

The Weight of "S": Legal Positioning and Institutional Response of Labor Rights Protection in Chinese Corporate ESG Evaluation

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Abstract. ESG principles are reshaping the governance paradigm of China's capital market, yet the "Social" dimension faces deep-seated dilemmas in bridging statutory labor baselines with market governance expectations. Current practices tend to soften labor issues into managerial narratives such as "employee care," leading to the coexistence of fragmented indicators, formalized disclosures, and weak assurance, which restricts the institutional efficacy of ESG in preventing systemic compliance risks. This study proposes a two-tier governance model based on reflexive law theory and the new Company Law, titled 'Law as the Foundation, ESG as the Guidance.' The baseline tier translates fixed statutory obligations, such as working hours and safety, into mandatory disclosure rates. The leading tier employs soft-law to establish improvement goals, using an assurance ladder to encourage continuous improvement beyond passive compliance. We find that 'compliance greenwashing' is a major problem and that rights-based international standards must be adopted in domestic governance. This requires evaluating the substantive effectiveness of the employee representative congress system.

Keywords: ESG, labor rights, reflexive law theory

1. Introduction

Contemporary labor relations in China face a profound tension between efficiency and rights [1]. The rise of the platform economy and intensifying global competition have driven enterprises to chase the limits of labor efficiency, while issues such as the "996" working hour system and high-risk operational hazards frequently trigger public outcry and regulatory concern [2]. Traditional governance models relying on administrative inspections and judicial remedies have revealed limitations in delayed response and insufficient coverage, making the ESG mechanism an important complementary governance path.

Since April 2024, the three major stock exchanges have released Guidelines for Sustainability Reports of Listed Companies [3-5], transitioning A-share ESG disclosure into an institutionalized phase. The Administrative Measures for the Disclosure of Information of Listed Companies,

effective July 1, 2025, incorporated sustainability reports into CSRC departmental regulations for the first time. Coupled with the revised Company Law enacted on July 1, 2024, which strengthens corporate social responsibility and democratic employee participation, the "S" dimension of ESG is undergoing a critical transformation from voluntary advocacy to rule-based operations.

Yet a significant gap remains between institutional progress and actual execution. The disclosure rate of A-share ESG reports has reached approximately 46%, but only 9% of enterprises engage third-party assurance. Many disclosures remain confined to management narratives, using peripheral indicators like "training hours" to obscure core legal disputes such as working hour compliance [5], risking degeneration into compliance greenwashing [6]. This paper applies reflexive law theory to construct a two-tier governance model of "Law as the Foundation, ESG as the Guidance," exposing current institutional problems and proposing a comprehensive restructuring blueprint.

2. Regulatory foundation: a governance network of soft and hard law synergy

The regulatory construction of the social dimension in China's ESG framework exhibits a governance pattern where in capital market soft-law guidelines and national substantive hard laws are deeply intertwined. The Sustainability Reporting Guidelines issued by the stock exchanges introduce a four-dimensional disclosure framework of "governance, strategy, impact, risk and opportunity management, and metrics and targets" [7], generating a reflexive law effect through mandatory disclosure procedures that compel enterprises to establish self-regulatory compliance management systems [8-10]. Building upon this, CASS-ESG 6.0 further translates macro principles into micro indicators via a "general framework-industry-specific guidelines" path, completing the transformation from principled mandates to operational parameters [3].

Substantive labor laws and the new Company Law jointly constitute the hard-law baseline for the social dimension of ESG [2, 11, 12]. The 2021 joint release of overtime dispute cases by the Ministry of Human Resources and Social Security and the Supreme People's Court drew an inviolable red line against the "996" schedule [13]. The Company Law revised in 2023 and enacted in 2024 provides institutional interfaces across substantive obligations, procedural participation, and stakeholder consideration [14-16] and 20 establish employee protection obligations, labor interest expression channels, and corporate social responsibility scope respectively, while Articles 68 and 120 mandate employee representative directors for qualifying companies, embedding labor participation directly into board-level decision-making. The "S" dimension of ESG is thereby internalized as a statutory component of the board's duty of diligence, shaping a tripartite structure of substantive obligation, procedural guarantee, and structural embedding.

At a higher institutional level, the Basic Rules for Corporate Sustainability Disclosure Standards (Trial), jointly issued by nine departments including the Ministry of Finance in December 2024 [15], placed China's sustainability disclosure on a fast track. Together with the revised Administrative Measures coordinated by the CSRC [3, 5, 14], these form a three-tiered network of "regulations–self-regulatory rules–operational guides," achieving systemic restructuring from macro principles to micro indicators, from external compulsion to internal governance, and from dispersed rules to unified standards [17].

3. Practical reality: a comprehensive analysis of disclosure status

3.1. The surge in disclosure rates vs. the deficit in assurance rates

A-share listed companies continue to expand their sustainability information disclosure coverage. In fiscal year 2024, 2,481 A-share listed companies released sustainability reports, achieving a 46.09% disclosure rate. Mandatory reporting entities showed a notable 94.90% rate; A+H share listed companies and components of the four major indices achieved 100% disclosure. By industry, the financial sector led at 91.94%, followed by electricity, heating, gas, and water production and supply (75.69%), while the education sector was lowest (33.33%). Listed companies with state-owned backgrounds had a significantly higher disclosure rate (76.85%) than private listed companies (35.06%) [18]. Dedicated ESG reports are now the primary category for A-share listed companies, with over half of reporting entities selecting this format.

However, behind rising disclosure rates, data credibility faces serious challenges. In fiscal year 2024, only 226 A-share listed companies utilized third-party institutions to assure their sustainability reports, representing just 9.11% of disclosures [18]. The A-share market displays a sharp contrast between "high publication rates and low assurance rates." This "selective disclosure" creates skepticism about data authenticity, intensifying greenwashing risks [7]. Industry analysis exposes the clearest polarization: apparel, finance, and electrical equipment are more confident while agriculture, forestry, animal husbandry, fishery, and retail trade are without guarantee. When guaranteed, the focus of a project is usually limited to environment or marginal social information, which is a bigger problem. The asymmetry in the information architecture of transparency and accountability [14] is corroborated with the deliberate omission of critical signals like work time, overtime compensation sharing, and key occupational safety and health standards under this provision.

3.2. The threefold manifestations of "compliance greenwashing"

First, to show how this structurally contradictory impulse to obscure hard law transgressions under layers of benevolent corporate concern plays out in practice today, I will discuss how existing transparency regimes begin by digitizing basic requirements. It seems unthinkable to find quantifiable standards that cover the labor law bottom line, like "compliance ratio for working hours" or "ratio of full payment on statutory overtime wages," and in current ESG reports even though the supreme courts have clearly stated that excessive work is illegal [19]. Companies confronted with hard law restrictions on working time regularly resort to "story replacement" strategies [6], using soft language like "reengineering our shift management processes" and "promoting a positive environment which supports work-life balance" in order to provide descriptive pictures but not real result figures. It is the replacement of compliance with work hours by concern for employees that undermines ESG's governance function [20].

Second, the elastic contraction of organizational boundaries. The touchstone of ESG disclosure quality lies in how an enterprise defines its reporting boundary [21]. In the construction industry, where engineering subcontracting relations are highly convoluted, although some enterprises disclose aggregate injury rate indicators, they remain vague about whether these figures cover multiple tiers of subcontracted workers or penetrate down to the grassroots migrant labor force. Similarly, in the platform economy and labor-intensive manufacturing sectors, enterprises rely heavily on outsourcing, labor dispatch, or "incomplete labor relations" to sustain operations, thereby excluding the very workers who generate core value from the protective scope of ESG reports [22].

This boundary contraction is not merely a technical flaw in statistical methodology but a typical manifestation of enterprises utilizing corporate organizational forms to sever legal liabilities and evade labor costs within the ESG arena [23].

Third, the procedural hollowing out of assurance mechanisms. An assurance coverage rate of less than ten percent, combined with superficial audits that avoid core issues, leaves the entire ESG disclosure ecosystem devoid of underlying evidentiary support and countervailing checks. When unverified data becomes the norm, fabricating labor harmony and doctoring working hour statistics carry no substantive legal consequences [18]. If social dimension data cannot enter the courtroom to serve as valid grounds for the inversion of the burden of proof, its legitimacy as a cornerstone for guiding long-term capital allocation and evaluating systemic corporate risks will inevitably collapse.

3.3. The translation dilemmas of international standards

On the international front, the GRI is accelerating a comprehensive overhaul of its labor-related topic standards. In December 2025, the GRI released four exposure drafts: Labor Rights in Business Relationships, Freedom of Association and Collective Bargaining, Forced Labor, and Child Labor, extending labor management and impact assessment across broader value chains and demanding more granular disclosures [24]. Among them, the GRI 407 exposure draft imposes more rigorous substantive mandates on freedom of association and the right to collective bargaining, requiring enterprises to explain whether workers face legal or practical impediments to exercising these rights across different jurisdictions, and whether the enterprise directly or indirectly interferes with workers organizing trade unions or engaging in collective bargaining [25, 26].

Nevertheless, these rights-based indicators from international standards face notable friction when aligning with China's domestic legal infrastructure. As of 2025, China has not ratified the two core ILO conventions concerning freedom of association and the effective recognition of the right to collective bargaining—namely, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) [27]. This institutional divergence means that blindly copy-pasting GRI's rights-based indicators lacks a domestic statutory foundation and presents reporting entities with a dual dilemma: disclosing legal impediments could trigger immediate regulatory compliance risks, while completely omitting them violates the principle of materiality [23]. The crux of the issue is not that China lacks institutional channels for collective expression, but rather that current ESG disclosure frameworks have failed to activate local mechanisms, such as employee representative congresses and employee directors. Therefore, the viable path to reconciling the tension between international standards and local systems is not to evade rights-based topics, but to achieve functional equivalence through procedural embedding: integrating employee representative participation deeply into pivotal governance flows—such as working hour formulations, safety budget approvals, annual target settings, and grievance redresses—and gradually transitioning to rigid, substantive metrics as the institutional framework matures [19].

4. Jurisprudential structure of the two-tier governance model

4.1. Theoretical origins and model architecture

Contemporary governance paradigms have undergone profound transformations, a shift that may be characterized through the reflexive principle advanced by Teubner [3]. This principle elucidates that governments no longer issue targeted directives or conduct direct interventions against discrete

conducts; instead, they predominantly supply procedural rules, institutional mechanisms and informational frameworks to enable societal self-regulation and self-reflection [15]. This delivers a critical implication when translating such reasoning into the ESG context: exhaustive, granular protective measures need not be mandated for every individual labour right. Instead, instruments including transparent information disclosure, internal control systems and third-party assurance may be deployed to prompt enterprises to identify, assess and refine their internal labour management practices autonomously [14].

From a jurisprudential perspective, the ESG evaluation mechanism bears distinctive features, encompassing both binding legal obligations and flexible legal incentives, whereas workplace supervision adheres to a rigid command-and-control model. By contrast, the supervisory logic embedded within ESG functions as an underlying regulatory layer. It does not supplant corporate discretionary judgment, but imposes two core requirements on firms: first, to articulate the rationales and benchmark standards underlying their internal judgments; second, to establish effective internal control regimes. In this sense, ESG constitutes an alternative regulatory pathway for compliance enforcement. It constructs a subsidiary governance channel mediated by financial markets, which relies on information disclosure and shifting investor preferences to amplify the enforcement capacity of conventional regulatory instruments.

Drawing upon the foregoing normative legal principles, this study constructs a dual framework integrating rule of law and ESG. The primary tier consists of binding legal constraints, represented by highly enforceable provisions laid down in the Labour Law and the Social Insurance Law. Mandatory binding standards covering wage levels, working hours and social insurance are translated into mandatory disclosure intensity metrics within the ESG architecture. Such translation renders the economic costs of illegal conduct, as well as resultant valuation discounts and financing constraints, visible to market participants [27]. The advanced tier centres on improvement-oriented indicators whose impacts stem from capital market pricing mechanisms and corporate reputational effects [13, 23, 28]. Verification within this tier proceeds in a progressive manner, evolving from preliminary verification to reasonable verification.

4.2. Stratified indicator system: regulatory structure of the baseline and leading tiers

First, indicators of the dual governance mechanism are classified according to the nature and functions of rule of law, so as to build an indicator system with hierarchical and sector-specific features oriented to laborers.

The basic tier covers the most fundamental indicators that are easiest to implement, easiest to measure and equipped with standardized baselines. Examples include workers working within statutory working hours with corresponding overtime wages paid; verifiable occupational injury and fatality cases counted on the basis of one million working hours or one million kilometers; the contribution ratio of social insurance and the contract signing rate; safety standards of multiple procedures such as complaint resolution speed. The above baseline elements shall be solidified into a mandatory disclosure checklist. On this basis, they can serve as the baseline for digital compliance and be directly cited as evidence in supervision, administration and judicial judgments. Any acts violating the standards of this tier shall receive definite responses stipulated by law, including administrative penalties, civil liabilities or capital market sanctions.

The management tier refers to a set of indicators centering on long-term corporate value objectives and measurable against given contextual conditions [28], such as P90 (90th percentile overtime volume), accident frequency rate, High Engagement Efficiency Score, contractor safety ratio and contractor compliance grade [23, 25]. Compliance with legal provisions alone does not

serve as the measurement benchmark for these indicators, which place greater emphasis on a continuous improvement corporate culture. Their binding force is determined by capital market valuation and corporate reputation [6]. Incremental guarantee schemes can boost the performance of such indicators, and offer enterprises a special channel to transcend minimum legal requirements and demonstrate outstanding management capabilities—this constitutes the primary mode of ESG-driven obligations [21].

4.3. Role allocation of functional entities

The success of such a two-level government system relies on clearly defining the role that each actor plays in this ESG ecosystem [16, 24].

The use of baseline tier indicators for high efficiency screens and cause-based research must be a priority of regulators, stock exchanges and while also incorporating top tier performance results in an ordered disclosure assessment grid for the development of separate policy approaches [19]. Members of boards of companies need strongly connect two layered indices with planning budgets and salaries for executives: lower limits of value should be given power of "single vote rejection" in order that the income necessary to maintain remained undisturbed, and leading indicators need to emphasize continual improvement in order to drive continuous government performance enhancements. Baseline tier data may be used by employee representatives and trade unionists to substantiate their claims for protection, and top-tier parameters should be used to negotiate collectively thereby rendering articulation and fulfillment of workers' interests more predictable. Investors and ratings agencies must see baseline metrics as critical tools of risk assessment, while leading indicators are vital compasses toward future value discovery, thus integrating compliance risk as well as value creation with the investments decision [28]. It would be important for auditors that the auditing process at this lower level were standardized, so they could have confidence in verifying end-of-year figures: while context-dependent methods have to be developed for the first level because of its qualitative and dynamic character.

4.4. Three dimensions of institutional embedding

The incorporation of governance, data and assurance in the two tier governance model requires a shift from regulatory requirements to real corporate governance practice.

Including labour-related KPIs on the annual agenda of the Board of Directors and in special committee reports and including a clause about safety performances in the supplier management is required in government. A direct route has been opened up by article 68 of the new Company Law, which introduces a regime for employee directors [18]. Under this arrangement, employee directors can also vote on matters that require participation and input from workers including work schedules and approval of occupational health expenditures; setting annual goals, and resolving complaints. It turns employees from mere subjects to managers into active agents who play a role in corporate stewardship. standardization of simple statistics (e.g., man-hours, working hours, and million hours worked) by companies; also clarify the demarcation lines between various forms of work (outsourcing, labor dispatch, subcontracting). To enforce such a dual reporting matrix of stratified and consolidated disclosure, we suggest that the regulator ask firms for reporting on two different sets of numbers: those that pertain to only firm-own workers versus those pertaining to contractors as well [22]. Such an arrangement would not permit firms to manipulate through altering organisational boundaries, ensuring that the data released are comprehensive and consistent with one another. A clear timetable is required for the phased move towards reasonable assurance for base line

indicators, working time and occupational health and safety indicators of dangerous occupations, for assurance. At the same time, it is necessary to accelerate the establishment of third-party ESG assurance standard systems. A four-point chain-of-custody consisting of source documents, digital trails, internal control points, and audit working papers should also be covered by the assurance ecosystem so that people, production safety, and finance are all linked directly [28].

5. Implementation pathways for sector-specific classification governance

The validity of the two-tier governance model must ultimately be tested across differentiated industry scenarios. The construction sector and instant delivery platforms represent the two poles of traditional high-risk physical industries and emerging platform economies, respectively. Their fundamental divergences in production organization, labor relations, and risk generation mechanisms necessitate customized governance designs to validate the explanatory power and adaptability of the model.

5.1. The construction industry: risk penetration and accountability anchoring

The suitability for testing the effectiveness of two-tier governance system [18] in the construction industry is high because it has a nature that projects based on a multi-tiers subcontracting structure. The commercial chain runs from general contractor down to labor subcontractor and can be extremely long. Frequent moving from one region to another, extensive use of transient workers, and large-scale accidents like falls, lifting injuries, falls, building collapse are all factors of risk for operations [27, 29]. Additionally, a tiered subcontracting system separates the formal legal entity from the productive unit. With safety accountability diluted, operational risks get passed down and legal liabilities are avoided by the top companies. Therefore, that government's fundamental obligation must be that there is an intense spread of risk and irrevocability of liability .

First, this system standardizes metrics and sets clear parameters for reporting to establish a baseline. In OHS, injuries and deaths are to be reported in terms of per million hours, which means employers will have to report separate figures for employees and contractors (and separately) [30]. The layered sample designs used to monitor compliance at the project level, including detailed dissections of holidays and nights to detect potential vulnerabilities on high-production days [2], serve as a preventive mechanism for firms to not change organisational borders in order to hide information.

The objective of developing the level-one indicators is to shift company management away from being reactive (i.e., punishing after an accident) toward becoming more proactive and process-based. Level one incorporates more process-based indicators, for example, close call rates and safety walk participation rates based on behaviors. The accident incidence rate (tracking potentially dangerous exposures that did not result in a personal injury) versus the safety audit rate, which measures the extent to which front-line workers are involved in safety management. A contractor safety performance coefficient for evaluating the subcontractors by their total accident rate, safety inspection correction times, and training compliance rates. The program ties those scores to bid eligibility and exclusion rules for subcontractors, thus forming a market-driven safety management loop through the supply chain [18].

Organizations should have in place a three-level responsibility structure, connecting the board, the project manager and crew, to govern the embedding of every year. The board would have to consider four basic indicators: fatality rate, disabling injury rate, working hour compliance rate, and contractor safety performance coefficient [18]. Automatic executive pay bonus vetoes for fatal

accidents shift safety accountability away from the construction worksite and toward top corporate executives.

5.2. Instant delivery platforms: normative restructuring of algorithmic governance

The instant delivery industry, as one of the most important parts of the platform economy, directly challenges the conventional system for labor regulations because of its three-tier architecture of platform, partner and rider [18]. The main issue in that industry is its extremely ambiguous labour relations: depending on who you ask, delivery drivers are either employees or not. service providers, and independent contractors. Optimized algorithms tightly control tasks, assignments, timetables, and delivery sites. Outmoded work-time-based worker protection norms required that novel regulatory indicators, business accounting procedures be developed in order to address the long-hour culture and other related hazards. In order to comply with this requirement, baseline metrics would have to be modified in order to incorporate labor hours and worker protection considerations. A company may use such a task-duration calibration model to evaluate its effective hourly wage guarantee rate and minimum payment compliance rate [29] regarding labor payment, which are weighted by order-waiting times, transit times, and exogenous shocks like bad weather or night shifts. It exposes implicit costs of algorithms which can prevent misleading revelations such as the case when a nominal per order pay rate is satisfactory while in reality the hourly wage remains woefully inadequate. For safety, accidents should be tracked in terms of the same measure: million kilometers ridden because riders' risk is proportional to distance ridden. To build an extremely prominent safety net, platforms need to publish the scope of their insurance offerings as well as the speed and frequency with which claims are denied or settled. The design of first-tier signals focuses on granular measures amenable to algorithmization. A threshold trigger rate of fatigue is set up in order to check whether or not the rider exceeds the limit of safe working time, number of consecutive orders, and changes under extreme events. We calculate the 90th percentile of task-load distribution to identify which workload has the highest intensity during the peak pressure period, thus showing whether the algorithms are overworking delivery workers under high pressure [24].

A multi-stakeholder algorithmic governance board composed of independent directors, labor law and algorithms experts external to the firm, and riders' representatives to conduct a review-before penalty protocol for significant changes in rider-algorithm rules is the core component of corporate governance implementation. The committee should carefully review the changes in algorithms prior to implementing penalties: thus requiring a pretrial procedure. Four departments, including the Ministry of Human Resources and Social Security, have jointly issued Guidelines for Platform Labor Rules and Algorithm Negotiation (Trial), which set the stage with legal authority for such an approach. These rules specifically require platforms to engage in consultation regarding labor standards, as well as the algorithms affecting workers, thus offering the direct regulatory base. We provide an operational semantics of such a control regime [26, 30].

6. Conclusion

The threefold predicament of ambiguous indicators, standard friction, and fragile assurance within the social dimension of China's ESG framework is a structural product of lagging institutional supply, internal compliance games, weak market pricing, and deficient methodological support acting in combination. Solving this impasse requires identifying low-friction, high-efficacy institutional interfaces within existing regulatory assets to achieve a paradigm shift from fragmented reactions to systemic governance.

At the jurisprudential level, the baseline tier translates statutory mandates of the Labor Law, Production Safety Law, and Social Insurance Law into disclosable, comparable, and verifiable risk information—including working hour compliance rates, overtime compensation rates, occupational health and safety values, and grievance resolution efficiency. Any false statements or material omissions trigger securities disclosure liabilities and exchange disciplinary procedures, forming a clear hard-soft law interface. The leading tier concentrates on improvement-oriented indicators like overtime concentration (P90) and near-miss rates, utilizing a progressive assurance path of "limited assurance to reasonable assurance" to gradually harden constraints.

At the level of standard alignment and verification, functional equivalence with global frameworks is achieved through procedural embedding—integrating employee representative participation into governance flows such as working hour formulations and safety budget approvals, for which the employee director system in the new Company Law provides an immediate legal channel. This must be underpinned by a four-point custody model of "source records—digital footprints—internal control nodes—audit working papers," with baseline tier indicators subject to mandatory limited assurance and high-risk sector parameters upgraded to reasonable assurance within two to three disclosure cycles. Only when legal baselines are quantified, governance processes are logged, and data quality is verified can labor rights protection transition from a peripheral topic to the governance core of Chinese ESG practices.

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