, with oversight fragmented among agencies such as the Treasury Department, Federal Reserve System (Fed), Commodity Futures Trading Commission (CFTC), and Securities and Exchange Commission (SEC) within their respective jurisdictions. This fragmented regulatory landscape resulted in inconsistent standards and legal uncertainty, creating market volatility and innovation barriers. As the stablecoin market rapidly expanded—with USD-pegged stablecoins exceeding $220 billion in circulation by April 2025—[31] Given the potential implications of stablecoins for financial stability and consumer protection, regulatory legislation has become imperative. Against this backdrop, the U.S. Congress proposed and advanced the passage of the GUNIUS Act. Following bipartisan negotiations, the bill was voted into law by Congress in July 2025 and signed by President Trump.The GUNIUS Act establishes unified federal regulations for stablecoins, bridging regulatory gaps and promoting coordinated oversight among agencies. As the first U.S. federal legislation specifically targeting stablecoins, it comprehensively addresses issuance, operations, and regulatory responsibilities. It clarifies the definition and regulatory scope of stablecoins while imposing stringent compliance obligations on issuers.The bill defines "payment stablecoins" as digital assets used for payment or settlement. Issuers are obligated to redeem tokens at a fixed amount and maintain the token's value stable relative to a fixed amount of fiat currency.

First, the bill establishes a licensing system for stablecoin issuers, prohibiting any

[30] Financial Stability Board (FSB), *High-Level Recommendations for the Regulation, Supervision and Ove rsight of Global Stablecoin Arrangements*, FSB Final Report, p. 9 (2023).
[31] U.S. Department of the Treasury Financial Technology Advisory Committee, *Current State of the Stabl ecoin Market* (April 30, 2025), at https://home.treasury.gov/system/files/136/FTAC-Stablecoin-Report-Apr2025.pdf (Last visited on September 3, 2025).

entity from issuing payment-type stablecoins within the United States without authorization. Violators will be barred from conducting related business. Regulation adopts a dual federal-state framework: Federal agencies including the Federal Reserve, OCC, and FDIC oversee licensing and supervision. However, stablecoins with total issuance below a certain threshold (e.g., $10 billion) may opt for state-level regulation equivalent to federal standards.[32]The bill establishes a Stablecoin Certification Review Board comprising the Treasury Secretary, Federal Reserve Chair, and FDIC Chair. This board determines whether state regulatory regimes are equivalent to federal standards and unanimously approves issuance applications from non-financial enterprises. During the approval process, regulators comprehensively evaluate applicants' financial condition, corporate governance, creditworthiness of executives and directors, adequacy of redemption policies, and compliance of affiliated entities to determine licensing eligibility.[33] The bill strictly regulates stablecoin reserve management and redemption mechanisms, enforcing the "full reserve" principle to ensure stable pegged value. Issuers must hold equivalent amounts of highly liquid, secure assets as reserves, including U.S. dollar cash, demand deposits, and low-risk assets such as U.S. Treasury securities approved by regulators, achieving 100% reserve coverage.[34] The stablecoin redemption system mandates transparency, allowing holders to exchange tokens for fiat currency at a 1:1 par value with disclosed associated fees. Issuers must monthly disclose reserve asset size and composition, undergo certified public accountant audits, and have disclosures jointly signed by the CEO and CFO to ensure accuracy. Large-scale issuers additionally require periodic submission of audited financial statements.[35]

The U.S. GUNIUS Act embodies technology neutrality and innovation encouragement through differentiated regulation of stablecoins. It primarily regulates fiat-pegged payment stablecoins while refraining from outright banning non-payment stablecoins. Instead, it requires regulators to assess their use cases and governance mechanisms, leaving room for future regulation. The bill clarifies that qualified payment stablecoins are neither securities nor commodities, eliminating legal uncertainty. It classifies issuers as "financial institutions" under the Bank Secrecy Act, imposing anti-money laundering and counter-terrorist financing obligations, and prohibits bundling or misleading marketing. The bill restricts yield-generating features, prohibiting the payment of interest or dividends for holding or using stablecoins to prevent disguised wealth management. It grants holders priority claims on reserve assets, ensuring preferential redemption in bankruptcy scenarios. The GUNIUS Act clarifies the legal attributes and regulatory scope of stablecoins, providing the market with a stable and predictable compliance framework. This marks a significant step forward in U.S. regulation, moving from fragmentation toward unification.

2.2 Objectives of Categorization Standards and Unified Regulatory Framework Development—European Union

Prior to the EU's Markets in Crypto-Assets Regulation (MiCA), member states maintained divergent regulatory standards for cryptocurrencies, resulting in long-standing regulatory fragmentation at the EU level. Given the borderless nature of crypto-assets, national-level regulation alone proved insufficient to protect the EU

[32] GENIUS Act, Sections 3–5, 12 U.S.C. §§5902–5904; Section 6(b)(1)–(2), 12 U.S.C. §5905.
[33] GENIUS Act, §5(c)(1)–(5), 12 U.S.C. §5904; §7(a)–(b), 12 U.S.C. §5906.
[34] GENIUS Act, §8(b)(1)–(2), 12 U.S.C. §5907; §9(a)–(c), 12 U.S.C. §5908.
[35] GENIUS Act, §8(b)(1)–(2), 12 U.S.C. §5907; §9(a)–(c), 12 U.S.C. §5908.

Single Market and maintain regional financial stability. Consequently, the EU introduced unified legislation to harmonize member states' fragmented cryptocurrency rules and establish a consolidated regulatory framework.

As part of the EU's Digital Finance Strategy, MiCA aims to balance technological innovation with investor protection and risk prevention. On one hand, the regulation comprehensively covers crypto asset issuers and service providers under supervision, enhancing transparency and preventing market abuse and illegal activities. On the other hand, it fills legal gaps to address systemic risks potentially arising from cross-border financial activities, ensuring the smooth operation of the Single Market. MiCA establishes a tiered regulatory system for stablecoins, centered on the core concepts of Electronic Money Tokens (EMT) and Asset-Referenced Tokens (ART).[36]EMTs are pegged to the value of a single fiat currency, serving as digital substitutes for legal tender. ARTs, meanwhile, are pegged to the currencies of one or more countries, other assets, or a combination of values, falling under the broader category of stablecoins but excluding EMTs. The regulation requires issuers to establish an entity within the EU and obtain authorization before publicly issuing or applying for listing. For ART issuance, entities beyond banks and other credit institutions must obtain regulatory approval from the competent authority in their jurisdiction of registration. EMT issuance is restricted to electronic money institutions licensed under the E-Money Directive or banks. Third parties providing stablecoins or facilitating transactions within the EU must obtain written consent from the issuer and fulfill disclosure obligations; failure to do so constitutes a violation.[37]

MiCA imposes prudential oversight and disclosure requirements on stablecoin issuers. For both ART and EMT, issuers must prepare a white paper detailing the issuing entity, token characteristics, issuance conditions, holder rights, and technical architecture. Stablecoin white papers must also specify the type and composition of reference assets, value stabilization mechanisms, reserve management policies, holder redemption rights, and risk factors, and be submitted to competent authorities for approval or filing. ART issuers must establish a reserve asset pool at least equal in value to the tokens issued, with assets covering reference asset volatility risks and ensuring redemption liquidity.[38]

To enhance holder protection, MiCA mandates that reserve assets be legally and operationally segregated from the issuer's proprietary assets, remaining separate from the issuer's bankruptcy estate to prevent issuer debt risks from affecting reserve assets. Investment and liquidity of reserve assets are also subject to regulatory constraints. The regulation authorizes bodies like the European Banking Authority (EBA) to develop technical standards specifying liquidity requirements and investment

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[36] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, OJ L 150, 9.6.2023, Art. 3(1)(6)–(7), 15, 36.

[37] Articles 15, 16, 19, 21, 36, 45 of the Markets in Crypto-Assets Regulation: Articles 16 and 19 require stablecoin issuers to establish a legal entity within the EU and obtain authorization from competent authorities before publicly issuing or applying for listing; Articles 15 and 21 stipulate that non-bank entities must obtain an issuance license from the competent authority of their Member State under MiCA to issue ARTs;Article 36: Only electronic money institutions licensed under the E-Money Directive or banks may issue EMTs. Article 45: Third parties wishing to offer ARTs or EMTs to the public within the EU must obtain written consent from the issuer and fulfill disclosure obligations; failure to do so constitutes a violation.

[38] Articles 6–8, 17, 30, 37 of MiCA: Articles 6–8 and 17 establish whitepaper disclosure obligations; Article 30 sets reserve requirements for ARTs; Article 37 applies to EMT whitepapers and reserve requirements.

restrictions for reserve assets. Examples include mandating minimum proportions of highly liquid assets in reserves and capping deposit concentration levels to ensure reserves remain readily available for redemption. Additionally, issuers must regularly disclose reserve status to the public and regulators, including monthly publication of the composition and value of reserve assets. Every six months, they must commission independent audits to examine reserves; audit reports must be promptly submitted to competent authorities and publicly disclosed to facilitate market oversight.

MiCA grants all stablecoin holders a statutory redemption right, ensuring they can exchange their tokens for equivalent assets as agreed. ART holders may request redemption from the issuer at any time, and the issuer must settle the corresponding amount in fiat currency based on the market value of the underlying assets referenced by the token, or directly deliver the equivalent physical underlying assets to the holder. EMT holders similarly possess an on-demand redemption right. Issuers must settle EMT at par value using the pegged fiat currency on a 1:1 basis and may not refuse redemption requests. Issuers must specify redemption terms and procedures in their whitepapers, including the redemption timeframe, settlement methods, and operational measures to ensure settlement under both normal and stress scenarios.

MiCA grants holders a statutory redemption right, ensuring assets can be exchanged for equivalent value as agreed. ART holders may request redemption at any time, with issuers settling in fiat currency at market value or providing equivalent physical reference assets; EMT holders may also redeem at 1:1 face value, and issuers may not refuse. Redemption must be free of charge. Concurrently, issuers must maintain minimum capital reserves to enhance risk resilience: ART issuers require at least €350,000 or 2% of reserve assets plus one-quarter of the previous year's fixed expenses, whichever is greater. EMT issuers must comply with the E-Money Directive's capital and operational requirements, with higher capital thresholds for significant EMTs.[39]

Issuers must establish robust governance and internal control mechanisms, including board and executive responsibilities, risk management, internal control processes, and consumer protection measures. They must develop token stability mechanism policies detailing the anchoring assets, reserve management, issuance/redemption procedures, and contingency measures. Regulations prohibit offering interest or other economic benefits to holders to prevent stablecoins from disguised deposit-taking.

MiCA introduces a "significant" classification threshold (Significant ART/EMT), applying differentiated regulation to stablecoins exceeding user size and transaction volume thresholds (e.g., over 10 million holders, over 2.5 million daily transactions, or average daily transaction value exceeding €500 million). Significant stablecoins fall under direct EBA oversight, requiring higher capital and liquidity reserve requirements, dedicated liquidity risk management policies, and regular stress testing. Tokens may be held by multiple custodians to mitigate concentration risk. The ECB may issue binding negative opinions on significant stablecoin business models, compelling competent authorities to deny authorization or impose restrictions.

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[39] Articles 32, 35, 44, 45 of the Crypto-Asset Markets Regulation: Articles 32 and 44 mandate that stabl ecoin redemptions must be conducted free of charge, prohibiting issuers from charging fees; Articles 35 a nd 45 require issuers to maintain minimum levels of own funds to enhance risk resilience.

Overall, MiCA comprehensively incorporates stablecoins into the financial regulatory framework through a unified approach, emphasizing functional regulation and risk management. Under the principle of technological neutrality, it focuses on stablecoins' functional attributes rather than underlying technology, achieving "equal treatment" in regulation. Regardless of technical mechanisms, any stablecoin that anchors to a specific value and claims value stability falls under MiCA's strict regulatory scope as either an Electronic Money Token (EMT) or an Asset-Backed Token (ART).

2.3 Establishing a Licensing Governance and 100% Reserve Custody Regulatory Framework—Hong Kong

In May 2025, the Hong Kong Legislative Council passed the Stablecoin Ordinance, establishing a licensing regime for issuers of fiat-pegged stablecoins in Hong Kong. This legislation marks a milestone in refining Hong Kong's regulatory framework for local digital asset activities. It aims to safeguard monetary and financial stability, reinforce Hong Kong's position as an international financial center, and foster financial innovation and the healthy development of the stablecoin ecosystem under regulatory oversight. The legislative process drew extensively from the 2023 "Global Regulatory Framework for Crypto-Asset Activities" issued by international organizations such as the Financial Stability Board (FSB). It embodies the regulatory principle of "same activities, same risks, same regulation."Overall, the Stablecoin Ordinance embodies Hong Kong regulators' "risk-based, prudent yet flexible" approach. It addresses international regulatory concerns about systemic risk while reserving ample compliance space for future stablecoin and digital asset innovation.[40]

The Regulation primarily targets stablecoins pegged to fiat currencies, defining "specified stablecoins" as crypto assets anchored to a single or basket of official currencies and operating on distributed ledger or similar technologies. Algorithmic stablecoins and commodity-backed stablecoins fall outside its regulatory scope. Upon the Ordinance's enactment, any institution issuing fiat-pegged stablecoins for Hong Kong operations, or those issued overseas but claiming to be pegged to the Hong Kong dollar, must apply for a license from the Monetary Authority. The Monetary Authority may designate overseas institutions as regulated entities to ensure cross-border stablecoins fall under regulatory oversight. Providing stablecoins to the public without a license constitutes an illegal act.

The Regulation establishes a stringent licensing framework, permitting issuance only by Hong Kong-registered companies or approved overseas institutions holding licenses. Applicants must meet high prudential standards, including minimum paid-up capital and internal governance reviews. A core requirement is the 100% reserve system: the market value of reserve assets must not fall below the total amount of stablecoins in circulation. These assets must be high-quality, highly liquid (cash, bank deposits, government bonds, and compliant money market funds) and segregated from the issuer's other assets. This ensures holders' rights remain unaffected in cases of bankruptcy or debt disputes. Risk management policies must also be established to guarantee timely fulfillment of redemption requests.

The regulations impose stringent compliance requirements on controlling persons, directors, senior executives, and stablecoin managers, with senior executives requiring

[40] See Financial Stability Board, *Global Regulatory Framework for Crypto-asset Activities*, Financial Stability Board, 2023.

MAE approval. Licensed institutions must establish price stabilization mechanisms and redemption arrangements to ensure holders can redeem at par value, while implementing anti-money laundering and counter-terrorist financing measures, including customer due diligence and suspicious transaction reporting. Regarding disclosure, licensees must publish white papers detailing issuance mechanisms, reserve backing, redemption procedures, holder rights, and underlying technology architecture. The HKMA may specify content and format requirements.

For auditing, licensed issuers must regularly commission independent audits to ensure reserve assets are transparent and compliant, and submit to regulatory inspections. For cross-border operations, compliance plans must be developed to secure licensing in all jurisdictions and adhere to local laws. Through these systems, the Stablecoin Regulation establishes a comprehensive framework covering legal definitions, licensing, reserve custody, operational obligations, information disclosure, and cross-border supervision. This ensures the safe and transparent issuance of stablecoins while providing a stable environment for digital asset innovation.

3. Pathways for China's Stablecoin Regulatory Framework

3.1 The Regulatory Logic of Domestic and International Coordination

As an auxiliary payment tool for the sovereign currency, the Renminbi stablecoin remains fundamentally part of the state-issued legal tender system and must be incorporated into unified national monetary regulation. According to Georg Friedrich Knapp's "State Theory of Money," currency fulfills its functions as a measure of value and medium of exchange in society due to the coercive power and public credit of the state, not its intrinsic commodity attributes.Keynes similarly noted in his "Monetary Reform" that the essence of modern money lies in the state's authority to define its issuance and acceptance scope. Thus, RMB-denominated and settled stablecoins, though appearing as novel digital instruments, ultimately derive their value stability and social acceptance from state credit backing and legal regulatory constraints. They cannot be regarded as "independent currencies" operating outside the legal tender system.[41]

Whether issued domestically or internationally, RMB-pegged stablecoins must comply with unified Chinese regulation. Allowing regional autonomy in rule-making would lead to fragmented oversight, policy arbitrage, and undermine state control over money supply, cross-border capital flows, and foreign exchange security—while also damaging the RMB's unity and legal tender status. To preserve the core monetary attribute of "universal equivalence," issuance and circulation must be regulated through the central bank or a unified authorized institution, with no room for regional autonomous oversight.While Hong Kong possesses advantages in financial innovation, it lacks constitutional authority to independently regulate RMB stablecoins. Their issuance must comply with national laws and regulations, aligning with mainland oversight to ensure the integrity of the RMB's monetary sovereignty and legal tender status.[42]

3.2 Regulatory Framework Design for Renminbi Stablecoins

Regulation of RMB stablecoins must be grounded in the theory of national monetary

[41] Georg Friedrich Knapp: The State as a Monetary Authority, translated by Li Lili, Commercial Press, 2023 edition.

[42] Yang, D., & Chen, Z. L. (2020). Research on the positioning and nature of legal digital currency. *Jou rnal of Renmin University of China*, (3), 108–121

sovereignty, adhering to the principle of "unified oversight with coordinated domestic and international management." Against the backdrop of rapid digital finance development, only by integrating RMB stablecoins into the comprehensive framework of the national monetary system can their innovative potential in cross-border payments and the digital economy be harnessed while avoiding monetary sovereignty risks stemming from decentralization and privatization.

China should impose stringent capital and reserve requirements on stablecoin issuers. Given that stablecoin profits primarily derive from the utilization of reserve funds, issuers may be driven by "over-issuance" and "scale impulses" to expand issuance for short-term gains, thereby increasing systemic risks. While Hong Kong's Stablecoin Ordinance establishes minimum capital requirements, it lacks dynamic constraints linked to issuance scale. China can draw on Basel Accords principles by introducing capital adequacy ratios, requiring issuance scale to be proportional to capital and highly liquid reserves to ensure risk tolerance aligns with market expansion. Reserve asset management is equally critical: 100% full reserves represent only the minimum threshold. Concentration in high-risk or illiquid assets renders even fully covered reserves vulnerable to run pressures. Regulators should clearly define the scope of reserve assets for RMB stablecoins, including central bank bills, government bonds, and policy financial bonds, while setting upper limits on asset allocation ratios to prevent liquidity mismatches from holding excessive single-asset concentrations. Concurrently, regular disclosure and independent audit mechanisms must be established to ensure reserve transparency and traceability, guarding against trust crises triggered by fraudulent reserves.[43]

Legislators should strictly define the business scope and operating models of RMB stablecoin issuers. Stablecoins are fundamentally payment instruments, not financing or investment tools. If issuers engage in cross-border lending, wealth management, or derivatives trading, it not only blurs their payment function but may also divert reserve funds into high-risk operations, creating systemic risks. Therefore, issuers' operations should be confined to stablecoin issuance, redemption, custody, and essential liquidity management. They must not utilize reserve funds for external lending or related-party transactions. During the transition phase, a limited number of licensed financial institutions may be permitted to explore restricted applications through regulatory sandboxes, but only under stringent prudential oversight and robust disclosure mechanisms.[44]

Stablecoins should primarily serve cross-border payments, supply chain finance, and blockchain scenarios, leveraging their institutional advantages in cross-border settlement and value interconnection. Within the Belt and Road framework, RMB-pegged stablecoins can support RMB internationalization and reduce overseas enterprises' reliance on USD clearing. However, unrestricted expansion of their scope should be avoided in the initial phase to prevent disrupting existing payment systems and monetary policy. Regulators should progressively expand applications based on market maturity and risk tolerance—from cross-border micro-payments to trade settlements, then to compliant capital market applications—ensuring a controlled and monitorable development path.

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[43] Li, S., & Qu, M.H. (2022). Constructing the legal order for international regulation of digital currenci es. *Law Review*, (4).

[44] Yang, Y.C. (2020). On the legal attributes of digital currency. Social Sciences in China, (1), 84–106.

4. Conclusion

Legal regulation of stablecoins should adhere to international standards of "same risks, same rules, technology neutrality, and cross-border cooperation." Centered on the synergy between functional and prudential regulation, it should adopt a combination of licensing requirements, full high-liquidity reserves, redeemability guarantees, and disclosure obligations, supplemented by hard constraints on anti-money laundering/counter-terrorist financing, governance, and auditing. In terms of implementation roadmap, insights can be drawn from the EU's MiCA classification and tiering system with differentiated requirements for major stablecoins, the U.S. federal legislation's unified framework for payment-type stablecoins with prioritized user rights protection, and Hong Kong's supervisory philosophy centered on "one coin, one license + 100% reserve custody." Within China's context, we must uphold the bottom-line thinking of RMB monetary sovereignty and financial security. This entails establishing a complementary "central bank digital currency (CBDC) – compliant stablecoin" dual-track framework, implementing unified regulatory rules for both domestic and international operations, clarifying issuer qualifications and dynamic capital-liquidity constraints, specifying reserve asset types, maturity periods, and concentration limits, establishing mandatory whitepaper disclosure and independent audit mechanisms,and develop stress testing and contingency plans. Regulatory sandboxes should facilitate prudent pilot programs following a "limited scenarios—phased rollout—quantifiable assessment" approach. Concurrently, cross-border compliance and information-sharing arrangements must be enhanced to prevent regulatory arbitrage and systemic spillovers. Only by creating a verifiable, enforceable, and iterative institutional loop that balances innovation promotion with risk containment can stablecoins be brought under the rule of law, thereby serving the strategic objectives of supporting the real economy and advancing the internationalization of the renminbi.

A Differentiated Regulatory Framework for Shareholders' Inspection Rights in Listed Companies

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Abstract: Shareholder inspection rights allow shareholders to access corporate information, easing the burden of proof in class actions and supporting corporate governance. China's Company Law has evolved, and the 2023 revision explicitly includes "accounting vouchers" for inspection and introduces a proxy inspection system. Article 110(3) mandates compliance with the Securities Law, distinguishing listed companies in scope, feasibility, and procedures. Listed companies differ from unlisted firms in equity dispersion, disclosure obligations, scale, and investor participation. Accessing accounting vouchers involves significant resources and risks, including insider trading, market manipulation, and frivolous lawsuits. Therefore, inspection rights for listed companies require institutional differentiation, tailored to governance and capital market characteristics, balancing oversight with operational efficiency and market stability.This paper examines the current system under the new Company Law, identifies potential risks, and proposes a differentiated model of shareholder inspection rights for listed companies, defining rights, triggering conditions, procedural rules, and information protection mechanisms suitable for China's market.

Keywords: Right to Know; Shareholder Inspection Rights; Chinese Company Law

Introduction

The capital market is playing an increasingly prominent pivotal role in optimizing resource allocation, serving scientific and technological innovation, and promoting the high-quality development of the real economy. As the core actors in the capital market, listed companies are closely tied not only to the effectiveness of corporate governance, but also to investor protection, market confidence, and financial security. In recent years, with the continued deepening of the registration-based IPO reform, the ongoing strengthening of the concept of investor protection, and the steady improvement of a law-based business environment, China's corporate governance rules have gradually shifted from an emphasis on corporate autonomy toward greater

attention to governance transparency, checks and balances of power, and accountability constraints. In this process of institutional evolution, the shareholder's right of inspection, as an important right safeguarding shareholders' access to information and supervision over corporate operation and management, has become increasingly significant in institutional terms. In particular, while the new Company Law improves the rules governing shareholders' inspection rights, it also brings accounting vouchers within the scope of inspection and makes coordinating arrangements for the application of laws such as the Securities Law to listed companies. This not only reflects the state's policy orientation toward improving the corporate governance system and strengthening the protection of shareholder rights, but also gives rise to a new practical question: in the context of listed companies, where information is highly sensitive, trading is highly liquid, and external regulation is highly intensive, how should shareholders exercise the right of inspection so as to satisfy supervisory needs without crossing the boundaries of fair trading and information security in the capital market? It can be said that how to achieve an institutional balance between "strengthening shareholder oversight" and "maintaining market order" has become an important issue in the current coordination between company law and securities law. Against this background, this article, grounded in the practical needs of the high-quality development of China's capital market, taking into account the institutional context of the new Company Law, and drawing on relevant experience from Delaware, explores the differentiated institutional design and optimization path for the shareholder inspection right in Chinese listed companies.

1. The Generative Logic and Functional Positioning of Shareholder Inspection Rights in Listed Companies

Shareholder inspection rights balance oversight with corporate confidentiality, linking shareholders' expectations as beneficial owners to directors' fiduciary duties while managing modern market externalities. They allow shareholders to access internal information when necessary, without threatening transaction security or market fairness.[1] Precisely because of this tension, the form of shareholder inspection rights has not expanded linearly but has been repeatedly calibrated throughout history.

1.1 The Evolutionary Trajectory of Shareholder Inspection Rights

Shareholder inspection rights, whether under common law or through statutory codification, stem from two fundamental theories: the theory of ownership and the theory of agency.[2] Under the theory of ownership, shareholders are recognized as beneficial owners of corporate assets. Although shareholders and the corporation are legally distinct—with actual ownership of corporate property vested in the corporation itself rather than shareholders—shareholders are still regarded as holding fundamental ownership rights over corporate assets.[3] Courts applying this theory hold that a shareholder requesting access to corporate books and records is essentially seeking access to what already belongs to him.[4] The agency theory is similar to and overlaps with the ownership theory. Under agency theory, directors and senior

[1] Lin, Y.Y. (2024). Implementation pathways for shareholder access rights from a balancing of interests perspective. *Journal of Finance and Law*, (1), 24-26.
[2] Jeffries, B., & Browning. (2010). Shareholder access to corporate books and records: The abrogation debate. *Drake Law Review*, (59), 1099.
[3] William Meade Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations, §2213, Permanent Edition, Revised Volume (2004), Supplement 2010–2011.
[4] See, e.g., Parsons v. Jefferson-Pilot Corp., 426 S.E.2d 685, 688 (N.C. 1993) (citing Cooke v. Outland, 144 S.E.2d 835, 841 (N.C. 1965)).

managers, acting as agents of the corporation, serve as trustees of shareholders' ownership interests in the company.[5] Shareholders need access to corporate books and records—maintained by directors and officers—to ascertain the company's financial health, ensure directors and officers are not engaging in corporate waste or mismanagement, and otherwise verify that directors and officers are properly conducting corporate affairs and complying with their fiduciary duties.[6] The theories of agency and ownership form the basis of the first shareholder inspection rights under common law.[7]

Common law shareholder inspection rights originated in 18th-century Britain during the Industrial Revolution, granting shareholders access to company records to protect economic interests.[8] Over time, a general rule developed: shareholders have the right to inspect and examine a company's books and records, but this right is not absolute. Instead, the right could only be successfully asserted if the shareholder demonstrated that the inspection request was reasonable in terms of time and place, and that a legitimate purpose existed. The limitations of reasonable time and place were straightforward and relatively uncontroversial, but the question of legitimate purpose was less clear. If a company refused a shareholder's inspection request on grounds of improper purpose, the shareholder needed to utilize available judicial forms to enforce their inspection right.[9]

During the nineteenth century, as corporations grew larger and more complex, the shareholder numbers of any given company expanded and became less homogeneous in interests. In this evolving corporate landscape, shareholders became increasingly detached from the operational management of corporate affairs, consequently diminishing their access to corporate information. This natural byproduct of changing corporate structures led to renewed recognition of the importance of shareholder inspection rights and the legal remedies available to correct corporate disregard for shareholder entitlements. By the late nineteenth century, against this backdrop of heightened emphasis on shareholder inspection rights, state legislatures codified enhanced inspection rights, expanding common law entitlements into absolute rights. Unlike the common law approach requiring shareholders to demonstrate a proper purpose to grant inspection or permitting companies to show improper purpose to deny it, codifying the right as absolute rendered the shareholder's purpose entirely irrelevant.[10]

In the 1930s concerns arose over abuses, such as acquiring minimal stock to obtain competitive information[11] The U.S. Supreme Court had already recognized shareholders' inspection requests under appropriate safeguards in Guthrie v. Harkness (1905), based on the principle that "directors and officers are agents of the shareholders." Courts refined the "proper purpose" standard to allow inspections for mismanagement, valuation, or shareholder status, while barring curiosity, harassment,

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[5] Guthrie v. Harkness, 199 U.S. at 155 ("The books are not the private property of the directors or managers, but are records of their transactions as trustees of the shareholders.")
[6] Albee v. Lamson & Hubbard Corp., 69 N.E.2d 811, 813 (Mass. 1946).
[7] Randall S. Thomas, Improving Shareholder Monitoring of Corporate Management by Expanding Statutory Access to Information, 38 Ariz. L. Rev. 331, 335–336 (1996).
[8] Ibid., at 337.
[9] id. supra note 337–338.
[10] Ibid., at 339.
[11] Ibid.

or competitive motives.[12] Subsequent state court jurisprudence refined the "proper purpose" requirement to encompass communications related to shareholder status, investigations of mismanagement, and stock valuation. Conversely, purposes driven by curiosity, harassment, competitive intent, or purely political motives constitute "improper purposes." Courts retained equitable discretion to impose conditions and limitations on scope, timing, and use to prevent inspection rights from becoming tools for vexatious litigation or competitive discovery.[13]

By the mid-20th century, states successively codified common law inspection rights, widely adopting the "proper purpose plus reasonable time and place" framework while establishing procedural prerequisites and judicial remedies.The American Bar Association's Model Business Corporation Act (MBCA) systematically codified shareholder inspection rights in its 1953 edition: defining subjects (six-month shareholders or 5% shareholders), objects (books, minutes, shareholder registers), and "proper purpose," while specifying statutory remedies for improper denial (including monetary liability for the denier). It simultaneously clarified that common law remedies could coexist alongside statutory avenues, establishing a dual-track system of "statutory law plus common law."[14] While states adopted varying technical approaches regarding subsidiary books, scope, and prerequisites, overall convergence toward homogeneity occurred under MBCA influence. Delaware's General Corporation Law (§220) emerged as a representative provision.

1.2 Inspection Rights Under the Public Company Disclosure System: Coexistence of Misalignment and Differentiated Constraints

Following the enactment of the U.S. Securities Acts of 1933 and 1934, publicly traded companies were progressively mandated to comply with the disclosure regime established under the Securities Act of 1933, the Securities Exchange Act of 1934, and regulations issued by the Securities and Exchange Commission (SEC). This framework requires listed companies to periodically disclose financial statements, material transactions, and governance structure information to ensure market transparency and investor protection.[15] However, U.S. judicial practice did not thereby negate shareholders' inspection rights. Instead, it positioned these rights as "supplementary to the disclosure regime." That is, when mandatory disclosure fails to satisfy shareholders' oversight needs or evidentiary requirements for litigation, inspection rights become a crucial channel for shareholders to obtain further information.[16] In corporate governance litigation scenarios (particularly shareholder derivative suits), federal and most state civil procedure rules establish the threshold of "no discovery before pleading." Consequently, courts explicitly require plaintiffs to utilize "tools at hand" before filing suit: including news reports, SEC public filings, and state shareholder inspection rights to supplement the factual basis for litigation.[17] Delaware courts have repeatedly emphasized that inspection rights hold critical evidentiary value in demonstrating the board's erroneous refusal to litigate and establishing "demand futility" in shareholder suits. Thus, they neither substitute for

[12] Guthrie v. Harkness, 199 U.S. 148, 155 (1905).
[13] Jeffries, Browning. "Shareholder Access to Corporate Books and Records: The Abrogation Debate." Drake L. Rev. 59 (2010).
[14] Model Business Corporation Act §16.02(a)(2)–(3), §16.04(b)–(c), §16.02(f) (2021 rev.).
[15] Securities Act of 1933, 15 U.S.C. § 77g(a)(1); Securities Exchange Act of 1934, 15 U.S.C. § 78m(a)
[16] supra note 6, Thomas.
[17] James D. Cox; Kenneth J. Martin; Randall S. Thomas, "The Paradox of Delaware's 'Tools at Hand' Doctrine: An Empirical Investigation," Business Lawyer 75, no. 3 (Summer 2020).

nor duplicate disclosure regimes but function as complementary mechanisms.[18] In other words, U.S. corporate law positions the inspection right and securities disclosure regime as complementary: securities law ensures equal access to information for general investors, while the inspection right safeguards individual shareholders' oversight and accountability over corporate governance in specific scenarios. This functional alignment prevents institutional conflicts between the two systems while ensuring shareholders can still exercise their rights through judicial remedies when faced with management information blockades or potential fraud.

Mandatory disclosure constitutes a "public good" in capital markets. Its rules, centered on materiality, periodicity, and comparability, provide audited and consolidated "finished information" to unspecified investors, serving as a safeguard for minority shareholders.[19] Unlike non-listed companies, however, Chinese listed companies are already integrated into the mandatory disclosure framework established by the Securities Law and exchange rules. Shareholders can access substantial operational information through periodic reports, interim announcements, and other channels.Theoretically, this system should satisfy investors' fundamental information needs. Yet corporate governance disputes often revolve around procedural facts and detailed evidence—such as board deliberation chains, special committee working papers, internal compliance reports, and transaction negotiation correspondence. These materials typically fail to meet the Securities Law's "materiality" threshold or remain in formation, making them unlikely to appear in public disclosures. Crucial information often resides in internal emails and meeting minutes rather than public filings.[20] For shareholders of listed companies—especially minority shareholders—the right to inspect documents plays a supplementary role when initiating shareholder derivative suits or monitoring controlling shareholders' abuse of rights or management misconduct. This right does not compete with disclosure systems; rather, it penetrates finished information to obtain the "necessary and critical" underlying materials required for oversight and accountability, provided legitimate purposes and necessity are satisfied. This enhances the accuracy of fact-finding and reduces information asymmetry in governance disputes.[21]

Thus, China's Securities Law establishes "external transparency" at the transactional level through periodic reports, insider information, and material event disclosures. Meanwhile, Article 110 of the new Company Law grants listed company shareholders access to core corporate documents—including accounting vouchers—thereby providing a pathway for "governance transparency" within the company. These two mechanisms are not mutually exclusive: the former addresses the information needs of "market participants—investment decision-making," emphasizing standardization and comparability; the latter serves the information needs of "specific shareholders—accountability oversight," prioritizing specificity and evidentiary value. This precisely reflects the long-standing governance consensus in Anglo-American corporate law where "mandatory disclosure and shareholder inspection rights coexist," and forms the normative basis for granting shareholders inspection rights in

[18] King v. VeriFone Holdings, Inc., 903 A.2d 738 (Del. 2006) (The court explicitly stated: Delaware courts have strongly encouraged stockholder-plaintiffs to utilize Section 220 to obtain facts sufficient to plead demand futility in a to-be-amended complaint.)
[19] Eastbrook, F.I., Fisher, D.J., & Wang, Y.C. (2022). Mandatory disclosure and investor protection. Securities Law Journal, (03), 310-312.
[20] George S. Geis, Information Litigation in Corporate Law, 71 Ala. L. Rev. 407 (2019), 432-432.
[21] Alyssa King Hunt, Recalibrating Section 220, 171 University of Pennsylvania Law Review 1195 (2023).

China's listed company context.

However, in theory, the provisions regarding shareholders' right of inspection in Chinese listed companies are deficient. In terms of corporate form, Chinese listed companies belong to the category of joint-stock companies (companies limited by shares); however, from the perspective of corporate structure, a listed company constitutes an independent form of corporate entity.[22] The exercise of shareholders' inspection rights in listed companies follows the provisions for joint-stock companies. While this approach holds rationality in legislative philosophy, it fails to deeply address the differences between the two distinct corporate forms in terms of governance structures, information environments, and market externalities. Particularly in the context of listed companies, the operational outcomes of the system may deviate from the original legislative intent. This divergence stems not from value judgments regarding shareholder rights themselves, but from the inherent functional attributes, market environments, and regulatory logic specific to listed companies. It can be understood that the current Company Law adopts an approach of "legislative simplification" regarding the inspection rights system for shareholders of listed companies. Although the Guidelines for the Articles of Association of Listed Companies stipulate that listed companies may set lower shareholding thresholds in their articles of association,[23] such detailed provisions on shareholder standards for inspection rights in listed companies reflect flexible corporate governance[24]. Nevertheless, more refined restrictions on inspection rights for listed companies are still needed. Some scholars note that the new Company Law grants differentiated inspection rights to shareholders based on the dichotomy between limited liability companies and joint-stock companies.[25] This paper argues that, beyond this dichotomy, independent and differentiated institutional restrictions should be established specifically for listed company shareholders' inspection rights. This would ensure that such rights—subject to conditions like legitimate purpose, necessity-relevance, burden of proof, scope limitations, and confidentiality—effectively supplement governance matters beyond the reach of public disclosure.

2. Rationale for Differentiated Restrictions on Shareholders' Inspection Rights in Listed Companies

Shareholder inspection rights constitute a core component of shareholder oversight, serving the institutional function of safeguarding shareholders' ability to hold the board of directors and management accountable.[26] Listed companies differ from unlisted ones in governance, with dispersed equity, complex shareholder asymmetries, and extensive disclosure; applying unlisted-company inspection models indiscriminately may conflict with rules, raising costs, leaks, and litigation risks.

2.1 Cost Burden of Shareholder Inspection Rights in Listed Companies

Judicial practice recognizes that a company's specific operational activities can only

[22] Li Dongfang, Theory of Listed Company Regulatory Law, China University of Political Science and Law Press, 2013 edition, p. 8.
[23] Article 35 of the Guidelines for Articles of Association of Listed Companies, issued by the China Securities Regulatory Commission on March 28, 2025.
[24] Miao Yinzhi, "Empowerment Orientation in the Interpretation of Provisions of the New Company Law," Local Legislation Research, No. 2, 2024, p. 16.
[25] Ibid., note 1, p. 35.
[26] Zhu, D.M. (2021). On the supervisory function of shareholders' right to inspect accounting books: Focusing on the common benefit nature of the inspection right. North China Law Review, (01), 55.

be ascertained through inspection of original vouchers. Without such inspection, minority shareholders may be unable to accurately understand the company's true operational status.[27] However, in the context of listed companies, the feasibility and implementation costs of the inspection right system are particularly prominent. This involves not only the difficulty of exercising the right itself but also a series of derivative risks concerning corporate resource allocation, information security, and capital market stability.

In daily operations, the volume and complexity of accounting documents for listed companies far exceed those of limited liability companies or unlisted joint-stock companies. Listed firms typically operate diversified business segments with high transaction frequencies, significant cross-border activities, and substantial related-party transactions. Their accounting documents cover complex business types and span extensive operational processes.[28] Large listed companies like China Southern Airlines Group generate millions of vouchers annually, requiring cross-system circulation across accounting, imaging, electronic voucher, and EBS platforms. When responding to extensive access requests, enterprises typically need to coordinate financial—audit/internal control—legal/compliance, and IT departments to screen and categorize materials.[29] They must also implement data masking and usage restrictions for insider information under the Securities Law, trade secrets under the Anti-Unfair Competition Law, and personal information under the Personal Information Protection Law to mitigate disclosure and compliance risks. This series of tasks consumes substantial human resources, time, and technical resources, potentially causing significant disruption to daily operations.

Cost control is integral to listed companies' operations, and both direct and indirect costs incurred in responding to access requests warrant attention. Direct costs encompass investments in document organization, duplication, information masking, and arranging access facilities. Indirect costs manifest as disruptions to management and key personnel schedules, delays in internal operational rhythms, and additional safeguards for information flow security. According to the "Administrative Measures for Accounting Archives," for large, highly digitized listed companies, while document storage primarily relies on electronic systems, manual intervention remains necessary for extraction, screening, and confidentiality maintenance. Furthermore, the complex compliance review processes involved significantly increase the time and economic costs of fulfilling inspection obligations.[30] Additionally, the highly dispersed and volatile shareholder structure of listed companies makes conflicts between document inspection demands and company operations more likely. In non-listed companies, shareholder identities are relatively stable, making it easier to control the boundaries of information usage. In contrast, listed companies face situations where some shareholders may transfer their shares and exit shortly after

[27] Civil Second Instance Judgment on Shareholder Right to know Dispute of XX (Guangzhou) Co., Ltd., Guangdong Provincial Guangzhou Intermediate People's Court (2023) Yue 01 Min Zhong No. 27221.
[28] Li, D.F. (2013). *Theory of Listed Company Supervision Law*, Beijing: China University of Political Science and Law Press.
[29] See https://www.saac.gov.cn/ , "Case Study on Electronic Invoice Reimbursement, Accounting, and Archiving (China Southern Airlines Group Co., Ltd.) Report," last accessed August 26, 2025.
[30] Article 24(4) of the "Administrative Measures for Accounting Archives" effective January 1, 2016: Electronic accounting archives shall be transferred together with their metadata; electronic accounting archives in special formats shall be transferred together with their reading platforms. The receiving unit shall inspect the storage media and technical environment of the electronic accounting archives to ensure the accuracy, completeness, usability, and security of the received electronic accounting archives.

submitting inspection requests, making it difficult for the company to effectively track the subsequent use of the inspected information.[31] This structural feature amplifies the risk of information misuse and requires companies to invest in additional compliance controls and legal safeguards when responding to inspection requests, thereby further increasing compliance costs.

As key participants in the securities capital market, listed companies must balance disclosure obligations with confidentiality duties when addressing document inspection requests. On one hand, the Company Law grants shareholders the right to inspect documents, aiming to strengthen oversight of management and safeguard shareholders' right to know.[32] On the other hand, both the Securities Law and exchange rules require companies to properly protect trade secrets and insider information, preventing improper disclosure. However, as previously noted, truly critical information resides in internal emails and meeting minutes rather than public disclosures. These often contain highly sensitive content such as supplier pricing strategies, customer transaction terms, unannounced contract projects, and R&D technology roadmaps. Granting access to individual shareholders without thorough screening could trigger irreversible market and competitive risks. This implies that in practice, while shareholders of listed companies exercise their inspection rights, companies must establish rigorous internal review and anti-disclosure mechanisms. The operation of such mechanisms itself incurs additional institutional costs.

2.2 Risk of Insider Information Leakage from Shareholders' Inspection Rights in Listed Companies

Academics hold the view that public companies' information disclosure systems have historically and currently been primarily regarded and utilized as regulatory tools.[33] However, within the institutional framework of capital markets, the information held and generated by listed companies is not merely operational data. It constitutes core elements directly impacting securities pricing, investor decision-making, and market stability. Accounting vouchers, as the most fundamental units recording corporate economic activities, inherently possess high information-carrying capacity. They serve as the foundation for auditing, taxation, and financial management,[34] while also potentially becoming direct carriers of insider information. Under the legislative context of the new Company Law, if shareholder inspection rights remain unrestricted in the listed company environment, the risk of insider information leakage will significantly increase.

Accounting vouchers and insider information share an inherent high degree of overlap. Daily operations of listed companies—including procurement contracts, sales orders, financing arrangements, and investment projects—are often meticulously documented in accounting vouchers with precise details such as amounts, dates, counterparties,

[31] The Interpretation of the Company Law (IV) explicitly stipulates: A shareholder suing for access must remain a shareholder at the time of filing; loss of shareholder status automatically extinguishes the right to know. However, the problem lies in the absence of effective legal mechanisms to track the "subsequent use" of company materials once they are delivered.

[32] Li, J.W. (2022). Realization of shareholders' right to know when companies cannot provide accounting books. Journal of Chongqing University of Technology (Social Sciences), (03), 193.

[33] Lan, S.R. (2006). Research on shareholders' right to know in listed companies. *China Procuratorate Press*, (01), 46.

[34] Chen, C.Y. (2011). Proposals for reconstructing China's voucher and ledger system. *Accounting Monthly*, (16),4.

and business descriptions, reflecting high operational complexity.[35] Such information may still be in the execution or negotiation phase and not yet publicly disclosed through statutory channels. However, premature access to it creates insider trading risks, potentially harming investors. Rather than "causing" losses to individual investors, insider trading allows insiders to exploit their information advantage to "take advantage of external investors" in anonymous markets, thereby "harming the collective interests of investors." This spillover of collective losses constitutes grounds for regulation.[36] In practice, insider trading often begins with the informal dissemination of information chains. Information obtained by shareholders through access to accounting records can easily leak through informal channels such as family members, business partners, or industry exchanges, creating covert disclosures that are difficult for regulators to trace. Simultaneously, unrestricted access to information may be exploited by those seeking profit.A U.S. case illustrates this: a fund manager obtained key signals about undisclosed trial/earnings outlooks from a lead clinical trial physician, then executed massive, rapid portfolio shifts around the announcement date to capture abnormal returns.[37] While this case did not involve accounting documents, its risk mechanism is identical. Such trading based on information advantages not only infringes on investor rights but also poses a direct threat to market order.

The risk of insider information leaks is also closely tied to the securities market's high liquidity and instantaneous reaction characteristics.[38] The openness and high liquidity of listed companies' shareholder structures make it impossible to guarantee the stability of accessors' identities or identify their precise purposes for accessing information. U.S. judicial practice includes cases where access solely for speculative purposes or to obtain trading information was deemed not to constitute a "legitimate purpose," potentially leading to the denial of access requests.[39] In practice, insider trading often begins with the informal dissemination of information chains. Information obtained by shareholders through access to accounting records can easily leak through informal channels such as family members, business partners, or industry exchanges. As mentioned earlier, once company materials are delivered, the law lacks effective mechanisms to track their "subsequent use," creating covert leaks that are difficult for regulators to trace.

2.3 Shareholders' Inspection Rights in Listed Companies Give Rise to Litigation Arbitrage

Within the institutional ecosystem of listed company governance, the original intent of shareholder inspection rights was to strengthen oversight of corporate operations and management actions. This right provides shareholders with an effective channel to access company information, serving as a fundamental safeguard for shareholder

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[35] Yang, F. (2025). Joint accounting supervision and accounting information quality of listed companies: A study based on joint supervision by the Ministry of Finance's Supervision Bureau and the Securities Regulatory Bureau. *Journal of Zhongnan University of Economics and Law,* (01), 24–25.

[36] Geng, L.H. (2010). Questioning the function of civil liability for securities insider trading. *Journal of Legal Studies*, (06), 77–78.

[37] United States v. Martoma, 894 F.3d 64 (2d Cir. 2017), amended and superseded on rehearing, 894 F.3d 64 (2d Cir. 2018).

[38] Chen, H., & Wang, Q.Y. (2012). Investor protection has a stock liquidity effect: Empirical evidence from China's high-frequency trading data. *Contemporary Finance and Economics*, (04), 50–53.

[39] Seinfeld v. Verizon Communications, Inc., 909 A.2d 117 (Del. 2006).In this case, shareholder Seinfeld sought inspection of Verizon's books and records under Delaware Corporation Law §220, claiming legitimate intent to investigate whether executive compensation was excessive or whether corporate assets were being wasted. However, Seinfeld failed to submit any concrete evidence, basing the request solely on media reports and personal conjecture. The court denied the inspection request because Seinfeld failed to meet the "credible basis" standard.

interests and sound corporate governance.[40] However, against the backdrop of high liquidity and strong speculative tendencies in capital markets, the manner and motivation for exercising this right are undergoing structural shifts. Some shareholders pursue not long-term investment returns or the company's overall interests, but instead leverage inspection rights as tools to secure short-term gains, exert governance pressure, or even seek litigation settlements. This phenomenon has accumulated substantial case experience abroad,[41] posing significant challenges to the healthy operation of the system. Therefore, it is essential to thoroughly understand these erroneous precedents to prepare China's judicial practice for these challenges.

Litigation arbitrage represents a specific tactic employed by shareholders of listed companies to exploit inspection rights, having evolved into a distinct profit model in certain jurisdictions. The typical pathway involves shareholders first requesting access to internal company documents or accounting records. Armed with this information, they then initiate shareholder derivative suits or securities disclosure lawsuits alleging corporate or director misconduct. Subsequently, they seek financial gains through mediation or settlement during litigation proceedings.[42] In Delaware's practice, the volume of such lawsuits has surged significantly over the past decade, compelling courts to place greater emphasis on substantive assessments of "proper purpose" during the review stage to prevent the inspection right from being abused as a pre-litigation evidence-gathering tool. In contrast, China's current laws lack restrictions linking inspection rights to subsequent litigation, enabling individual shareholders to exploit inspection opportunities to obtain sensitive information at low cost and amplify its deterrent effect in lawsuits.Particularly within the context of China's securities capital market, where the representative litigation system is still in its infancy and compensation amounts for information disclosure violations are relatively high, this model presents tangible arbitrage opportunities. This is what drives listed company shareholders to consider exploiting it for profit.

Notably, litigation arbitrage may pursue not only economic gains but also control over corporate agency rights. Cases in Delaware, USA, indicate that after filing inspection requests, some investors intend to use the obtained materials to voice concerns on behalf of shareholder groups, thereby exerting pressure and initiating proxy

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[40] Peng Zhenming and Fang Miao: "Limitations and Safeguards of Shareholder Right to know: The Case of Shareholder Inspection Rights," Law and Business Research, Issue 3, 2010, p. 100.

[41] Pershing Square, L.P. v. Ceridian Corp., 2007 WL 1428444 (Del. Ch. May 11, 2007).In this case, hedge fund Pershing sought access to the shareholder register and other records under §220 to engage in shareholder communication and pressure tactics concerning board changes and M&A matters. The Court of Chancery denied the request, finding its "true purpose" was not oversight but to identify vehicles for publicly disseminating sensitive information and launching takeover campaigns; the court cautioned against turning §220 into a tool for "publicly broadcasting confidential information and pressuring management."

[42] In re The Boeing Company Derivative Litigation, C.A. No. 2019-0907-MTZ (Del. Ch. Sept. 7, 2021).This case stemmed from two Boeing 737 MAX crashes in 2018 and 2019. Shareholders obtained over 44,000 corporate documents—totaling more than 630,000 pages of board meeting minutes, committee materials, and internal communications—through a preliminary inspection under Delaware Corporation Law §220.Based on this, the shareholders filed a derivative lawsuit alleging that Boeing's board failed to fulfill its oversight duty regarding the "aircraft safety" mission-critical risk, constituting a breach of fiduciary duty under the Caremark standard.In his ruling, Associate Justice Zurn of the Court of Chancery determined that the board had neither established effective safety oversight mechanisms nor responded to "red flag warnings," resulting in significant deficiencies in the company's safety risk management. Consequently, the shareholders' Caremark claim was upheld and not dismissed.The case was subsequently settled in 2022, with Boeing agreeing to pay $2.375 billion in cash from directors' and officers' liability insurers and implement corporate governance reforms including establishing an Aviation Safety Committee, appointing safety expert directors, and strengthening compliance mechanisms.

contests.[43] This process essentially represents an information-driven exchange of interests rather than resolving corporate governance disputes through judicial adjudication. While this strategy may yield short-term benefits for shareholders, it risks creating a negative precedent of exploiting inspection rights for personal gain, undermining the rule of law environment for companies and the capital market as a whole. Moreover, the risk of litigation arbitrage is amplified in China's listed company environment. This stems from persistent institutional loopholes and insider control issues in information disclosure management at some Chinese listed companies,[44] making it easier for activist shareholders to identify exploitable information gaps during the inspection process. Therefore, preventing litigation arbitrage must be a key consideration in optimizing institutional design.

Moreover, the risk of inspection rights abuse extends beyond individual investors exploiting loopholes for personal gain; it also undermines the public trust foundation of the system. Academic perspectives suggest that shareholders, often lacking specialized financial knowledge, cannot independently determine the appropriate scope for reviewing accounting documents. Consequently, they tend to exercise inspection rights as extensively as possible.[45] When listed companies face frequent requests motivated by non-benign intentions, their defense costs inevitably rise—including increased compliance reviews, legal counsel fees, and internal data redaction expenses. This not only distracts management but may also prompt companies to adopt a cautious or even exclusionary stance toward all inspection requests. Consequently, even well-intentioned shareholders seeking oversight face heightened barriers to exercising their rights. Over time, this vicious cycle erodes the institutional function of inspection rights, transforming them into a bargaining tool between companies and certain shareholders rather than an effective mechanism for upholding governance transparency and accountability. This undoubtedly represents a detrimental model for corporate governance.

3. Improvement Strategies for the Shareholder Inspection Rights System of Chinese Listed Companies

As demonstrated by the evolution of Delaware's Section 220 regime and its judicial precedents, shareholder inspection rights are not an unlimited entitlement. Instead, they constitute a carefully calibrated institutional arrangement constrained by multiple mechanisms—procedural requirements, evidentiary standards, scope limitations, and

[43] High River Ltd. P'ship v. Occidental Petroleum Corp., C.A. No. 2019-0403-JRS (Del. Ch. Nov. 14, 2019). In this case, funds under Icahn sought access to board records and related internal documents under Delaware Corporation Law Section 220. This request arose during Occidental Petroleum's bid for Anadarko, financed in part by Berkshire Hathaway preferred stock.The plaintiff explicitly stated that its primary purpose was to gather material for an impending proxy fight to "demonstrate to other shareholders the board's errors in the merger and financing, thereby winning the proxy battle," and to use the obtained information to communicate with and pressure shareholders. In its ruling, the Court of Chancery acknowledged that shareholders may exercise inspection rights for proxy fight purposes under certain appropriate circumstances, but emphasized that the strict standard of "necessary and essential" must still be met.In this case, the court determined that M&A-related information had been widely disclosed. The board minutes and working papers requested by the plaintiff were not necessary to advance the proxy fight. Furthermore, "mere disagreement with the board's business judgment" was insufficient to establish a credible basis for improper investigation. Consequently, the court denied the inspection request.

[44] Luo Jinhui: "Why Does the Quality of Information Disclosure by Listed Companies Fluctuate?", Investment Research, Vol. 33, No. 1, 2014.

[45] Huang Hui: "China's Derivative Litigation System: Empirical Research and Improvement Recommendations," Renmin University Law Review, No. 1, 2014.

purpose restrictions.[46] This abuse-prevention oriented restriction model ensures shareholders can exercise oversight rights based on factual grounds at the rights level, while providing a robust institutional barrier for corporate operational stability and commercial interest protection. China's Company Law (Art.110) grants listed-company shareholders inspection rights but has gaps in purpose, proof, scope, and confidentiality, risking misuse for litigation or competition, which may undermine corporate governance and market order.

3.1 Categorization of "Legitimate Purpose" and Burden of Proof for Shareholders' Inspection Rights in Listed Companies

To resolve the tension between "legitimate purpose—appropriate scope—trade secret protection" in judicial practice, the "legitimate purpose" of shareholders' inspection rights in listed companies can be categorized under the current Company Law framework based on the subject of inspection, scope, and impact on corporate interests. This categorization divides legitimate purposes into three types: "presumed legitimate—requiring proof of legitimacy—excluded from legitimacy," with corresponding allocation of burden of proof and review intensity:For requests closely related to supervising operations or preparing to exercise statutory shareholder rights, legitimacy is presumed, with the company bearing primary burden of proof for "improper purpose"[47] . For requests involving broad scope, extended periods, or highly sensitive information, shareholders must provide more specific justification regarding "necessity—minimal intrusion—direct relevance," while the company bears burden of proof for trade secret and compliance objections and must offer alternative information[48]. Requests clearly conflicting with the company's legitimate interests or unrelated to shareholder status/functions shall be presumed improper and excluded.[49] This approach aligns with the regulatory framework for inspection rights under the new Company Law, draws on mature international practices (e.g., Delaware's Section 220 framework examining "proper purpose/credible basis" and "necessary and essential"), and is consistent with the shareholder information rights protection logic affirmed in the OECD Principles of Corporate Governance (2023)[50] .

3.1.1 Presumption of Legitimacy: Purposes Directly Related to Supervising Operations and Exercising Rights

Requests for inspection made to investigate potential breaches of fiduciary duties by directors or senior management, verify related-party transactions and fund misappropriation, prepare shareholder derivative suits or actions to rescind/void resolutions, or verify information regarding exercising rights like profit distribution or share buybacks should generally fall under "presumed legitimacy"[51]. In Anglo-American practice, courts recognize "investigating management misconduct or negligence" as a typical legitimate purpose. Shareholders need only demonstrate a "credible basis" rather than prove actual illegality[52]. If a company defends against

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[46] Donald F. Parsons Jr.; Jason S. Tyler, "Docket Dividends: Growth in Shareholder Litigation Leads to Refinements in Chancery Procedures," Washington and Lee Law Review 70, no. 1 (Winter 2013).
[47] OECD, G20/OECD Principles of Corporate Governance (2023), Ch. II.A "Basic shareholder rights," p.16
[48] Wal-Mart Stores, Inc. v. Indiana Elec. Workers Pension Trust Fund IBEW, 95 A.3d 1264, 1271–1273 (Del. 2014) ("necessary and essential" and "credible basis" thresholds; limitations on scope and method)
[49] Security First Corp. v. U.S. Die Casting & Dev. Co., 687 A.2d 563, 569–570 (Del. 1997) (Competitive/harassing purposes may negate "legitimate")
[50] OECD, Principles (2023), Ch. II.A, p.16 (Governance positioning of shareholder information rights)
[51] Espinoza, 32 A.3d at 371–372 (Investigating Potential Misconduct); AmerisourceBergen Corp. v. Lebanon County Employees' Ret. Fund, 243 A.3d 417, 436–437 (Del. 2020) (Preparatory Derivative Action Also Qualifies as Proper)
[52] Seinfeld, 909 A.2d at 123 ("credible basis" does not require proof of established illegality); Wal-Mart, 95 A.3d at 1271–1272.

"improper purpose," it must present specific, verifiable evidence proving foreseeable overlap and harm between the request and competitive activities or information leakage.Regarding burden of proof allocation, shareholders bear a minimal duty to demonstrate (the specific right to be exercised/prepared to exercise, the direct connection between the required information and the purpose)[53]. If the company asserts refusal, it bears the primary burden to prove "improper purpose" and "potential harm pathways," and may request the court to impose confidentiality obligations, restrict access methods, or impose other conditions to balance trade secret protection[54] .This "purpose presumption + company rebuttal" framework aligns with China's regulatory principles and mirrors Delaware Section 220's justification requirements for investigating misconduct or management failures. Courts also permit shareholders to obtain other "necessary and essential" documents for exercising/preparing to exercise rights, safeguarding rights through diverse approaches[55].

3.1.2 Requiring Proof of Legitimacy: Applications for Broad Scope, Long Time Periods, or Highly Sensitive Materials

When inspection requests are overly broad in scope, span excessive time periods, or target highly sensitive information such as undisclosed material transaction plans, core pricing models, client directories, source code/algorithms, or counterparty identities, they should undergo stricter "necessity-least intrusive" scrutiny.[56] Shareholders must specifically explain: why public disclosures or low-sensitivity carriers (e.g., financial reports, audit reports, MD&A, interim announcements) are insufficient to achieve the purpose[57] ; the direct and close relevance between each document and the intended purpose; and consistency between the inspection period and the dispute period. They must also accept court-imposed limitations on scope and method (e.g., phased access, sampling, directory-first physical review, viewing-only without copying, judge retention for verification)[58] .If a company seeks restrictions based on trade secrets, personal information/privacy, or data export compliance, it must provide specific evidence (e.g., classified lists, sensitivity levels, leakage risk assessments) and cooperate by providing "functionally equivalent" aggregated or de-identified reports.[59] Extraterritorial case law emphasizes that "necessary and intrinsically related" serves as the threshold for accessing accounting vouchers and even emails. If a company retains critical decisions solely in electronic communications, it bears the burden of providing corresponding electronic records[60]. Regarding burden of proof allocation, shareholders bear a higher responsibility to specify purposes and demonstrate relevance; companies, meanwhile, have a negative burden of proof and duty to cooperate regarding restrictions and alternative means of disclosure. Courts may balance rights enforcement and confidentiality protection through confidentiality orders and conditional permissions[61]. Furthermore, Delaware

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[53] Robin Hui Huang & Randall S. Thomas, The Law and Practice of Shareholder Inspection Rights: A Comparative Analysis of China and the U.S., 3–4

[54] Tiger v. Boast Apparel, Inc., 214 A.3d 933, 939 (Del. 2019) (No presumption of confidentiality; balancing shareholder communication freedom against corporate confidentiality interests)

[55] KT4 Partners LLC v. Palantir Techs. Inc., 203 A.3d 738, 752–754 (Del. 2019)

[56] George S. Geis, Information Litigation in Corporate Law, 74 Ala. L. Rev. 407, 410–412 (2023)

[57] AmerisourceBergen, 243 A.3d at 439–440

[58] Wal-Mart, 95 A.3d at 1271–1273

[59] Jill E. Fisch, Governance by Contract: The Implications for Corporate Bylaws, 106 Calif. L. Rev. 373, 404–406 (2018)

[60] KT4 Partners, 203 A.3d at 752–754

[61] James D. Cox, Kenneth J. Martin & Randall S. Thomas, The Paradox of Delaware's "Tools at Hand" Doctrine: An Empirical Investigation, 75 The Business Lawyer 2123, 2147–2152 (2020). also: Tiger v. Boast Apparel, LLC, 214 A.3d 933, 939–41 (Del. 2019); United Technologies Corp. v. Treppel, 109 A.3d 553, 558–61 (Del. 2014).

courts have clarified that no "presumption of confidentiality" exists in inspection proceedings. Whether confidentiality applies and its duration depend on balancing shareholder communication freedom against corporate confidentiality interests; indefinite confidentiality remains exceptional rather than standard[62]. This design effectively curbs strategic behaviors at both extremes—overly aggressive defense and excessively expansive requests—reducing space for "alternative discovery disputes" and restoring the fundamental screening mechanism of inspection rights.[63]

3.1.3 Exclusion of Legitimate Requests

Where the purpose clearly conflicts with the company's legitimate interests or is unrelated to shareholder identity and function

Common law theory and jurisprudence typically employ "competitive purpose, disclosure intent, or vexatious request" as negative guidelines. The following scenarios should be presumed "improper" and excluded: Where the shareholder's own business or that of a third party engages in "substantial competitive activity" with the company's primary operations, and the inspection purpose involves foreseeable overlap and abuse risks with such competitive activities;Intent to disclose to third parties or where disclosure would harm the company's legitimate interests (e.g., undisclosed material transactions, bid documents, procurement pricing systems)[64] ;Accessing information for private purposes unrelated to shareholder status (e.g., gathering evidence for other cases, media disclosure, or online dissemination), or submitting clearly "fishing/harassing" requests (repeated, indiscriminate, or mass parallel requests) to disrupt business operations[65]. These types align with the negative enumeration in Article 8 of China's Judicial Interpretation (IV).Furthermore, listed companies must coordinate these restrictions with ongoing obligations under securities law for continuous and fair disclosure, insider information controls, and personal information protection in shareholder registers. They must rigorously apply the "necessity-alternative-confidentiality" principle, aligning with exchange self-regulatory rules, the Personal Information Protection Law, and fair disclosure principles. Regarding the burden of proof, if a company asserts "legitimate exclusion," it typically only needs to present evidence and clues sufficient to establish a "substantial likelihood" for the court (e.g., proof of competitive overlap, prior notification records, assessment of information leakage pathways and consequences). If shareholders cannot refute this with credible materials, the court may directly dismiss the access claim or modify the ruling to "conditional non-approval."

3.2 Simplifying the Scope of Access: Reshaping the System with Board-Level Formal Materials as the Core Priority

Balancing shareholder inspection rights in listed companies requires harmonizing "effective litigation screening—procedural burden control—trade secret protection" to prevent procedural overreach and abuse. The key lies in simplifying and clarifying the scope of inspection. Delaware's experience offers a transplantable "structural solution": designating formal board-level materials as presumptively accessible "Tier 1" documents, while subjecting high-burden carriers like emails and instant messages to strict "necessary and materially relevant" exception thresholds. This reduces

[62] Tiger, 214 A.3d at 939 (rejecting the "presumption of confidentiality," holding that confidentiality periods should be treated as exceptions)
[63] Hunt, supra note 1, at 1196–1199, 1230–1232
[64] Espinoza, 32 A.3d at 371–372 (improper disclosure/harm to corporate interests)
[65] Robert B. Thompson, Protecting Shareholder Rights to Vote, Sell, and Sue, 62 Law & Contemp. Probs. 62, 70–72 (1999)

procedural transaction costs and prevents inspection rights from being "distorted" into an alternative discovery battleground.[66] This "scope simplification plus tiered disclosure" approach has been repeatedly validated through case law and legislative proposals: First, both Delaware courts and academia have confirmed that formal board materials are typically centrally stored, can be provided at low cost, and sufficiently satisfy most oversight purposes;[67] Second, electronic communications—due to high search/review costs and susceptibility to tangential information—should be treated as an exception, accessible only when critical information resides exclusively in that medium.[68]

Based on China's existing regulatory framework and judicial practice, judicial interpretations and exchange self-regulatory rules may explicitly list first-tier "formal board materials":Minutes and resolutions of board and specialized committee meetings; management/intermediary reports and presentation materials submitted to directors; signed company contract texts concerning disputed matters, etc. These are presumed to have a direct and essential connection to "supervising operations and preparing to exercise shareholders' statutory rights—presumed legitimate purpose," satisfying the "necessary and essential connection" standard.If a company seeks exclusion, it bears the burden of proving that providing a less sensitive substitute medium with equivalent functionality (e.g., de-identified/aggregated reports, excerpts from audited working papers) would achieve the same purpose.[69] In contrast, the second tier—"electronic communications" (emails, instant messages, chat logs, etc.)—is only accessible under two conditions: First, when shareholders present credible evidence that the company stored critical decisions and information solely in electronic communications without formal records. Second, when formal records exist but are clearly insufficient for oversight purposes, and the marginal benefits significantly outweigh the marginal procedural costs. In both scenarios, the company must first provide a communications index and keyword list. The court may then control the scope through conditions such as reviewing the list before accessing physical materials, conducting phased sampling, permitting only viewing without copying, and conducting in camera review by the judge (similar to the application process for proving legitimacy described above).[70] This dual-layer framework aligns with Delaware's recalibration approach of "prioritizing formal board materials with email as a necessary exception." It can substantially reduce procedural transaction costs and enhance the screening function of inspection rights without altering China's substantive standards.

To mitigate the "duplication-conflict" between inspection requests and ongoing disclosure, the China Securities Regulatory Commission (CSRC) and stock exchanges may require listed companies, through disclosure and investor relations management rules, to establish a "centralized, searchable" documentation practice for board-level materials. This facilitates low-cost preparation and provision of documents upon inspection requests. This requirement aligns with U.S. court findings that "most

[66] Alyssa Hunt, Recalibrating Section 220, 171 U. Pa. L. Rev. 1195, 1230–1232 (2023)
[67] Amalgamated Bank v. Yahoo! Inc., 132 A.3d 752, 790–793 (Del. Ch. 2016) ("The starting point and often the endpoint" should be board-level documents; most companies centrally archive board matters and can provide them with minimal burden)
[68] Schnatter v. Papa John's Int'l, Inc., No. 2018-0542-AGB, 2019 WL 194634, at *16 (Del. Ch. Jan. 15, 2019) (The burden of collecting and reviewing emails and text messages is significantly higher, imposing greater cost pressures on companies)
[69] Hunt, supra note 1, at 1230–1232
[70] AmerisourceBergen Corp. v. Lebanon Cty. Emps.' Ret. Fund, 243 A.3d 417, 437–440 (Del. 2020)

companies centrally archive board matters and provide them with minimal burden."[71] For companies with high state-owned capital content, national security implications, or operations in specific sensitive industries, compliance safeguards—such as pre-decentralized redaction, read-only access, on-site review, and log retention—can be established without undermining the "first-tier presumption of accessibility."

3.3 Introducing a Limited Cost-Shifting Mechanism: Lessons from U.S. Experience in Curbing Frivolous Litigation

The abuse of shareholder inspection rights litigation not only consumes judicial resources but also disrupts normal corporate operations. To curb speculative shareholders from filing frivolous lawsuits lacking factual basis, China may consider adopting Delaware's experience by introducing a limited, court-discretionary cost-shifting mechanism under specific conditions. This aims to precisely target abusive litigation while safeguarding shareholders' legitimate inspection rights.[72]

Delaware's experience demonstrates that the "exclusion threat" in derivative suits may incentivize plaintiffs to forgo necessary pre-litigation investigations to avoid being preempted in other jurisdictions, instead hastily filing lawsuits based on public information and insufficient investigation.[73] To correct this perverse incentive, scholars propose amending Section 220 of the Delaware General Corporation Law by introducing a limited cost-shifting provision: where the court finds, in its discretion, that a derivative plaintiff unreasonably failed to utilize pre-litigation investigation (including inspection requests) to obtain and consolidate information supporting their claims, it may order that plaintiff to bear a portion of the defendant's reasonable attorneys' fees incurred as a result.[74] The core advantage of this mechanism lies in its precision: it avoids blanket "loser-pays" rules that penalize all unsuccessful plaintiffs, instead targeting specifically "frivolous lawsuits filed without reasonable investigation." This prevents excessive deterrence and avoids discouraging shareholders from pursuing valuable litigation. Its policy logic aligns with scholarly arguments regarding the screening function of shareholder lawsuits.[75] It aims to incentivize plaintiff shareholders to proactively exercise available tools like inspection rights to gather necessary information before filing lawsuits, thereby enhancing litigation quality and helping distinguish between valuable and worthless cases. Additionally, to prevent undue burdens on financially constrained shareholders and small law firms, scholars suggest capping transferable costs, requiring plaintiffs to bear only a portion—not the entirety—of defendant expenses. This balances deterring frivolous lawsuits with safeguarding shareholder litigation rights.[76]

When establishing a similar cost-shifting mechanism in China, it is essential to fully absorb the essence of U.S. experience while carefully designing it to align with domestic judicial environments and shareholder structures, thereby mitigating potential risks.First, strict triggering conditions must be established, clarifying that the

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[71] Hunt, supra note 1, at 1231

[72] Alyssa Hunt, Recalibrating Section 220, 171 U. Pa. L. Rev. 1195, 1222–1224 (2023)

[73] California State Teachers' Retirement System v. Alvarez, 179 A.3d 824, 839, 849–850, 854 (Del. 2018)

[74] Hunt, supra note 2, at 1222–1224

[75] Jessica Erickson, Investing in Corporate Procedure, 99 B.U. L. Rev. 1367, 1372 (2019) (arguing for cost allocation tools to calibrate shareholder litigation incentives, preventing excessive deterrence and "Gresham's Law");Ann M. Lipton, Limiting Litigation Through Corporate Governance, in Research Handbook on Representative Shareholder Litigation 184–186 (2018) (discussing the screening function of targeted procedural tools).

[76] Hunt, supra note 2, at 1228–1230 (proposing fee caps to protect resource-constrained plaintiffs and attorneys); also Erickson, supra note 5, at 1372–1377 (arguing for the necessity and feasibility of capped cost mechanisms)

cost-shifting mechanism applies only when shareholder-initiated inspection requests or subsequent derivative lawsuits lack evidentiary basis, constitute an abuse of rights, and involve unreasonable failure to conduct necessary pre-litigation investigations (e.g., complete neglect to seek information through corporate documents despite clear leads). Courts should initiate such cases cautiously upon defendant application or ex officio. This aligns with the Delaware courts' threshold of "necessary and substantially relevant" for the scope of inspection and their preference for companies to provide formal board materials first.[77] It is imperative to avoid transforming this into a general "loser-pays" rule, which could deter minority shareholders from exercising their legitimate rights. Delaware's post-ATP Tour case legislative amendment prohibiting the application of comprehensive loser-pays charter provisions to stock corporations offers a valuable reference.[78] Second, courts should be granted broad discretion to comprehensively evaluate factors including the plaintiff's subjective state, the reasonableness of litigation conduct, and the defendant's defense actions. Legislation should establish maximum caps on the opposing costs borne by plaintiffs (e.g., proportional to shareholding value or fixed ceilings) to ensure potential liability does not stifle minority shareholders' willingness to litigate. Comparative law and legal theory both support capped approaches to prevent a "chilling effect."[79]

Finally, it should be noted that compared to the United States, derivative lawsuits by shareholders in China are generally not very active, and both frivolous lawsuits and "under-litigation" may coexist. Therefore, the cost-shifting mechanism should function as a highly precise "scalpel" rather than a "sledgehammer." Its primary objective should be to curb the extremely rare instances of clearly malicious abuse of litigation, not to broadly increase litigation costs. This approach aligns with the governance chain revealed by empirical evidence: "access to tools → prior review → improved quality → reduction in frivolous cases."[80]

3.4 Remedial Mechanisms for Shareholders' Inspection Rights in Listed Companies

Within the institutional framework of shareholder inspection rights, enforcement and remedy mechanisms constitute the final stage of rights protection and serve as key indicators of the system's vitality. Without efficient, actionable enforcement pathways and effective remedy channels, even the most refined standards for legitimate purpose, scope of inspection, or confidentiality safeguards risk becoming mere "paper rights."

The aforementioned limited cost-shifting regime not only effectively curbs frivolous litigation and incentivizes plaintiff shareholders to proactively exercise "available tools" like inspection rights to gather necessary information before filing lawsuits—thereby enhancing litigation quality—but also serves as a powerful deterrent against corporate liability for refusing inspections at the back end of the inspection rights process. Cost shifting should not target plaintiffs alone. Where a company maliciously denies shareholders' legitimate inspection requests without justification, or adopts excessively aggressive defense strategies (such as stubbornly refusing requests that meet "proper purpose" requirements), courts may similarly order the defendant company to bear the plaintiff's reasonable costs. This reflects the

[77] AmerisourceBergen, 243 A.3d at 437–440 (establishing the "necessary and materially relevant" threshold and prioritizing formal board materials).
[78] ATP Tour, Inc. v. Deutscher Tennis-Bund, 91 A.3d 554 (Del. 2014)
[79] Erickson, supra note 5, at 1372–1377 (advocating cost-capping rules to balance "deterring frivolous suits/protecting access to justice")
[80] Cox/Thomas/Bai, supra note 6, at 2147

principle of reciprocal rights and obligations, compelling companies to cooperate in realizing shareholder rights.In Pettry v. Gilead Sciences, Inc., the court of equity not only ordered the company to provide requested documents within a deadline but also permitted shareholders to apply for cost shifting.[81] Therefore, in designing enforcement measures, China should substantially increase the legal costs for companies and relevant responsible parties that refuse to fulfill inspection obligations, and the cost shifting mechanism is a reasonable approach.

Building upon this, Nevada's penalty model also merits consideration and adaptation.[82] China could establish a "delayed compliance—daily penalty—enforcement" framework through legislation or judicial interpretations for listed companies. This would impose daily penalties at a fixed rate on companies failing to fulfill inspection obligations after a ruling takes effect, while simultaneously initiating enforcement proceedings.Additionally, for malicious defenses or fabricated reasons to refuse compliance, the company and relevant directors, supervisors, and senior management may be ordered to bear all reasonable expenses incurred by shareholders during rights protection, including attorney fees and accountant/auditor fees. This institutional arrangement not only enhances enforcement strength but also objectively encourages companies to proactively fulfill inspection obligations during the pre-litigation stage, thereby reducing litigation rates.

4. Conclusion

From the litigation practice concerning inspection rights in Delaware, it can be observed that the rise and proliferation of "disclosure litigation" and negative incentives such as "reverse auctions" are not inevitable byproducts of the inspection right itself. Rather, they are "second-order effects" that can only emerge within an institutional environment characterized by "a relatively complete inspection right framework operating under liberalized access." In other words, the United States first consolidated the two foundational pillars of shareholders' inspection rights through the long-term accumulation of case law and procedural refinement: first, by requiring a legitimate purpose in good faith as the threshold for access, and by verifying the authenticity of the petitioner's motive through the "credible basis" standard, thereby narrowing the gray area for "curiosity-driven" or "harassing" requests; second, by limiting the scope, subject matter, and medium of inspection to what is "necessary and essential," prioritizing formal board-level materials, and permitting access to electronically stored information (ESI) such as emails only as an exception when there is no adequate substitute and a close nexus to the stated purpose exists.

It is precisely after the above "institutional framework" became relatively well-established—and inspection rights became a genuinely viable "tool at hand"—that plaintiffs' attorneys were able to leverage them to bolster complaints, counter the substantive law contraction trends represented by cases such as *Corwin* and *MFW*, and thereby trigger the scaling-up of disclosure litigation and structural arbitrage. This further gave rise to strategic distortions such as "reverse auctions" in the context of multi-forum parallel derivative litigation. This logic carries significant

[81] Pettry v. Gilead Sciences, Inc., 2020 WL 6870461 (Del. Ch. Nov. 24, 2020)

[82] Nevada Revised Statutes § 78.257(4), which provides that if a corporation or its officer/agent willfully refuses to permit a shareholder of record to inspect books or conduct an audit, the corporation shall pay a daily forfeit of $100 to the state, and the corporation and its relevant officers shall be jointly and severally liable for damages suffered by the shareholder due to the denial of inspection.(jointly and severally liable).

cautionary implications for China: while drawing lessons from the proliferation of disclosure litigation and the negative incentives generated by the development of American practice, China must first refine its own institutional framework. Against the backdrop of the new *Company Law* having incorporated accounting vouchers into the scope of inspection rights for shareholders of listed companies, the shareholders' inspection right in listed companies constitutes a newly established system in China, and the practical problems it may engender have yet to fully surface. It is therefore necessary to draw on American experience and, from a long-term developmental perspective, to confer inspection rights upon shareholders of listed companies in a precise and bounded manner.

Empirical Study on the Characteristics and Prevention of Recidivism Among Ex-Convicts —Focusing on Recidivists

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Abstract: Recidivism is a serious social issue which receives urgent attention in contemporary society. Data analysis reveals an upward trend in recidivism rates among released prisoners, predominantly concentrated in economically developed regions and specific high-risk populations. Offenses primarily involve property crimes and disruptions to social management order, closely linked to low educational attainment, unemployment, youth and specific residential areas. Research indicates that the risk of recidivism increases with a younger age at first offense, shorter prison sentences, and more prior convictions, with the two years following release being a critical danger period. To effectively prevent recidivism, a comprehensive management system must be established: within prisons, emphasis should be placed on strengthening remorse education, vocational skills training, and psychological rehabilitation. At the societal level, social security systems must be improved to address employment and social security transition issues. Legally and policy-wise, the post-release rehabilitation and assistance system should be optimized, shifting the focus of penal enforcement toward rehabilitation and social reintegration.

Keywords: Release from prison; Recidivism; Empirical study

Introduction

The purpose of penalty is to prevent and deter crime. Recidivism, the commission of new crimes after finishing a sentence, indicates that prior penalty failed to fully achieve its rehabilitative function or yielded minimal corrective effects. The social harm that recidivism yields often exceeds that from ordinary crimes, posing a severe threat to societal security and stability. In the era of information, accelerated technological iteration and societal cognitive renewal, coupled with rapid social change, have heightened recidivism risks. During penalty enforcement, individuals face prolonged isolation from mainstream society, disrupting their socialization process. Upon release, they often struggle to resume education or secure employment,

making societal acceptance difficult. This survival dilemma may compel them to return to criminal activity. Therefore, conducting empirical statistical analysis on various factors contributing to recidivism among released prisoners, identifying their individual characteristics and general patterns of reoffending, and integrating these findings with social phenomena provides crucial empirical evidence for crime prevention, optimizing penal execution, and refining related measures. This holds significant practical importance.

1. Big Data Analysis of Recidivism

This study focuses on “repeat offenders” as the subject of recidivism research. This is because repeat offenders are defined as individuals who commit another crime within five years after completing their sentence or receiving a pardon. This timeframe provides a relatively clear reflection of the effectiveness of criminal punishment enforcement and crime prevention education. Using the China Judgments Online database, the author searched for criminal cases tried and adjudicated by courts nationwide from January 2014 to December 2019 using the keyword “repeat offender”. During this period, 5,194,507 criminal cases were tried and adjudicated nationwide, among which 630,059 cases explicitly stated repeat offender status, accounting for 12.13%. A search using the keyword “recidivism” revealed 802,861 cases explicitly noting “recidivism”. After excluding 19,415 cases marked as “no risk of recidivism”, the valid cases totaled 783,446, accounting for 15.08%. The author's analysis of data released by the Ministry of Justice, calculations by relevant scholars, and recidivism rate data published by some provinces and cities in China[1]. These reveal that the overall recidivism rate among released prisoners nationwide has remained between 7% and 16%, showing a gradual upward trend. It rose from 3.92% in 1985 to 8.00% in 2004, and further increased to 15.98% in 2007.

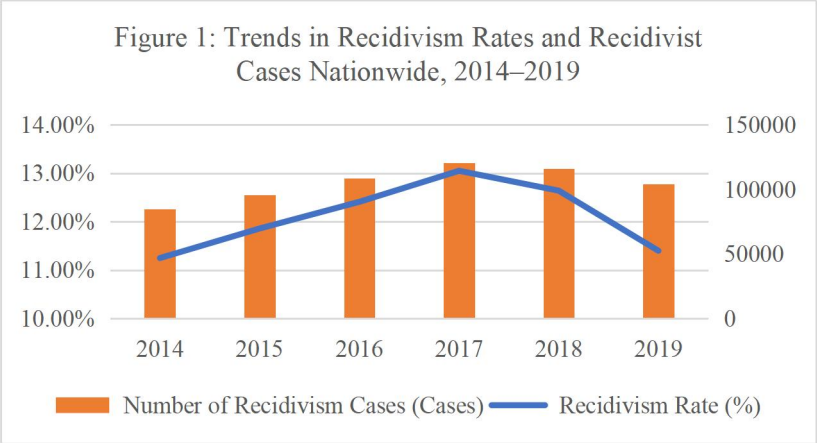
The author set keywords on the Judgment Document Network and Alpha Case Analysis Network to screen recidivist judgments from 2014 to 2019, collecting relevant data and supplementing other information by adjusting keyword ranges. Among these, the distribution of time, location, case types, and basic personal characteristics (such as drug using) reflect the fundamental features and associated factors of recidivism. The involved amounts, sentencing circumstances, and imposed penalties, meanwhile, demonstrate the social harmfulness of recidivism.

1.1 Analysis of Basic Recidivism Patterns

1.1.1 Development Trends

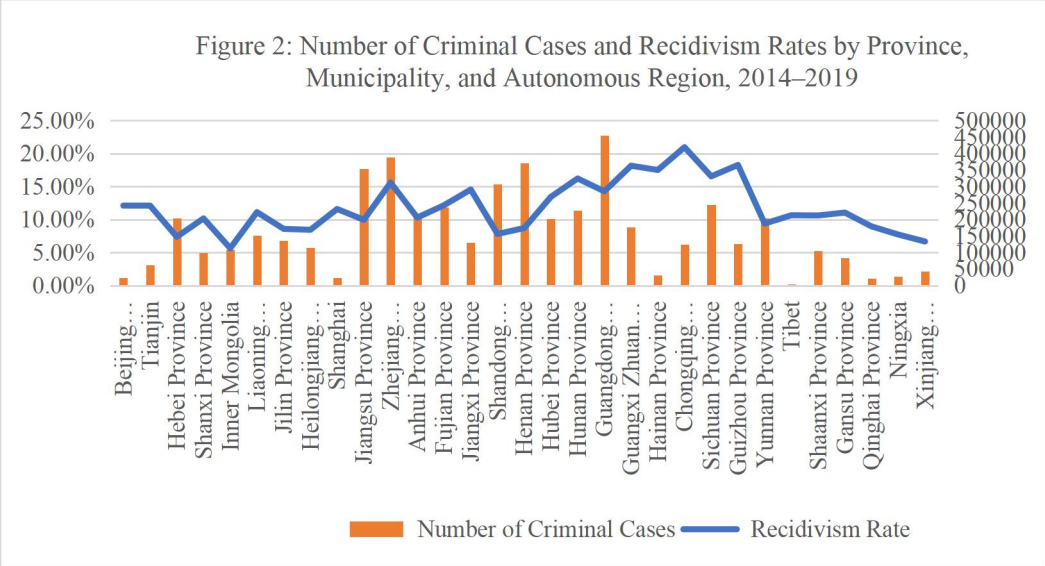
From a temporal perspective, both the national recidivism rate and the number of recidivist cases showed an upward trend from 2014 to 2017, peaking in 2017, followed by a downward trend from 2018 to 2019.

[1] See Li Guangyong: Empirical Study on Factors Influencing Recidivism Among Released Prisoners and Preventive Measures: A Sampling Survey of Recidivist Groups in Nine Prisons in Shanghai, China Legal Publishing House, 2018.



1.1.2 Regional Distribution

Recidivism rates generally correlate positively with economic development levels. Among provinces and municipalities, economically developed regions like Beijing, Shanghai, Zhejiang, Jiangsu, Tianjin, and Fujian exhibit relatively higher recidivism rates, while economically underdeveloped areas such as Tibet, Ningxia, Inner Mongolia, and Qinghai show comparatively lower rates. The following are the recidivism rate data of China's seven major geographical regions: North China: 8.81% , Northeast China: 9.49%, East China: 11.63%, Central China: 12.03%, South China: 15.45%, Southwest China: 15.52%, Northwest China: 9.72%.



1.1.3 Distribution of Offense Categories

Among recidivism cases, property crimes (63.02%) and crimes against social management order (24.25%) constituted the primary offenses. Crimes endangering public safety, crimes disrupting the socialist market economy order, crimes infringing upon citizens' personal rights, and other offenses accounted for a negligible proportion. Property crimes were predominantly low-effort offenses such as theft, robbery, and fraud, while crimes against social management order were primarily drug-related offenses and crimes disrupting public order.

Notably, drug abuse is closely linked to recidivism, with related cases totaling 99,271, accounting for over 20% of all recidivism cases. Robbery and intentional injury

crimes constitute 7% of violent offenses. Given the greater harm posed by violent crimes and the rising trend in robbery-related recidivism, violent crime recidivism remains a critical concern requiring focused attention.

1.1.4 Degree of Social Harm

This section assesses the social harmfulness of recidivism through analysis of sentencing, circumstances, and involved amounts.

(a) Sentencing Statistics Analysis

According to data compiled by the Alpha platform, from 2014 to 2019, fixed-term imprisonment was the most commonly applied principal punishment in criminal cases involving recidivism, accounting for approximately 95%. Lighter punishments such as public surveillance and short-term detention collectively accounted for 4.5%. Additionally, probation was applied in 26,552 cases (probation is a method of punishment execution, not an independent principal punishment), representing about 5.5%.

(b) Circumstantial Analysis

Approximately 70% of released prisoners admitted to their crimes in recidivism cases. Voluntary compensation was a secondary common circumstance, though neither directly reflects social harm because admissions often stemmed from suspects knowing they could receive leniency, while compensation was frequently arranged by relatives rather than reflecting genuine remorse. In theft recidivism cases, 73.95% of suspects admitted to their crimes. Additionally, 17.02% of recidivists had a history of drug use, which is a significant factor influencing criminal behavior.

2. SPSS Data Analysis of Recidivism Phenomena—Focusing on Theft Crimes

This research designed variables and data tables to input data from first-instance sentencing judgments for recidivism in theft crimes in 2018 and used sampling approach to analyze seven regions: northeast China, north China, central China, east China, south China, northwest China and southwest China. Representative provinces were selected from each region to construct a database containing 13,289 valid data points. Analysis was subsequently conducted using SPSS to derive the results.

2.1 Analysis of Personal Factors of Offenders

This section analyzes personal factors (e.g. age and education level) of repeat offenders for theft crimes. Using selected variables as independent variables, it tests following hypotheses: (1) Is there a correlation between place of residence and place of crime? (2) Is there a correlation between education level and number of convictions? (3) Is there a correlation between place of residence and number of convictions?

2.1.1 Age

The sample mean was 37.44 years old, with a mode of 31 years old. The ages of recidivists ranged from 22 to 52 years old, with the highest incidence of recidivism occurring between 27 and 40 years old.The sample shows 12,052 valid cases for age, with 1,237 missing values.

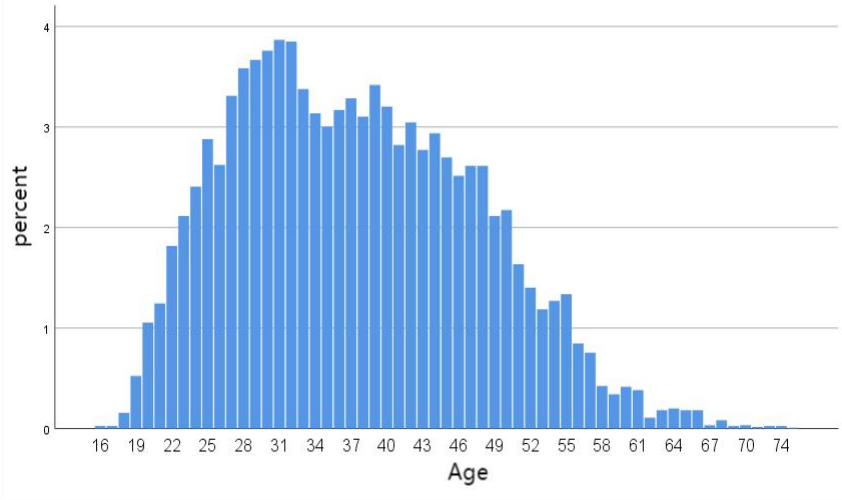


Figure 3: Age Distribution of Recidivism for Theft Offenses

2.1.2 Limited Criminal Responsibility Capacity and History of Drug Abuse

Only 1.2% of recidivists lacked complete criminal responsibility. And 6.3% of recidivists had a history of drug use. It indicates that the vast majority of recidivists possesses full capacity for criminal responsibility and doesn't commit crimes due to drug addiction or drug-related profits.

2.1.3 The Analysis of Educational Attainment and Number of Convictions

The educational attainment of recidivists was predominantly junior high school (42.9%) and primary school (42%), with illiteracy accounting for 10% and high school or above only 5.1%. A correlation analysis between educational level and prior conviction counts among recidivists was conducted using Spearman's rho test. The results indicate a significant correlation between educational attainment and prior convictions among repeat offenders: $r(11279) = -0.024$, $p = 0.012 < 0.05$. The correlation is negative, which means higher educational attainment correlates with fewer repeat offenses. This suggests that individuals with higher education are more receptive to corrections and benefit from educational qualifications that facilitate employment upon release.

2.1.4 Analysis of the Correlation Between Residence and Crime Location

Following statistical guidelines, we first propose the hypothesis: Is there a correlation between an individual's place of residence and their choice of location for committing a crime?

The null hypothesis H0 is formulated: There is no correlation between an individual's place of residence and their choice of crime location (correlation coefficient = 0). A Pearson chi-square test is conducted.

Table 1: Pearson Chi-Square Test for Place of Residence vs. Location of Offense

Chi-Square Test

	Value	Degrees of Freedom	Progressive Significance (Two-tailed)

Pearson Chi-Square	65287.487[a]	36	.000
Likelihood Ratio	41123.737	36	.000
Linear correlation	11429.403	1	.000
Valid Cases	12756		

a. 0 cells (0.0%) have an expected count less than 5. The minimum expected count is 6.79.

Symmetry Measure

		Value	Progressive Significance
Nominal to Nominal	Phi	2.262	.000
	Clemens V	.924	.000
Number of Valid Cases		12756	

Upon testing, the contingency table analyzed here is non-four-cell. Less than 20% of cells have expected frequencies below 5, and none have expected frequencies below 1. The results from the Pearson Chi-Square column are read.P=0.000 < 0.05. Reject the null hypothesis, indicating that the different residential locations of recidivists influence their choice of crime location. As this is a multidimensional contingency table, read the coefficient value in the Krammer's V column. Here, r=0.924, indicating a highly significant correlation.

Conclusion: The different residential areas of repeat offenders influence their choice of crime location. p < 0.05, Krammer's V = 0.924, indicating a high degree of correlation. Therefore, repeat offenders are more likely to commit crimes in their residential areas.

2.2 Analysis of First-Time Offenders

This section analyzes 10,312 court judgment records from Guangdong, Shanghai, Heilongjiang, and Yunnan provinces/municipalities.

2.2.1 Frequency Analysis and Correlation Analysis of Age at First Offense

(a) Frequency Analysis of Age at First Offense

Sample statistics are shown in Figure 4. The valid case count was 8,716. The sample mode was 20, with a valid percentage of 6.8% and a frequency of 591. The next most common age was 19, with a valid percentage of 6.3% and a frequency of 550. The sample mean was 28.55, the minimum value was 14 (valid percentage <0.1%, frequency=2),The maximum age was 73, with an effective percentage below 0.1% and a frequency of 1. Thus, the most common ages for first-time offenses were 20 and 19, representing the early adult stage, with young adults aged 19 to 30 being the most

prevalent group. Overall, the trend shows a decline. It can draw a conclusion that the age of first offense is negatively correlated with the risk of recidivism.

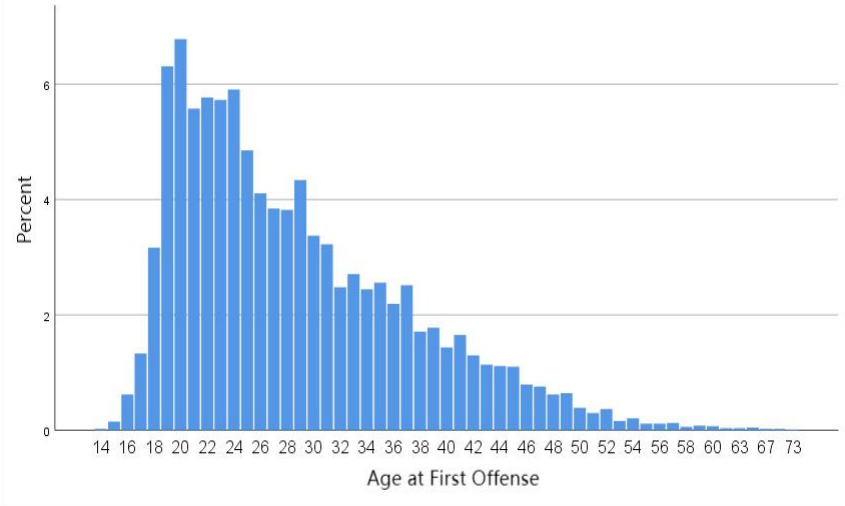


Figure 4: Frequency Distribution of Age at First Offense

(b) Correlation Analysis Between Age at First Offense and Recidivism
This correlation analysis examines the relationship between age at first offense and "number of convictions." A higher number of convictions indicates a relatively greater likelihood of recidivism.

Research Question: Does the age at first offense influence the number of subsequent offenses?

Following scatter plots and K-S tests, Spearman's correlation coefficient analysis yielded the following results:

Table 2: Correlation between age at first offense and number of prior convictions

			Age at First Offense	Number of Prior Convictions
Spearman's Rho	Age at First Offense	Correlation Coefficient	1.000	-.099**
		Sig. (two-tailed)	.	.000
		N	8716	8716
	Number of Prior Convictions	Correlation coefficient	-.099**	1.000
		Sig. (two-tailed)	.000	.

	N	8716	13259

**. At the 0.01 level (two-tailed), the correlation is significant.

At this point, $p = 0.000 < 0.05$, leading us to reject the null hypothesis and conclude that the two variables are significantly correlated. This means we have at least 95% confidence that the correlation coefficient between these two variables in the population is not equal to zero, and this result is not due to chance. The correlation coefficient is -0.099, indicating a negative correlation between the two variables.

In summary, a negative correlation exists between the age at first offense and the number of prior convictions among recidivists. And a higher number of prior convictions indicates greater difficulty in rehabilitation. A lower age at first offense, particularly among youth who have not fully socialized, suggests that individuals took the wrong path and were sentenced before reaching full maturity.

2.2.2 Frequency Analysis of First Offense Categories

Statistics from 9,299 valid cases show that property crimes (excluding robbery) accounted for 86.4% (8,033 cases). Crimes against citizens' personal rights and democratic rights accounted for 4.8%. Robbery accounted for 5.2% (483 cases). Crimes against social management order (excluding drug-related crimes) accounted for 1.5% and drug-related crimes accounted for 1.3%. Thus, the initial offenses of recidivists predominantly involve property crimes with relatively low levels of violence. Simultaneously, the primary age group for these initial offenses consists mainly of young adults who have recently reached adulthood and entered society. Before achieving a stable life phase, when living conditions cannot meet their personal needs, they often develop a mindset of seeking gains without labor, leading to property crimes as their first offenses.

2.2.3 Frequency Analysis of Actual Sentences Served for First Offenses

The valid sample size was 9,433 cases. Measured in months, the most frequent actual sentence length was 6 months (9.9%, 931 cases), followed by 8 months (6.1%, 579 cases). The average actual sentence length was 20.328 months. The minimum was 0 months (2.2%, 212 cases), while the maximum was 448 months (less than 0.1%).This indicates that sentences for first offenses primarily fall within one year, with the total number of relevant cases decreasing as the actual length of imprisonment increases. Thus, the actual length of imprisonment proves effective in rehabilitating offenders and preventing recidivism. However, since the first offenses of released prisoners are predominantly property crimes (excluding theft), their severity is relatively low, which results in lighter sentences. Consequently, the rehabilitative effect of punishment is limited, making these individuals more susceptible to returning to criminal behavior.

2.3 Analysis of Other Factors Related to Prior Convictions

Statistical analysis of prior convictions shows that among 13,259 case samples, the mode is 1 prior conviction (42.9%, 5,687 cases), followed by 2 prior convictions (26.7%, 3,537 cases). The maximum number of prior convictions is 22, accounting for less than 0.1%.Thus, most released prisoners who reoffend had previously received one to two sentences, making them a key focus group in reoffending prevention efforts.

2.4 Analysis of Period Between Previous Release and Recidivism

2.4.1 Sample Frequency Analysis of Employment Status

Among released prisoners who reoffended, the data sample shows that out of 9,952

valid cases: - Unemployed individuals accounted for 74.8% (7,448 cases); - Farmers accounted for 18.9% (1,876 cases); - Workers accounted for 5.9% (590 cases); - Students accounted for less than 0.1% (2 cases); - Businesspeople accounted for 0.4%.

The unemployed constituted the overwhelming majority, followed by farmers, workers, and merchants in descending order. Students, constrained by their capacity for independent action and supported by family safety nets, exhibited the lowest proportion due to their lack of significant livelihood challenges. This indicates a negative correlation between recidivism probability and living conditions: individuals without stable income sources face higher risks of returning to criminal activity.

2.4.2 Frequency Analysis of Intervals Between Offenses

Analysis of recidivism intervals reveals that the recidivism rate decreases as the interval lengthens. The frequency distribution table shows that the average interval between the current offense and release from prison was 23.15 months, with a relatively small standard deviation.As shown in Figure 6, the probability of reoffending is highest within 0-10 months (approximately one year) after release. The normal distribution curve indicates that the two-year period following release represents a high-risk phase for reoffending, coinciding with the critical stage for post-release rehabilitation and support measures.

Long-term inmates often struggle to adapt to societal changes after completing their sentences, face difficulties securing stable livelihoods, and are thus more likely to return to criminal behavior. Conversely, those with shorter incarceration periods, having undergone limited rehabilitation and burdened by criminal records, also exhibit higher recidivism rates.

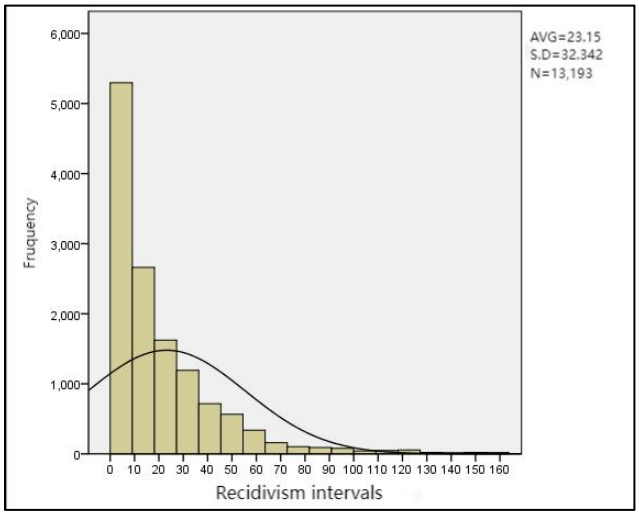


Figure 6: Frequency Distribution Histogram of Time Intervals Between Current Offense and Release Date

2.5 Characteristics and Influencing Factors of Recidivism

2.5.1 Characteristics Associated with Recidivism

(a) Sentences primarily range from 5 to 20 Months of Fixed-Term Imprisonment. Among the 13,283 valid cases analyzed for recidivism sentencing types, fixed-term imprisonment constituted the largest proportion at 71.5%, followed by life imprisonment at 26.6%. In the statistics on the duration of sentences for recidivism, the average sentence length was 15.71 months with a small standard deviation and the

mode was 12 months. Term of penalty was primarily concentrated in the 5-20 month range, with the highest frequency occurring between 5 and 15 months.

(b) The location of the crime is closely related to the place of residence. As analyzed earlier, the different places of residence of repeat offenders influence their choice of crime location, with a high probability of committing crimes in their place of residence. This indicates that criminal activity is a special type of social behavior, and perpetrators often habitually commit crimes in familiar environments.

(c) Among the crimes committed, the percentage of carrying weapons is 11.3%. The percentage of pickpocketing incidents is 16%. The percentage of burglaries is 17.5% .The percentage of multiple thefts is 27.4%. The percentage of voluntary surrender is 2.6%. The percentage of admitting to the criminal fact is 98.5%. The percentage of showing remorse is 46.5%. The percentage of returning stolen property voluntarily is 2.7%. The percentage of making contributions is 0.3%. The percentage of making active restitution is 1.9%. What's more, the percentage of being judged probation is 0.4%. Except for admitting the facts of the crime and repentance, the proportions of other mitigating or reducing circumstances were all lower than those of aggravating circumstances. According to the principle of proportionality between crime and punishment, the reoffending of theft crimes exhibits high levels of harm to legal interests, blameworthiness, and personal danger. However, the high percentages for admitting criminal facts and expressing remorse still fail to prove low dangerousness. Individuals previously punished under criminal law possess some understanding of sentencing factors. Moreover, both surrender and voluntary restitution, which more effectively demonstrate remorse, account for less than 3%. Thus, admitting facts and expressing remorse cannot fully prove a good attitude of repentance.

2.5.2 Analysis of Factors Influencing Recidivism Aggravating Circumstances[2]

This section employs ROC curve analysis to examine the impact of intrinsic factors, first-time offense characteristics, other prior conviction factors and post-release experiences on aggravating recidivism factors. If the Sig is less than 0.05, the hypothesis that the independent variable correlates with "the presence of xx facto" is confirmed. Otherwise, it is rejected, indicating no diagnostic significance for "the presence of xx factor" or, equivalently, no statistical significance. If AUC<0.5, diagnostic significance is absent; conversely, diagnostic significance is present, with accuracy improving as AUC approaches 1. "AUC=0.5" indicates the diagnostic method is completely ineffective and lacks diagnostic value. AUC between 0.5 and 0.7 indicates low accuracy. AUC between 0.7 and 0.9 indicates moderate accuracy. AUC above 0.9 indicates high accuracy.

(a) Table 3 presents the test results for the area under the ROC curve regarding "carrying weapons". The diagnostic significance for "carrying weapons" is indicated by serial numbers 9 (actual time served for first offense), 13(time of most severe sentence), and 15 (total cumulative prison time for prior offenses) showed AUC values greater than 0.5 and P values less than 0.05. Thus, the actual prison time served for the first offense, the time of the most severe sentence and the total cumulative prison time for prior offenses have a weak influence on the aggravating circumstance of "carrying a deadly weapon."

[2] In this section, * denotes: *P＜0.05, **P＜0.01, ***P＜0.001

Table 3 Area Under the Curve and Significance Values

Independent Variable	AUC Area	Sig
1. Gender	0.493	0.439
2. Age	0.496	0.632
3. Take drugs?	0.503	0.779
4. Do you have limited criminal responsibility capacity?	0.492	0.385
5. Educational attainment	0.514	0.128
6. Place of Residence	0.436***	0.000
7. Age at First Offense	0.504	0.693
8. First Offense Charge	0.470**	0.008
9. Actual prison term served for first offense	0.551***	0.000
10. Most serious prior offense	0.495	0.576
11. Most Severe Sentence Imposed	0.506	0.508
12. Whether the most severe sentence was suspended	0.505	0.622
13. Length of the most severe prison sentence served	0.552***	0.000
14. Number of Prior Convictions	0.499	0.953
15. Total time served for prior convictions	0.547***	0.000
16. Interval between crimes	0.491	0.360
17. Employment Status	0.478*	0.020

(b) The results shown in Table 4 and the test results for the area under the ROC curve for "pickpocketing" are as follows: The diagnostic significance numbers for "pickpocketing" are 2, 7, and 14, with AUC areas greater than 0.5 and P values less than 0.05. That is, age, age at first offense, and number of prior convictions have a weak influence on the likelihood of pickpocketing upon recidivism.

Table 4 Area Under the Curve and Significance Values

Independent Variable	AUC Area	Sig
1. Gender	0.511	0.195
2. Age	0.590***	0.000
3. Take drugs?	0.486	0.083
4. Do you have limited criminal responsibility capacity?	0.495	0.553
5. Educational attainment	0.480**	0.016
6. Place of residence	0.368***	0.000
7. Age at First Offense	0.586**	0.009
8. First Offense Charge	0.482*	0.048
9. Actual prison term served for first offense	0.468***	0.000
10. Most serious prior offense	0.491	0.279
11. Most Severe Sentence Imposed	0.494	0.458
12. Whether the most severe sentence was suspended	0.503	0.680
13. Length of the most severe prison sentence served	0.452***	0.000
14. Number of Prior Convictions	0.553***	0.000
15. Total time served for prior convictions	0.482*	0.031
16. Interval between offenses	0.474**	0.002
17. Employment Status	0.457***	0.000

(c) Table 5 shows the results of testing the area under the ROC curve for “household registration”. Specific results are as follows. The diagnostic significance of “home invasion” is indicated by items 9, 13, 14, and 15, with AUC values exceeding 0.5 and P values below 0.05. This indicates that the actual length of initial incarceration, the maximum length of incarceration, the number of prior convictions, and the cumulative length of prior incarceration exert a weak influence on the likelihood of committing home invasion during recidivism.

Table 5 Area Under the Curve and Significance Values

Independent Variables	AUC Area	Sig
1. Gender	0.494	0.422
2. Age	0.443***	0.000
3. Take drugs?	0.504	0.608
4. Do you have limited criminal responsibility capacity?	0.502	0.801
5. Educational attainment	0.499	0.908
6. Place of residence	0.468***	0.000
7. Age at First Offense	0.423***	0.000
8. First Offense Charge	0.508	0.371
9. Actual time served for first offense	0.560***	0.000
10. Most serious prior offense	0.494	0.486
11. Most Severe Sentence Imposed	0.508	0.341
12. Whether the most severe sentence was suspended	0.503	0.744
13. Length of the most severe prison sentence served	0.581***	0.000
14. Number of Prior Convictions	0.517*	0.039
15. Total time served for prior convictions	0.576***	0.000
16. Interval between crimes	0.499	0.859
17. Employment Status	0.515	0.065

(d) The results shown in Table 6 and the test results for the area under the ROC curve for “multiple offenses” are as follows. The diagnostic significance numbers for "whether multiple offenses were committed" are 6, 9, 13, 14, and 15, with AUC > 0.5 and P < 0.05. The remaining variables—place of residence, actual time served for first offense, time of most severe sentence, number of prior convictions, and cumulative time served for prior offenses—were not significant, indicating they do not influence the occurrence of multiple offenses.

Table 6 Area Under the Curve and Significance Values

Independent Variables	AUC Area	Sig
1. Gender	0.498	0.756
2. Age	0.494	0.360
3. Drug use?	0.501	0.932
4. Do you have limited criminal responsibility capacity?	0.486*	0.040
5. Educational attainment	0.502	0.750
6. Place of Residence	0.531***	0.000
7. Age at First Offense	0.466***	0.000
8. First Offense Charge	0.493	0.430
9. Actual time served for first offense	0.545***	0.000
10. Most serious prior offense	0.487	0.051
11.Most Severe Sentence Imposed	0.504	0.521
12. Whether the most severe sentence was suspended	0.497	0.694
13. Length of the most severe prison sentence served	0.558***	0.000
14. Number of Prior Convictions	0.525***	0.000
15. Total time served for prior convictions	0.562***	0.000
16. Interval between offenses	0.474***	0.000
17. Employment Status	0.480**	0.004

2.5.3 Summary of ROC Curve Analysis

The above factors influencing aggravating circumstances were assigned values as shown in the table below. Among the factors presented, particularly the actual time served for the first offense, the maximum time served, the cumulative time served for prior convictions and the number of prior convictions, exert a significant influence on aggravating circumstances.

Table 7: Independent Variables and Number of Influencing Factors

Independent Variables	Number of Influencing Factors
Actual Sentence Length for First Offense	3
Maximum Sentence Served	3
Cumulative Sentence Length for Prior Convictions	3
Age	1
Age at First Offense	1
Number of Prior Convictions	3
Residence	1

3. Recommendations for Preventing Recidivism

The persistently high recidivism rate not only directly tests the effectiveness of the criminal justice system but also poses a profound challenge to social governance capabilities. Whether released prisoners can successfully reintegrate into society concerns not only individual dignity but also the long-term stability and security of society. Preventing recidivism is far from a mere extension of punishment. It is a systematic endeavor requiring governance from source to end, encompassing process intervention and terminal safeguards. A comprehensive governance system should be established across three dimensions: internal rehabilitation through prison management, external acceptance through social support and institutional refinement through legal policies. This integrated approach aims to restore social relationships while rehabilitating offenders, then achieve the organic unity of legal and social outcomes.

3.1 Prison Management

3.1.1 Strengthening Education on Remorse and Rehabilitation for First-Time Offenders

Frequency analysis indicates that remorse is not fully developed among recidivists. From a criminological perspective, the growing severity of recidivism among released prisoners necessitates addressing internal causes alongside external factors as a primary pathway to prevention. Deepening remorseful attitudes among released prisoners promotes their renunciation of crime and successful reintegration into society.

Rehabilitation efforts for offenders, particularly first-time offenders, warrant heightened emphasis. Factors associated with first-time offenses influence aggravating circumstances in recidivism. And the age at first offense correlates with the number of prior criminal convictions. The peak age for first-time offenses is around 18-20 years old, with the majority occurring during the youth period before age 37. At this stage, most individuals are newly entering society and may stray onto the wrong path during the process of social integration. However, since the severity of

their crimes is generally relatively minor, strengthening the development of their outlook on life, moral values, and values, while reinforcing education on the rule of law, holds significant importance for preventing recidivism.

3.1.2 Implementing Vocational Education to Enhance Employment Capabilities

The Prison Law stipulates: “Local people's governments shall assist released prisoners in securing livelihood arrangements.” In order to address basic livelihood needs while fostering sound employment attitudes, prisons and post-release rehabilitation agencies must: cultivate proper employment perspectives by organizing job fairs, guiding career paths, and recommending employers. Concurrently, strengthening vocational skills training to enhance human capital is vital. Providing relevant vocational training during incarceration significantly boosts inmates' professional capabilities.

3.1.3 Implement proactive physical and mental health education

Reforming internal factors is central to prison rehabilitation. Rather than relying solely on strict surveillance, efforts should focus on psychological education, addressing inmates' inner motivations. This involves continuously fostering positive psychological factors such as self-confidence and cooperative spirit, cultivating healthy psychological qualities, standardizing behavioral awareness, and developing strong self-control. A comprehensive psychological health education assessment system should be established with regular evaluations.

3.1.4 Guide Inmates to Understand Current Social Conditions and Contemporary Information

Societal development makes it difficult for incarcerated offenders to adapt to the pace of societal change upon release. To encourage them access to external information, prisons should provide media resources such as news and periodicals to help inmates stay informed about social developments, so that they can facilitate their successful reintegration into society.

3.2 Social Management Aspects

3.2.1 Improve the social security system to continue assisting released prisoners in overcoming livelihood challenges

Although released prisoners have reintegrated into society, a great deal of them face significant challenges due to their criminal records. Modern social security systems serve both poverty alleviation and crime prevention functions. Efforts should include adjusting national income, raising the proportion of labor compensation in primary distribution, rationalizing benefit allocation structures, establishing a progressive tax system and implementing tax transfer payments to prioritize disadvantaged groups in secondary distribution. What’s more, the goverment should integrate cultural education for ex-convicts into local planning, broaden the scope of compulsory education and enhance their cultural literacy.

3.2.2 Ensuring Employment for Released Prisoners

The vast number of released prisoners accommodated by resettlement agencies nationwide makes it impractical to provide adequate employment for each individual. However, failing to facilitate their smooth reintegration into society not only disrupts their personal lives but also threatens social stability. Besides vocational training during incarceration, resettlement agencies should establish designated employment units for released prisoners or recommend suitable job placements upon their release.

3.3 Legal and Policy Optimization

Legal policies and penal enforcement models should be optimized. Amending existing regulations on the placement and rehabilitation assistance for released prisoners at the legislative level are necessary. This involves identifying gaps in existing legal principles and areas where laws are inconsistent with judicial practice, while also

conducting empirical research to evaluate the effectiveness of laws and regulations in preventing recidivism. The aim is to pinpoint the root causes of ineffective outcomes and ensure the revised regulations align with the current Constitution, Criminal Law and Criminal Procedure Law. Additionally, mechanisms for liability and related implementation measures not specifically addressed in existing laws and regulations should be elaborated upon.

4. Conclusion

Preventing recidivism not only salvages individual destinies but also strengthens the foundations of society. This systemic endeavor requires both the rigid constraints of the rule of law and the flexible support of social governance. It demands precise rehabilitation within prisons and inclusive acceptance from society. And it necessitates short-term placement assistance. Against the backdrop of advancing the modernization of Chinese governance system and capacity, the prevention of recidivism should be integrated into the broader framework of high-level rule of law development. Grounded in empirical research, this approach should drive the transformation of penal enforcement models from “containment” to “rehabilitation”, elevate social support systems from “relief-oriented” to “development-oriented” and refine legal policies from “fragmented” to “systematic”.

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