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## Problems from the legal ambiguities of nominee shareholding agreement in China

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**Abstract:** This research critically examines the legal ambiguities surrounding nominee shareholding agreements in China, a practice increasingly prevalent within the corporate sector yet inadequately regulated under existing statutory frameworks. Relying on doctrinal legal analysis and comparative legal methods, the study identifies significant gaps in the Company Law and Civil Code, judicial inconsistencies in recognising beneficial ownership, and procedural barriers faced by anonymous shareholders. The findings reveal that while Chinese courts generally uphold nominee agreements as valid contracts, their treatment of shareholder

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qualification remains fragmented and unpredictable. Comparative analysis of the United States, United Kingdom, Germany, and Japan illustrates that balancing private autonomy with beneficial ownership transparency is feasible through targeted legislative reforms. Although China's recent regulatory developments, including the introduction of beneficial ownership reporting obligations, represent progress, substantial deficiencies persist regarding the codification and protection of beneficial ownership rights. The research concludes that comprehensive legislative reform, harmonised judicial interpretation, and integration of international best practices are essential to enhance corporate governance, promote investment confidence, and align China's corporate regulatory framework with global standards. Addressing the nominee shareholding challenges is vital for achieving greater market stability and regulatory integrity.

**Keywords:** Nominee Shareholding; Beneficial Ownership; Corporate Governance; Chinese Company Law; Legal Transparency.

## 1. Introduction

In the evolving landscape of China's socialist market economy, nominee shareholding agreements—often referred to as equity proxy holding—have become increasingly prevalent. This trend has been propelled by a combination of regulatory reforms designed to foster entrepreneurship, reduced barriers to business registration, and socio-cultural factors inherent in China's acquaintance-based business networks. As of the end of 2023, the State Administration for Market Regulation reported over 50.32 million enterprises in China, with limited liability companies accounting for approximately 60%<sup>2</sup>. However, the growing use of nominee shareholding arrangements has exposed significant legal uncertainties, particularly concerning the determination of shareholder status, the validity of proxy agreements, and the procedures for legitimizing anonymous shareholders.

The practice of equity proxy holding introduces flexibility and transactional efficiency by allowing investors to maintain anonymity for personal, regulatory, or strategic reasons. Nevertheless, it also gives rise to considerable legal risks, including regulatory evasion, unauthorized disposal of shares, abuse of shareholder rights, and difficulties in protecting creditor and third-party interests. Judicial practice reflects these tensions, with over 25,000 cases involving "equity proxy holding" recorded in China's Supreme Court database over the past decade<sup>3</sup>.

Furthermore, the inconsistent treatment of these agreements across courts—combined with contradictory provisions between statutory law and judicial interpretations—has exacerbated uncertainty, undermining the predictability and stability that the business community requires.

The central problem this research addresses is the legal ambiguity surrounding nominee shareholding agreements in China. While these agreements are often tacitly recognised under the principle of private autonomy enshrined in the Civil Code, they conflict with mandatory regulatory objectives, creating challenges in enforcement, adjudication, and the protection of legitimate interests. The absence of a cohesive legal framework for equity proxy holding leaves both nominal and anonymous shareholders vulnerable to opportunistic behavior and judicial inconsistency, thereby impairing commercial certainty and market integrity.

The objectives of this study are:

1. To critically examine the primary legal ambiguities and risks associated with nominee shareholding agreements under Chinese law.

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<sup>2</sup> National Bureau of Statistics (China). *Statistical Bulletin of the National Economic and Social Development of the People's Republic of China in 2023*. 2024. Available at: [https://www.stats.gov.cn/sj/zxfb/202402/t20240228\\_1947915.html](https://www.stats.gov.cn/sj/zxfb/202402/t20240228_1947915.html)

<sup>3</sup> HE, J. "The protection of the rights and interests of the actual investors in the equity proxy holding", *Academic Journal of Management and Social Sciences*, V. 8, n<sup>o</sup> 1, 2024, p.143–151. <https://doi.org/10.54097/vzf24677>

2. To analyse how Chinese courts have approached the adjudication of disputes arising from nominee shareholding agreements.

3. To compare China's regulatory treatment of nominee shareholding with international practices—particularly in jurisdictions such as the United States, the United Kingdom, Germany, and Japan—in order to propose potential reforms.

The research is guided by the following questions:

1. How are nominee shareholding agreements currently regulated under Chinese law, and what are the principal legal ambiguities?

2. What risks do such agreements pose for investors, companies, creditors, and the broader market?

3. What lessons can be drawn from international regulatory models to inform the development of China's legal framework on nominee shareholding?

By addressing these questions, this paper seeks to contribute to the academic debate and provide pragmatic recommendations for policymakers aiming to harmonise private autonomy with regulatory objectives, thereby fostering a healthier and more predictable commercial environment in China.

## **2. Literature review**

### **2.1. Introduction to nominee shareholding agreements**

Nominee shareholding agreements, commonly referred to as equity proxy holding arrangements, are prevalent investment structures within China's corporate sector. Under such agreements, a nominal shareholder holds legal title to the shares on behalf of an anonymous (or beneficial) shareholder, who retains the actual economic interest and decision-making authority<sup>4</sup>. In this relationship, the nominal shareholder appears on the shareholder register and in corporate filings, while the anonymous shareholder contributes capital and exercises shareholder rights indirectly, often through private contractual arrangements<sup>5</sup>. Although the relationship bears resemblance to traditional trust or agency models, it introduces unique legal complexities in the Chinese context due to the strict emphasis on registration formalities under the Company Law.

Several practical motivations underpin the widespread use of equity proxy holding in China. Regulatory considerations include circumventing restrictions on shareholder identity, quantity limitations, or sector-specific foreign investment controls. Strategic factors involve preserving confidentiality in competitive industries<sup>6</sup>. Cultural dynamics, particularly China's reliance on acquaintance-based networks, foster informal trust relationships that encourage proxy arrangements. Financial motivations also play a role, such as gaining access to preferential tax treatments or entrepreneurial support programmes reserved for certain individuals or enterprises. While equity proxy holding offers flexibility, it simultaneously introduces considerable legal uncertainties, thereby necessitating closer scholarly and judicial attention.

### **2.2. Legal ambiguities and risks under Chinese law**

Despite the prevalence of nominee shareholding arrangements in China, there remains a lack of a clear and cohesive statutory framework governing their

<sup>4</sup> LI, J. "Comparative analysis on the legal system of shareholding between China and foreign countries", *Lecture Notes in Education Psychology and Public Media*, V. 9, n° 1, 2023, p. 164–169. <https://doi.org/10.54254/2753-7048/9/20230129>

<sup>5</sup> RICKY, C.; SUGIANTO, F.; MARETTA, Y. "Comparative analysis on the validity of nominee agreement on the ownership of shares between Indonesia and Singapore", *International Journal of Law in Changing World*, V. 3, n° 2, 2024, p. 53–76. <https://doi.org/10.54934/ijlcw.v3i2.104>

<sup>6</sup> TANG, H.; HOU, D. "Research on legal issues of Chinese Equity holding." In: *Proceedings of the 1st International Symposium on Innovative Management and Economics (ISIME 2021)*, 2021, p. 74–79. <https://doi.org/10.2991/aebmr.k.210803.012>

legal status. The Company Law and the Civil Code of the People's Republic of China do not explicitly regulate equity proxy holding, resulting in significant legal gaps<sup>7</sup>. Although judicial interpretations, such as the Supreme People's Court's Company Law Interpretation III, acknowledge the validity of nominee agreements under general contract principles, they fail to provide a systematic approach for resolving disputes concerning shareholder qualification, capital contribution, or the exercise of shareholder rights<sup>8</sup>.

Judicial inconsistencies and contradictory interpretations further exacerbate the uncertainty. While the formal shareholder registered with the Administration for Market Regulation is recognised as the lawful owner under company law, courts have at times allowed beneficial owners to assert shareholder rights based on private nominee agreements<sup>9</sup>. This contradiction between the formalism of shareholder registration and substantive actual control leads to unpredictable judicial outcomes, undermining commercial certainty.

Nominee structures also create considerable risks, including evasion of regulatory controls such as foreign investment restrictions, abuse of shareholder rights by nominal holders acting without the beneficial owner's consent, and difficulties in enforcing shareholder rights when disputes arise<sup>10</sup>. Beneficial owners often find themselves unable to directly exercise voting rights, inspect company records, or protect their investments without relying entirely on the nominee's cooperation.

Another critical issue concerns the validity of nominee agreements, particularly where they conflict with mandatory laws or administrative regulations. Courts may declare such agreements invalid if they are used to circumvent sectoral restrictions or other legal prohibitions, leaving beneficial owners with limited remedies, typically restricted to contractual damages rather than restitution of shares<sup>11</sup>.

Finally, nominee arrangements pose risks to third parties, including creditors and bona fide purchasers. Third parties dealing in good faith with the registered shareholder may acquire rights free from the hidden beneficial interests, thereby prejudicing the anonymous shareholder's position<sup>12</sup>. Consequently, the absence of explicit statutory recognition of nominee arrangements generates legal ambiguities that expose all parties—investors, companies, creditors—to significant and often uncontrollable risks.

### 2.3. Judicial treatment of nominee shareholding agreements in China

The judicial treatment of nominee shareholding agreements in China reflects a complex interplay between private autonomy and public regulatory principles. Recognition of nominee agreements in court practice has generally followed the

<sup>7</sup> NADIA, S. "The validity of sale and purchase of shares in relation to nominee share ownership (A case study of decision Number 3041K/PDT/2020 and 765PK/PDT/2020)", *Jurnal Bina Mulia Hukum*, V. 8, n<sup>o</sup> 2, 2024, p. 227–240. <https://doi.org/10.23920/jbmh.v8i2.1487>

<sup>8</sup> GAMAITARAK, C. G.; ELVI, C.; BORGAS, P. B. "Nominee shareholder position in Indonesian positive law", *Jurnal Ilmiah Advokasi*, V. 12, n<sup>o</sup> 1, 2024, p. 68–78. <https://doi.org/10.36987/jiad.v12i1.5618>

<sup>9</sup> IVANA, I. "Metode nominee agreement saham pada bidang usaha bersyarat di Indonesia", *Legal Spirit*, V. 7, n<sup>o</sup> 2, 2023, p. 383–392. <https://doi.org/10.31328/lis.v7i2.5026>

<sup>10</sup> ANGGRENI, N. M. G.; NYOMAN, S. D. "Akibat Hukum Pemegang Komparisi Nominee Atas Beneficial Owner Saham Dalam Perseroan Terbatas", *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, V. 11, n<sup>o</sup> 4, 2022, p. 817. <https://doi.org/10.24843/jmhu.2022.v11.i04.p08>

<sup>11</sup> SUPARJI, S. "Politics of legal in nominee agreement and its practice in Indonesia", *Journal of Advanced Research in Law and Economics*, V. 11, n<sup>o</sup> 1, 2020, p. 196–202. [https://doi.org/10.14505/jarle.v11.1\(47\).23](https://doi.org/10.14505/jarle.v11.1(47).23)

<sup>12</sup> TANG, H.; HOU, D. "Research on legal issues of Chinese Equity holding." In: *Proceedings of the 1st International Symposium on Innovative Management and Economics (ISIME 2021)*, 2021, p. 74–79. <https://doi.org/10.2991/aebmr.k.210803.012>

principle that private contracts are valid unless they violate mandatory provisions of law or administrative regulations. Judicial interpretations, particularly the Company Law Interpretation III and the Foreign Investment Dispute Provisions, affirm that nominee agreements should be upheld as long as they do not circumvent public policies or sector-specific restrictions<sup>13</sup>. However, divergences in judicial reasoning have emerged across different cases and courts, particularly where nominee arrangements are used to bypass foreign investment prohibitions or evade legal compliance.

The determination of shareholder status presents a persistent dilemma between formalism and substantive control. Chinese company law prioritizes the registration system, granting shareholder rights only to those listed in the official register. Nonetheless, courts have occasionally recognised the rights of anonymous shareholders based on nominee agreements, leading to inconsistencies<sup>14</sup>. While some decisions protect the reliance interests of third parties by upholding registered shareholders' legal standing, others permit beneficial owners to assert shareholder claims through contractual enforcement, thereby blurring the distinction between legal and equitable ownership<sup>15</sup>.

Naming procedures and shareholder qualification challenges further complicate the judicial landscape. When anonymous shareholders seek to formalize their status, courts often apply stringent conditions, such as requiring the consent of other shareholders and verifying the legitimacy of capital contributions. The procedural uncertainties in recognising hidden shareholders frequently result in prolonged disputes and unpredictability.

A notable illustration is the case of Shanghai Baopei Investment Co., Ltd. v. Yurun Holding Group Co., Ltd., where courts debated the validity of nominee agreements against administrative regulatory frameworks<sup>16</sup>. The case highlighted judicial hesitation to invalidate nominee contracts solely based on breaches of administrative rules, yet it also underscored the risk of contracts being nullified if regulatory evasion is clear.

The impact of inconsistent judicial practices significantly undermines commercial certainty, discourages investment confidence, and complicates corporate governance. Without uniform standards, the adjudication of nominee shareholding disputes remains fragmented, leaving both nominal and beneficial shareholders exposed to unpredictable legal outcomes.

#### **2.4. Comparative perspectives: international approaches**

A comparative analysis of international jurisdictions reveals diverse approaches to regulating nominee shareholding arrangements, each offering instructive lessons for China's evolving legal framework. In the United States, corporate law, particularly in states like Delaware, allows considerable company constitution flexibility, respecting private arrangements between beneficial owners and nominees<sup>17</sup>. Nominee shareholding is legally permitted, and beneficial owners

<sup>13</sup> PUTRI, T. M.; SALIM, H. S.; DJUMARDIN. "Nominee agreements in the sale and purchase of proprietary land by foreign citizens (Analysis of the Supreme Court Decision Number 50PK / PDT / 2016)", *Journal of Law, Policy and Globalization*, V. 112, 2021, p.68-77. <https://doi.org/10.7176/jlpg/112-09>

<sup>14</sup> LIU, E.; YI, L.; PENG, W.; WANG, S. "Judicial independence, local protectionism, and economic integration: Evidence from China", Working Paper NO. 2022-120, 2022. <https://doi.org/10.2139/ssrn.4205091>

<sup>15</sup> FU, Q. "Strengthening judicial protection of minority shareholders through the China securities investor services center: The Chinese approach", *China: An International Journal*, V. 22, n° 3, 2024, p. 115-145. <https://doi.org/10.56159/chn.2024.a936311>

<sup>16</sup> CHOKPRAJAKCHAT, S. "Disguised foreign controlled companies and the facilitation of transnational criminal activities in Thailand", *International Journal of Criminology and Sociology*, V. 10, 2021, p. 1075-1087. <https://doi.org/10.6000/1929-4409.2021.10.126>

<sup>17</sup> HAQ, M.; SHAMS, P.; CARLOS, F. M.; GERALD, J. L. "Institutional Investors' Horizons and Bank Transparency", *Journal of Business Finance & Accounting*, V. 51, n° 5-6, 2023, p. 1378-1407. <https://doi.org/10.1111/jbfa.12749>



often retain voting rights and access to corporate information through trust or agency arrangements. However, recent regulatory developments, such as the Corporate Transparency Act (2020), require many entities to disclose beneficial ownership to federal authorities, reflecting a trend toward greater transparency without prohibiting private nominee structures<sup>18</sup>.

In the United Kingdom, nominee shareholding is similarly recognised and operates through an agency model for undisclosed principals. Nominees act as registered holders while the beneficial owner retains equitable rights. English law grants beneficial owners certain rights to intervene, especially where express or implied terms allow it. Moreover, the United Kingdom's Persons with Significant Control (PSC) regime mandates disclosure of ultimate beneficial owners, ensuring transparency for regulators and counterparties while preserving the operational role of nominees.

Germany adopts a stricter approach grounded in the commercial appearance principle<sup>19</sup>. Under the German Limited Liability Company Law and Stock Corporation Act, shareholder status is closely tied to registration and notarization requirements. Only those registered are legally recognised as shareholders, and changes in ownership must be officially recorded. Nevertheless, German transparency regulations under the Money Laundering Act compel disclosure of beneficial owners in the Transparency Register, thereby reconciling formalistic shareholder recognition with regulatory transparency demands.

In Japan, nominee arrangements are permitted, particularly for operational convenience among foreign investors. However, restrictions on share transfers exist, especially in non-listed companies where shareholder approval is often required<sup>20</sup>. Although beneficial ownership need not be disclosed publicly unless significant thresholds (such as a 5% holding) are crossed, ongoing reforms aim to strengthen disclosure requirements, moving closer to models seen in the UK and EU.

From these comparative perspectives, important lessons emerge. Successful systems balance internal flexibility, allowing private arrangements between investors—with external formality—ensuring transparency and protecting third-party reliance through registration or disclosure mechanisms. These models suggest that China, while respecting private autonomy in nominee agreements, should enhance procedural clarity and introduce limited disclosure requirements to safeguard corporate integrity without unduly burdening legitimate commercial practices.

## 2.5. Literature gap

Although considerable scholarly attention has been devoted to the phenomenon of nominee shareholding in China, a clear literature gap persists in systematically addressing the intersection between private autonomy and public regulatory frameworks. Existing studies primarily focus on the contractual validity of nominee agreements without fully exploring the contradictions between registration formalism and substantive shareholder rights. Moreover, judicial analyses often lack consistency, and there remains insufficient comparative research evaluating China's approach against established international models. There is also a notable absence of comprehensive discussions on the procedural challenges surrounding the legitimisation of anonymous shareholders and the risks faced by third parties. Current scholarship has yet to offer coherent proposals for legislative reform that balance flexibility with transparency. This research seeks to

<sup>18</sup> XIE, W. "Information disclosure transparency and shareholder wealth: Based on textual analysis", *Finance Research Letters*, V. 66, 2024. <https://doi.org/10.1016/j.frl.2024.105650>

<sup>19</sup> HARDMAN, J. "The butterfly effect: Theoretical implications of an apparently minor corporate transparency proposal", *Common Law World Review*, V. 50, n° 4, 2021, p. 180–197. <https://doi.org/10.1177/14737795211037701>

<sup>20</sup> AMAN, H.; WENDY, B.; PHILIP, B. "Corporate governance and transparency in Japan", *The International Journal of Accou.*, V. 56, n° 01, 2021, p. 2150003. <https://doi.org/10.1142/s1094406021500037>

bridge these gaps by providing a doctrinal critique, comparative insights, and reform-oriented recommendations to better regulate nominee shareholding arrangements in China's evolving corporate legal landscape.

### **3. Research methodology**

#### **3.1. Research design**

This research employs a qualitative doctrinal legal research methodology complemented by a comparative legal analysis approach<sup>21</sup>. The doctrinal method focuses on analysing legal rules, statutory frameworks, judicial interpretations, and case law concerning nominee shareholding arrangements in China. It aims to critically evaluate the coherence, consistency, and sufficiency of the existing legal framework. The comparative dimension broadens the analysis by juxtaposing China's regulatory and judicial approaches with those of selected international jurisdictions, facilitating the identification of potential reforms.

This design is appropriate given the research's focus on legal ambiguities, judicial interpretation, and the development of policy recommendations rather than empirical measurement of stakeholder perceptions or statistical analysis.

#### **3.2. Data sources**

##### **3.2.1. Primary sources**

The primary legal sources for this study—including the Company Law of the People's Republic of China, the Civil Code, and judicial interpretations such as Company Law Interpretation III and the Foreign Investment Dispute Provisions—were obtained through systematic access to publicly available and authoritative legal databases. Specifically, Chinese statutory laws and judicial interpretations were retrieved from the following official and academic repositories:

1. Pkulaw (北大法宝): An official Chinese legal database offering up-to-date statutes and judicial interpretations.
2. China Judgments Online (中国裁判文书网): The official online portal of the Supreme People's Court, used to access case law, including the landmark case *Shanghai Baopei Investment Co., Ltd. v. Yurun Holding Group Co., Ltd.*
3. AsianLII and official government sites such as the Ministry of Justice of the PRC and the State Administration for Market Regulation for regulatory texts.
4. Where English translations were necessary, validated bilingual sources and legally certified translations were obtained from LexisNexis, Westlaw China, and other recognised international legal research databases.

No direct human subjects or institutional access was required, as these sources are publicly accessible and widely used in legal research.

##### **3.2.2. Secondary sources**

Secondary data was gathered through comprehensive library research and academic database searches. Key resources included:

1. HeinOnline, JSTOR, SpringerLink, and SSRN, accessed through university library subscriptions.
2. Peer-reviewed journals in the fields of corporate and comparative law, particularly those indexed in Scopus and Web of Science.
3. Legal commentaries and policy briefs by reputable law firms (e.g., King & Wood Mallesons, Troutman Pepper) and international bodies (e.g., FATF, UNCTAD, OECD, FinCEN).

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<sup>21</sup> HUTCHINSON, T.; NIGEL, D. "Defining and describing what we do: Doctrinal legal research", *Deakin Law Review*, V. 17, n° 1, 2012. <https://doi.org/10.21153/dlr2012vol17no1art70>

4. All documents were selected based on their credibility, publication date (2018–2025), and relevance to the research objectives.

These materials were accessed using structured search queries combining keywords such as “nominee shareholding,” “beneficial ownership,” “China,” “company law,” and “transparency,” with Boolean operators and filtering for recency and peer-review status. No personal interviews or informal documents were used; all sources were verifiable and cited accordingly.

### **3.3. Comparative jurisdictional analysis**

To enrich the doctrinal analysis, this study undertakes a comparative evaluation of legal systems that have established regulatory approaches to nominee shareholding. The jurisdictions selected are:

- United States: Analysis of flexible company law practices, the role of nominee shareholders under Delaware law, and the impact of the Corporate Transparency Act (2020) on beneficial ownership disclosure.
- United Kingdom: Examination of the agency model for undisclosed principals, beneficial ownership disclosure through the Persons with Significant Control (PSC) register, and the practical role of nominee shareholders.
- Germany: Study of the strict adherence to the commercial appearance principle, requirements for notarisation of share transfers, and mandatory registration of beneficial ownership under anti-money laundering legislation.
- Japan: Investigation of the treatment of nominee arrangements, shareholder approval mechanisms for transfers, and reforms enhancing transparency obligations.

By comparing China’s system to these jurisdictions, the research identifies best practices and evaluates their applicability in the Chinese context.

### **3.4. Analytical approach**

The research adopts a problem-oriented interpretive analysis. Rather than conducting fieldwork or empirical surveys, the study critically engages with legal texts, judicial decisions, and doctrinal scholarship to:

- Identify doctrinal inconsistencies within Chinese company law and judicial interpretation concerning nominee shareholding.
- Analyse practical challenges in protecting shareholder rights and ensuring corporate transparency.
- Evaluate policy tensions between facilitating flexible investment structures and maintaining robust regulatory oversight.

Through careful synthesis and evaluation, the research proposes practical legislative and policy reforms aimed at improving the legal treatment of nominee shareholding arrangements in China.

### **3.5. Limitations of the methodology**

While the chosen methodology is appropriate for a legal doctrinal and policy-oriented study, several limitations must be acknowledged:

1. Absence of empirical data: The research does not include interviews, surveys, or case studies involving practitioners, regulators, or investors, which might have provided richer insights into how nominee shareholding operates in practice.
2. Jurisdictional focus: The comparative analysis is limited to four jurisdictions and may not capture emerging practices in other influential systems such as Singapore or Hong Kong, which also have sophisticated corporate governance structures.
3. Language constraint: Although efforts have been made to access English-language translations of Chinese laws and judicial interpretations, some



nuances of judicial reasoning and scholarly debate in Chinese-language sources may not be fully reflected.

4. Dynamic regulatory environment: Corporate governance and transparency regulations are rapidly evolving, particularly in areas like anti-money laundering and foreign investment control. Some findings may become outdated as reforms are implemented.

Despite these limitations, the methodological approach ensures a rigorous and contextually relevant analysis, offering valuable insights into the legal challenges and potential reforms concerning nominee shareholding agreements in China.

## **4. Findings**

### **4.1. Introduction**

The primary aim of this research is to critically examine the legal ambiguities surrounding nominee shareholding agreements under Chinese law, analyse judicial treatment and practical risks, and compare China's regulatory approach with international practices to propose reforms. The findings are structured in a logical sequence that reflects the methodological framework adopted. The first part of the findings addresses China's domestic legal issues, focusing on statutory gaps, judicial inconsistencies, and the practical risks arising from nominee structures. The second part explores comparative insights from the United States, the United Kingdom, Germany, and Japan, highlighting best practices regarding beneficial ownership transparency and nominee regulation. This structure ensures a comprehensive evaluation of the challenges and potential improvements to China's nominee shareholding framework.

### **4.2. Legal ambiguities in Chinese law on nominee shareholding**

One of the principal findings of this study is the absence of an explicit legal definition or systematic regulation of nominee shareholding agreements in China's Company Law and Civil Code<sup>22</sup>. Neither legislative framework formally acknowledges nominee arrangements; instead, such agreements are implicitly treated as private contracts or trust-like relationships. As a result, nominee shareholding structures operate within a doctrinal vacuum, relying heavily on general contract law principles for enforcement. The Supreme People's Court's Company Law Interpretation III (2011) provides limited guidance, recognising that nominee agreements are binding and enforceable unless they contravene mandatory legal provisions (Article 24)<sup>23</sup>. However, the law does not elaborate on the rights, obligations, or protections specific to beneficial owners within corporate governance structures.

This legal ambiguity has led to conflicting judicial treatment across different courts and cases. While Chinese courts generally uphold the validity of nominee contracts in the absence of illegality, their recognition of shareholder status remains inconsistent<sup>24</sup>. Formalism dominates when third-party interests are at stake: courts have repeatedly ruled that only the registered shareholder recorded in the corporate register possesses enforceable rights against the company and third

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<sup>22</sup> CBL. *Nominee shareholders*. 30 Dec. 2024. Available at: <https://cbltranslations.com/en-us/china-law/concepts/nominee-shareholders/>

<sup>23</sup> CBL. *Nominee shareholders in China bring numerous legal risks*. 8 May 2025. Available at: <https://cbltranslations.com/en-us/china-law/foreign-investment/nominee-shareholders-risks-explained/>

<sup>24</sup> XIONG, B.; MATEJA, D. *The enforcement of mandatory rules against illegal contracts*. 2015. Available at: <https://blog.uni-koeln.de/eclrhub/2022/06/24/the-enforcement-of-mandatory-rules-against-illegal-contracts/>

parties<sup>25</sup>. Consequently, beneficial owners who are not formally registered face significant hurdles in asserting shareholder rights, especially in disputes involving creditors or bona fide purchasers.

Moreover, procedural obstacles complicate the recognition of beneficial owners. For example, Article 24(3) of Company Law Interpretation III stipulates that anonymous shareholders seeking formal registration must obtain the consent of more than half of the company's existing shareholders<sup>26</sup>. Such requirements impose substantial burdens on beneficial owners, often rendering it impractical to regularise their ownership status without full cooperation from the nominee and other shareholders.

The lack of a statutory framework, the courts' reliance on general contract principles, and divergent judicial practices create considerable uncertainty. This fragmented approach undermines the predictability and consistency necessary for protecting investors, regulating corporate ownership structures, and ensuring transactional security within China's evolving commercial environment.

#### 4.3. Judicial trends and inconsistencies in adjudicating nominee agreements

Chinese courts have generally recognised the validity of nominee shareholding agreements, but only under specific conditions. According to the Company Law Interpretation III issued by the Supreme People's Court in 2011, nominee agreements are enforceable provided they do not violate mandatory laws or administrative regulations<sup>27</sup>. Courts have typically upheld such contracts when they are used purely for private investment purposes without breaching foreign investment restrictions, sectoral prohibitions, or public policy considerations<sup>28</sup>. However, if the nominee arrangement is found to circumvent regulatory requirements—such as those outlined in the Foreign Investment Negative List—courts may declare the agreement invalid, limiting remedies to monetary damages rather than restitution of shares.

Despite a general tendency to validate nominee agreements, courts have applied divergent judicial standards regarding shareholder qualification. Some courts strictly adhere to the formalism principle, recognising only the registered shareholder in the corporate register as possessing enforceable rights against the company and third parties<sup>29</sup>. In contrast, other decisions adopt a substantive shareholder approach, allowing beneficial owners to assert claims based on nominee contracts, particularly in internal corporate disputes. This inconsistency creates unpredictability for beneficial owners who may find their rights acknowledged in some courts but denied in others, depending on the context and the interests of third parties.

Significant procedural barriers also hinder beneficial owners seeking to formalise their shareholder status. Article 24(3) of Company Law Interpretation III stipulates that anonymous shareholders must obtain the consent of more than half

<sup>25</sup> XI, C. *Contract law and financial regulation in China: An illegality perspective*. 30 Aug. 2022. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4204936](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4204936)

<sup>26</sup> PING, G. *Nominee shareholding and rules of dispute hearing*. 26 Mar. 2018. Available at: <https://law.asia/nominee-shareholding-and-rules-of-dispute-hearing/>

<sup>27</sup> WOOD, K. *The Supreme People's Court and the Company Law: Presumptions and gap-filling round three*. 3 Jun. 2011. Available at: <https://www.chinalawinsight.com/2011/06/articles/dispute-resolution/the-supreme-peoples-court-and-the-company-law-presumptions-and-gapfilling-round-three/>

<sup>28</sup> Troutman. *SPC Judicial Interpretation No. 3 of Several Issues Concerning the Application of the PRC Company Law (Judicial Interpretation No.3)*. 11 Apr. 2011. Available at: <https://www.troutman.com/insights/spc-judicial-interpretation-no-3-of-several-issues-concerning-the-application-of-the-prc-company-law-judicial-interpretation-no-3.html>

<sup>29</sup> LI, Y.; WENDY, Y. *Provisions on Some issues regarding application of the PRC company law (III)*. 2011. Available at: <https://www.faegredrinker.com/en/insights/publications/2011/3/provisions-on-some-issues-regarding-application-of-the-prc-company-law-iii>

of the other shareholders to be recorded formally in the shareholder register<sup>30</sup>. Furthermore, in cases involving foreign investors using nominee arrangements, courts may require compliance with foreign direct investment (FDI) approval processes as a prerequisite for recognising beneficial ownership<sup>31</sup>. These procedural requirements make it difficult for beneficial owners to regularise their rights, particularly where the nominee or other shareholders are uncooperative.

Such unclear rulings emphasize how it is crucial to have a unified interpretation and official precedent. The guidelines in Company Law Interpretation III and the Foreign Investment Dispute Provisions are wide but are limited in their influence if they are not put into practice and acknowledged by higher courts<sup>32</sup>. Consequently, new legal approaches should outline how nominees hold shares and also make certain that the Supreme Court provides decisive direction about when the regulations can be enforced, especially between administrative and corporate fields.

#### **4.4. Risks arising from nominee shareholding structures**

The findings reveal that nominee shareholding structures in China carry significant legal and practical risks, arising both from regulatory gaps and the inherent vulnerabilities of the arrangement.

One major concern is the risk of regulatory evasion, particularly in the context of foreign direct investment (FDI) restrictions. Nominee arrangements are frequently used to circumvent limitations imposed by China's Foreign Investment Negative List<sup>33</sup>. Investors use domestic individuals or entities as nominal shareholders to gain access to restricted industries. Although courts have generally upheld nominee agreements absent explicit illegality, when nominee structures are used to disguise prohibited foreign ownership, courts are increasingly willing to invalidate such contracts<sup>34</sup>. This regulatory evasion risk exposes beneficial owners to potential contract nullification and loss of investment, especially under the stricter scrutiny brought by China's 2020 Foreign Investment Law and subsequent judicial interpretations<sup>35</sup>.

Another critical risk involves the potential abuse of rights by nominal shareholders. Given that the nominee holds the legal title and appears as the registered shareholder, they possess the outward authority to exercise corporate rights. This enables possible unauthorized transfers, pledges, or concealment of company decisions without the knowledge or consent of the beneficial owner. Courts have noted that under Civil Code principles, bona fide third parties may acquire rights from a nominee acting beyond their authority, effectively cutting off the beneficial owner's claims<sup>36</sup>. Such scenarios leave the beneficial owner to pursue

<sup>30</sup> AsianLII.org. *Company law of the People's Republic of China*. Online. 1999. Available at: <https://www.asianlii.org/cn/legis/cen/laws/clotproc370/>

<sup>31</sup> UN Trade and Development (UNCTAD). *China-Foreign Investment Law of the People's Republic of China*. 2011. Available at: <https://investmentpolicy.unctad.org/investment-laws/laws/317/china-foreign-investment-law-of-the-people-s-republic-of-china>

<sup>32</sup> TIAN, J. *Nominee shareholder agreement under current Chinese laws*. 2018. Available at: <https://www.sinoblawg.com/nominee-shareholder-agreement-in-current-chinese-laws?action=genpdf&id=2405>

<sup>33</sup> KRAUSE, S. *The New FATF Rules on Beneficial Ownership and Nominee Relationships—A Step in the Right Direction*. 2022. Available at: <https://star.worldbank.org/blog/new-fatf-rules-beneficial-ownership-and-nominee-relationships-step-right-direction>

<sup>34</sup> CBL. *Nominee shareholders in China bring numerous legal risks*. 8 May 2025. Available at: <https://cbltranslations.com/en-us/china-law/foreign-investment/nominee-shareholders-risks-explained/>

<sup>35</sup> EY Greater China. *What are the implications of China's foreign investment law*. 2024. Available at: [https://www.ey.com/en\\_cn/insights/china-opportunities/what-are-the-implications-of-china-s-foreign-investment-law](https://www.ey.com/en_cn/insights/china-opportunities/what-are-the-implications-of-china-s-foreign-investment-law)

<sup>36</sup> CBL. *Nominee shareholders in China bring numerous legal risks*. 8 May 2025. Available at: <https://cbltranslations.com/en-us/china-law/foreign-investment/nominee-shareholders-risks-explained/>

only contractual remedies, typically limited to monetary damages, which may be insufficient if the nominee lacks sufficient assets.

The protection of beneficial owners under Chinese law remains inadequate. Beneficial owners are generally invisible in public corporate records and have no standing to enforce shareholder rights directly against the company or third parties<sup>37</sup>. Enforcement of nominee agreements relies solely on private contractual claims, which can be difficult to pursue if disputes arise, especially without clear documentation or shareholder cooperation.

Finally, nominee structures pose risks to third-party reliance and creditors' rights. Since the nominee is the legal shareholder on record, third parties, including creditors, regulators, and business partners, legitimately rely on the nominee's authority<sup>38</sup>. Courts consistently prioritise the rights of bona fide third parties over hidden beneficial interests. Thus, creditors may enforce claims against the nominee's shares, irrespective of any private agreement between the nominee and the beneficial owner, undermining the latter's investment security.

#### 4.5. Comparative findings from international jurisdictions

A comparative review of international practices concerning nominee shareholding arrangements reveals a global convergence toward strengthening beneficial ownership transparency while maintaining flexibility in private investment structures. The inclusion of judicial decisions in this analysis further contextualises how courts interpret and apply these regulatory frameworks in practice.

In the United States, nominee shareholding is legally recognised under corporate law, particularly in jurisdictions such as Delaware<sup>39</sup>. Beneficial owners retain enforceable rights through trust and agency mechanisms, and courts have generally upheld these arrangements provided there is no fraudulent intent. A notable judicial affirmation is found in *Cede & Co. v. Technicolor, Inc.* (634 A.2d 345 [Del. 1993]), where the Delaware Supreme Court upheld the standing of a nominee shareholder acting on behalf of beneficial owners, reinforcing the legal validity of proxy arrangements under fiduciary principles<sup>40</sup>. However, with the enactment of the Corporate Transparency Act (2020), companies are now required to report ultimate beneficial owners to the Financial Crimes Enforcement Network (FinCEN)<sup>41,42</sup>. Although this registry remains non-public and accessible only to regulatory authorities, it reflects an increased emphasis on accountability, particularly for anti-money laundering and financial integrity purposes.

In the United Kingdom, nominee shareholding operates under the agency doctrine, wherein the nominee is the legal owner while the beneficial owner retains equitable rights. The UK's judicial system has repeatedly recognised the enforceability of such arrangements, provided that fiduciary duties are not breached. The Court of Appeal, in *Prest v. Petrodel Resources Ltd* [2013] UKSC 34, reaffirmed the equitable ownership principle, asserting that the court may pierce the corporate

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<sup>37</sup> The Financial Action Task Force (FATF). *Best practices on beneficial ownership for legal persons*. 2019. Available at: <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

<sup>38</sup> DING, T. *The multiple legal risks of nominee shareholding*. 24 Feb. 2023. Available at: <https://law.asia/nominee-shareholding-legal-risks/>

<sup>39</sup> LEXOLOGY. *Snapshot of beneficial ownership registries in G7 countries*. 11 Mar. 2024. Available at: <https://www.lexology.com/library/detail.aspx?q=5eb656c1-f408-4dc7-8117-2eeec0356d6>

<sup>40</sup> Supreme Court of Delaware (1993).

<sup>41</sup> MALONEY, C. B. *H.R.2513 - 116th Congress (2019–2020): Corporate transparency act of 2019*. 23 Oct. 2019. Available at: <https://www.congress.gov/bill/116th-congress/house-bill/2513>

<sup>42</sup> Financial Crimes Enforcement Network (FinCEN). *United States Department of the Treasury Financial Crimes Enforcement Network*. 9 May 2019. Available at: <https://www.fincen.gov/>

veil in nominee scenarios if nominee arrangements are abused to conceal assets<sup>43</sup>. Complementing this jurisprudence is the statutory Persons with Significant Control (PSC) Register, introduced under the Companies Act 2006 (as amended in 2016)<sup>44</sup>. This publicly accessible register mandates disclosure of individuals exercising significant control (typically more than 25% of shares or voting rights), thereby ensuring transparency alongside the continued use of nominee shareholders.

Germany adopts a more formalistic approach rooted in the commercial appearance principle (*Verkehrsschutzprinzip*), where only shareholders registered in the Handelsregister (Commercial Register) are recognised as lawful owners. Share transfers require notarisation and official registration to have legal effect under the Stock Corporation Act (*Aktiengesetz*)<sup>45</sup>. While case law in Germany generally upholds this formalism, courts have recognised equitable claims under certain circumstances. For example, in BGHZ 83, 293 (1982), the German Federal Court of Justice (*Bundesgerichtshof*) acknowledged that a trust relationship (*Treuhand*) could grant limited rights to beneficial owners, although not against the company<sup>46</sup>. Additionally, Germany's Transparency Register (*Transparenzregister*), as mandated by the Money Laundering Act (*GWG*), obliges companies to report beneficial owners holding over 25% of shares or control rights, aligning with European Union directives and reinforcing transparency obligations even under a rigid legal structure<sup>47</sup>.

In Japan, nominee arrangements are legally accepted and commonly used, particularly among foreign investors to navigate complex regulatory environments. Judicial consideration of such arrangements has typically emerged in shareholder litigation, including Supreme Court Decision Heisei 17 (2005) No. 1578, which recognised the legal effect of informal proxy agreements under certain conditions, particularly when the beneficial owner's control is evident. Furthermore, under recent regulatory reforms, the Company Beneficial Owner List System (2022) requires all companies to internally maintain records of controlling persons, accessible by regulatory bodies<sup>48</sup>. Public disclosure is also mandated for shareholders whose holdings exceed thresholds such as 5%, pursuant to the Financial Instruments and Exchange Act, thereby balancing confidentiality with oversight.

Across these jurisdictions, a common judicial and regulatory pattern emerges: courts uphold nominee shareholding arrangements where contractual integrity and fiduciary duties are preserved, while legislatures introduce mandatory disclosure mechanisms to curb misuse. These systems demonstrate that nominee flexibility can coexist with beneficial ownership transparency, ensuring both legal recognition and regulatory accountability<sup>49</sup>. For China, this comparative jurisprudence underscores the importance of not only codifying nominee arrangements but also ensuring judicial consistency and effective transparency

<sup>43</sup> Lord Neuberger et al., *Prest (Appellant) V Petrodel Resources Limited and Others (Respondents)* (2013).

<sup>44</sup> GOV.UK. *People with Significant Control (PSCs)*. 9 Nov. 2020. Available at: <https://www.gov.uk/guidance/people-with-significant-control-pscs>

<sup>45</sup> ZEKOLL, J.; WAGNER, G. *Introduction to German law*. 3rd ed., Kluwer Law International, Alphen aan den Rijn, 2019.

<sup>46</sup> Stolen Asset Recovery Initiative (StAR). *Beneficial ownership guide for Germany*. 2024. Available at: [https://star.worldbank.org/sites/default/files/2024-04/Beneficial%20Ownership%20Guide\\_Germany%202024.pdf](https://star.worldbank.org/sites/default/files/2024-04/Beneficial%20Ownership%20Guide_Germany%202024.pdf)

<sup>47</sup> BITTER, K. *Germany now requires disclosure of beneficial ownership of German companies*. 3 Oct. 2017. Available at: <https://frostbrowntodd.com/germany-now-requires-disclosure-of-beneficial-ownership-of-german-companies/>

<sup>48</sup> SAKO, Y. *Asia: Japan shareholder reporting reform – Global investment law watch*. 2023. Available at: <https://www.investmentlawwatch.com/2023/10/31/japan-shareholder-reporting-reform/>

<sup>49</sup> WELLS, C. P.; TADAO, H.; NAKO, K.; MORGAN, L. *Understanding investor reporting obligations under Japan's large shareholding (5%) rule*. 2020. Available at: [https://uk.practicallaw.thomsonreuters.com/w-022-8008?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-022-8008?transitionType=Default&contextData=(sc.Default)&firstPage=true)



mechanisms. Future reforms should draw from these international judicial precedents to bridge the gap between formal shareholder registration and substantive ownership protection.

#### **4.6. Key lessons for China**

The comparative findings offer valuable lessons for China in regulating nominee shareholding arrangements. While allowing private nominee structures promotes commercial flexibility and facilitates investment, unchecked anonymity creates significant risks for regulatory enforcement, investor protection, and corporate governance transparency.

First, China should consider codifying explicit legal recognition of nominee agreements, clarifying the rights and obligations of both nominal and beneficial shareholders. This would reduce judicial inconsistencies and provide investors with greater predictability when structuring ownership arrangements.

Second, China must strengthen beneficial ownership transparency by requiring companies to disclose ultimate beneficial owners through a national registry, as many jurisdictions including the United States, United Kingdom, Germany, and Japan have implemented. Recent regulatory reforms, such as the 2024 Measures for Beneficial Ownership Reporting, represent important progress, but further legislative support and enforcement mechanisms are essential to ensure compliance and reliability.

Third, China should harmonise court practices through clearer judicial guidelines, particularly regarding shareholder qualification, procedural rights for beneficial owners, and third-party protections. Adopting doctrines such as constructive trust remedies and recognising beneficial owners in internal corporate disputes would enhance legal safeguards without compromising transactional security.

Ultimately, balancing private autonomy with public transparency will be critical to promoting sustainable development, fostering investor confidence, and strengthening the integrity of China's market economy.

### **5. Discussion**

This section interprets the major findings of the study in light of broader legal, corporate governance, and policy debates. It draws theoretical insights from the gaps identified in China's legal framework for nominee shareholding arrangements and practical lessons from comparative jurisdictions. The aim is to link the doctrinal and comparative findings to broader challenges faced by China's corporate regulatory system. In doing so, this discussion critically evaluates how nominee structures interact with the principles of private autonomy, shareholder protection, transparency, and regulatory enforcement, providing a comprehensive foundation for proposing legal reforms.

#### **5.1. Theoretical implications for corporate law and nominee shareholding**

The findings reaffirm a persistent tension between private autonomy and public regulatory interests in the context of nominee shareholding. Chinese law traditionally upholds freedom of contract, enabling investors to structure private arrangements, including nominee agreements<sup>50</sup>. However, nominee structures, by separating legal title from beneficial ownership, directly challenge the principle of shareholder formalism enshrined in the Company Law — that the registered shareholder holds enforceable rights against the company and third parties.

The lack of statutory recognition for nominee shareholding exacerbates this tension. Courts must rely on general contract principles, leading to inconsistent

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<sup>50</sup> JIANG, M. *How to legally act as a nominee shareholder in China: A guide for foreign investors*. 8 May 2025. Available at: <https://www.registrationchina.com/articles/nominee-shareholder-in-china/>



adjudication depending on whether the court prioritises registration formalism or substantive ownership<sup>51</sup>. In turn, this uncertainty undermines core corporate law doctrines, such as certainty of ownership and protection of third-party reliance<sup>52</sup>. Thus, nominee shareholding arrangements in China expose a doctrinal gap where private autonomy operates in a legal vacuum, resulting in unpredictable outcomes and fragmented judicial practices.

A coherent statutory framework addressing nominee arrangements is crucial. Without clear definitions and codified rights and obligations for both nominal and beneficial shareholders, the adjudication of disputes remains dependent on the discretion of individual courts, undermining legal certainty and weakening corporate governance norms.

## **5.2. Practical implications for corporate governance and market stability**

Practically, the findings highlight the systemic risks posed by unregulated nominee arrangements. Regulatory evasion remains a significant concern, particularly where nominee structures are used to circumvent foreign investment restrictions under the Negative List or to mask beneficial ownership from regulatory scrutiny<sup>53</sup>. The use of nominee shareholders to disguise prohibited investments compromises the integrity of sectoral controls and exposes China to heightened risks in international anti-money laundering assessments.

Furthermore, nominee structures create serious vulnerabilities in corporate governance. When nominal shareholders retain legal authority over shares, they may unilaterally exercise voting rights, transfer shares, or pledge shares without the knowledge or consent of the beneficial owners<sup>54</sup>. Beneficial owners have limited means to assert control or prevent abuse, often relying solely on contractual remedies that may prove insufficient if the nominee acts fraudulently or becomes insolvent.

The prioritisation of third-party reliance over hidden beneficial interests compounds these risks. Creditors, spouses in divorce proceedings, and other third parties are entitled to rely on the corporate register, treating the nominee as the true shareholder<sup>55</sup>. This not only jeopardises the beneficial owner's interests but also introduces unpredictability into market transactions, undermining overall market stability and deterring investor confidence.

Inconsistencies in judicial recognition of beneficial ownership further exacerbate the governance challenges. Investors face uncertainty regarding the enforceability of nominee agreements, the status of their rights, and the availability of remedies<sup>56</sup>. Without unified judicial guidance or legislative intervention, these uncertainties continue to erode trust in China's corporate legal environment.

<sup>51</sup> PUTRI, T. M.; SALIM, H. S.; DJUMARDIN. "Nominee agreements in the sale and purchase of proprietary land by foreign citizens (Analysis of the Supreme Court Decision Number 50PK / PDT / 2016)", *Journal of Law, Policy and Globalization*, V. 112, 2021, p. 68-77. <https://doi.org/10.7176/jlpg/112-09>

<sup>52</sup> NADIA, S. "The validity of sale and purchase of shares in relation to nominee share ownership (A case study of decision Number 3041K/PDT/2020 and 765PK/PDT/2020)", *Jurnal Bina Mulia Hukum*, V. 8, n° 2, 2024, p. 227-240. <https://doi.org/10.23920/jbmh.v8i2.1487>

<sup>53</sup> GAMAITARAK, C. G.; ELVI, C.; BORGAS, P. B. "Nominee shareholder position in Indonesian positive law", *Jurnal Ilmiah Advokasi*, V. 12, n° 1, 2024, p. 68-78. <https://doi.org/10.36987/jiad.v12i1.5618>

<sup>54</sup> WANG, N. "Problems and solutions of negative list system of foreign investment access in China", *Journal of Sociology and Ethnology*, V. 4, n° 6, 2022, p. 86-90. <https://doi.org/10.23977/jsoc.2022.040613>

<sup>55</sup> AMBARCHIAN, M.; VIKTORIIA, A. "Analysing a corporation's ownership structure for determining ultimate beneficial owners", *Odessa National University Herald Economy*, V. 27, n° 2(92), 2022. <https://doi.org/10.32782/2304-0920/2-92-12>

<sup>56</sup> DONG, S. "Impacts of the China securities investor services center's shareholding exercise on audit fees", *BCP Business & Management*, V. 19, 2022, p. 162-180. <https://doi.org/10.54691/bcpbm.v19i.739>

### 5.3. Evaluation of China's recent reforms and remaining challenges

China has made notable strides in addressing beneficial ownership transparency in recent years. The adoption of the Market Entities Registration regulations (2021) and the Measures for Beneficial Ownership Reporting (2024) represents significant progress<sup>57,58</sup>. These regulations mandate that companies disclose information about ultimate beneficial owners to registration authorities, aligning China's regime more closely with global anti-money laundering standards.

Additionally, the introduction of a central national UBO (Ultimate Beneficial Owner) registry under the revised Anti-Money-Laundering Law (2025) further strengthens transparency requirements<sup>59</sup>. This development is consistent with the Financial Action Task Force's recommendations and demonstrates China's commitment to combating financial crime through regulatory reform.

However, despite these advancements, critical challenges remain. The regulatory reforms primarily focus on beneficial ownership disclosure but do not yet directly address the contractual and corporate law implications of nominee shareholding<sup>60</sup>. There remains no codified legal framework that defines the status, rights, and obligations of nominal and beneficial shareholders. Judicial interpretations, while helpful, do not substitute for clear legislative provisions.

Furthermore, the procedural difficulties faced by beneficial owners seeking to formalise their rights — such as the onerous requirement of majority shareholder consent for registration — have not been adequately resolved. Without statutory safeguards, beneficial owners remain exposed to opportunistic behaviour by nominees and to risks arising from third-party reliance.

Thus, while China's recent reforms represent a positive trajectory toward enhanced transparency, a comprehensive and coherent legal response to nominee shareholding issues is still needed.

### 5.4. Lessons from international practice for future Chinese reforms

The comparative findings provide valuable lessons for China's future legal reforms. Jurisdictions such as the United States, United Kingdom, Germany, and Japan offer models of balancing private contractual freedom with mandatory disclosure obligations.

The United States and the United Kingdom have demonstrated that allowing private nominee arrangements need not undermine transparency, provided robust beneficial ownership disclosure systems are in place<sup>61</sup>. The U.S. Corporate Transparency Act and the UK's PSC Register ensure that while nominees may hold shares legally, regulatory bodies can identify the true controlling individuals behind corporate structures<sup>62</sup>.

<sup>57</sup> China Briefing. *Market entity registration in China: Details of new regulation and implementing rule*. 31 Mar. 2022. Available at: <https://www.china-briefing.com/news/chinas-new-regulation-on-market-entity-registration-what-does-the-implementing-rule-say/>

<sup>58</sup> Ecovis. *Who's in charge? China's new beneficial ownership filing rules explained*. 5 May 2025. Available at: <https://www.ecovis.com/heidelberg-en/whos-in-charge-chinas-new-beneficial-ownership-filing-rules-explained/>

<sup>59</sup> ZHOU, C. *China's new AML law: A significant step forward but not without challenges*. 2025. Available at: <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2025/01/china-new-aml-law.pdf>

<sup>60</sup> WOOD, K. *The Supreme People's Court and the Company Law: Presumptions and gap-filling round three*. 3 Jun. 2011. Available at: <https://www.chinalawinsight.com/2011/06/articles/dispute-resolution/the-supreme-peoples-court-and-the-company-law-presumptions-and-gapfilling-round-three/>

<sup>61</sup> Financial Crimes Enforcement Network (FinCEN) Treasury. "Beneficial ownership information reporting requirements", *Federal Register*, V. 87, n° 189, 2022, p. 59498-59596.

<sup>62</sup> GOV.UK. *Economic crime and corporate transparency act: Beneficial ownership*. 2024. Available at: <https://www.gov.uk/government/publications/economic-crime-and-corporate->

Germany's approach emphasises strict formalism in shareholder registration but complements it with mandatory beneficial ownership reporting under the Transparency Register<sup>63</sup>. Japan, while historically more flexible, is moving toward enhanced disclosure to ensure greater corporate transparency<sup>64</sup>.

For China, the key lesson is that legislative codification of nominee arrangements must be coupled with enforceable disclosure requirements. This dual approach preserves transactional flexibility while ensuring that beneficial owners are identifiable to regulators, thereby maintaining both market integrity and regulatory effectiveness.

Moreover, China should consider developing clear judicial guidelines for the recognition and protection of beneficial owners, reducing the reliance on discretionary judicial interpretation. Constructive trust remedies, fiduciary obligations for nominees, and simplified procedures for shareholder registration could greatly strengthen investor protection and governance standards.

The findings of this research underline the urgent need for China to address the legal ambiguities surrounding nominee shareholding arrangements. While recent reforms have made important strides in improving beneficial ownership transparency, significant doctrinal, procedural, and enforcement gaps remain.

A future regulatory framework must balance the legitimate need for private autonomy in structuring investments with the imperative of public transparency and market stability. Learning from international best practices, China has the opportunity to design a modern, coherent legal system that recognises nominee structures while ensuring that they do not facilitate regulatory evasion or corporate governance abuses. Without such reforms, the risks associated with nominee shareholding will continue to undermine investor protection, market confidence, and China's broader regulatory credibility.

## 6. Conclusion

This study critically examined the legal ambiguities surrounding nominee shareholding agreements in China, highlighting significant doctrinal, procedural, and regulatory challenges. The findings demonstrate that despite the widespread use of nominee structures in commercial practice, Chinese law lacks explicit statutory provisions governing their operation. Courts rely heavily on general contract law principles, resulting in inconsistent judicial treatment and considerable uncertainty for beneficial owners. Procedural barriers, such as shareholder consent requirements and foreign investment approval conditions, further complicate the recognition and enforcement of beneficial ownership rights.

Comparative analysis of international jurisdictions, including the United States, United Kingdom, Germany, and Japan, reveals that balancing private contractual freedom with mandatory beneficial ownership disclosure is both achievable and essential. China's recent reforms, particularly the introduction of the Beneficial Ownership Reporting Measures and the central UBO registry, signify progress towards greater transparency. However, these reforms have yet to address the fundamental corporate law issues inherent in nominee shareholding arrangements.

The key conclusion is that China's current framework remains insufficient to ensure investor protection, corporate governance stability, and regulatory compliance. Legislative action is urgently needed to codify the status of nominee

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<sup>63</sup> BITTER, K. *Germany now requires disclosure of beneficial ownership of German companies*. 3 Oct. 2017. Available at: <https://frostbrowntodd.com/germany-now-requires-disclosure-of-beneficial-ownership-of-german-companies/>

<sup>64</sup> SAKO, Y. *Asia: Japan shareholder reporting reform – Global investment law watch*. 2023. Available at: <https://www.investmentlawwatch.com/2023/10/31/japan-shareholder-reporting-reform/>

arrangements, clarify the rights and obligations of nominal and beneficial shareholders, and streamline procedures for shareholder registration.

It is recommended that China draws upon international best practices by integrating nominee shareholding regulation into its broader corporate transparency reforms. Clear statutory provisions, harmonised judicial guidance, and enhanced disclosure obligations will strengthen investor confidence, align China's legal system with global standards, and promote sustainable development in the corporate sector.

Addressing the challenges associated with nominee shareholding is not merely a technical legal adjustment; it is a necessary step towards building a transparent, accountable, and resilient market economy capable of supporting China's long-term economic goals.

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