

CORPORATE INTIMIDATION & CENSORSHIP IN CHINA: RECOMMENDATIONS FOR FOREIGN COMPANIES

REPORT
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Executive Summary

Since China's rise as a global trade giant, the Chinese Communist Party (CCP) has leveraged its position in the global economy to intimidate foreign companies into becoming indirect messengers of its political ideology. Since the 1990s, the Chinese government has exerted pressure on foreign companies doing business in China to ensure that their practices are in line with the CCP's ideology, including, for example, adherence to the One-China principle. Starting in 2016, a new wave of crackdowns aimed at foreign companies doing business in China commenced. Lancome, Zara, Mercedes-Benz, Apple, Gap, Leica, and various global airlines and hotel chains all faced intimidation from the Chinese government for touching on "sensitive topics" such as the One-China principle and Tibet. But such cases were mostly sporadic until 2019.

The Chinese government's repression of foreign companies saw a sharp rise in the summer and fall of 2019 during the Hong Kong anti-extradition law protests, when the CCP aggressively targeted foreign companies for any marketing materials that may suggest pro-democracy messages. The Chinese government likely found it especially important to shape international opinion during the protests as Hong Kong pro-democracy protesters garnered significant international support, causing widespread global criticism of the Chinese government.

In 2019, Nike, ESPN, Philadelphia 76ers, Blizzard Entertainment, Apple, Google, Tiffany & Co., and YouTube all engaged in self-censorship with regards to messaging suggesting support for the Hong Kong protests. Meanwhile, Cathay Pacific and the NBA faced direct threats from the Chinese government to either alter their brand messaging, or face expulsion from the Chinese market.

Although some of these examples were prompted by self-censorship rather than direct pressure from the Chinese government, it is apparent that the CCP's strategy of corporate intimidation was effective in ensuring that foreign companies fell in line with its ideology and helped the Party to perpetrate its official propaganda.

For foreign companies doing business in China, their decision to appease the Chinese government and carry messaging approved by the CCP has implications under both international and United States law.

The United Nations (U.N.) Guiding Principles on Business and Human Rights states that companies have the responsibility to respect fundamental human rights set forth in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), one of those being the freedom of expression, which encompasses the freedom to receive information. Companies should ensure

that their practices in China do not impede these freedoms. Companies also have the obligation to avoid complicity in human rights abuses committed by the Chinese government. By practicing self-censorship or altering company messaging according to the Chinese government's preference, foreign companies in China are perpetrating and perpetuating information censorship, and have become accomplices to an authoritarian government that routinely violates fundamental freedoms outlined in the UDHR and ICCPR.

In the United States, domestic companies that do business in China and appease the Chinese government by self-censoring may open themselves to investigation or even prosecution by the U.S. government. With the White House's recent call for companies to move out of China vis-a-vis the International Emergency Economic Powers Act (IEEPA), U.S. companies should expect their company practices to face a higher level of scrutiny should they decide to continue conducting business in China. Additionally, close ties or a proven willingness to work with the Chinese government could suggest to the Department of Justice that the company is more likely to violate the Foreign Corrupt Practices Act (FCPA). Companies' censorship of information could also open them to prosecution under the Global Magnitsky Act, as the Act sanctions anyone, including U.S. entities, for participating in or supporting corrup-

tion in connection with serious human rights abuses.

Evidence suggests that companies that take into account environmental, social, and governance (ESG) factors in their operations not only rank highly on ESG indices, but perform better financially. As human rights restricting practices in China make their way into ESG ratings, foreign companies eager to conduct business successfully in China should also uphold fundamental human rights, instead of yielding to threats from the Chinese government to self-censor.

HRF recommends that foreign companies doing business in China, or considering entering the Chinese market, consult experts in political and human rights fields to inform their business decisions. They should avoid basing corporate decisions solely on short-term profit expectations and instead incorporate into their decision-making process the potential for enforcement action in the U.S. while paying serious attention to compliance with ESG factors, especially those that relate to human rights. The principles of the U.N. Guiding Principles on Business and Human Rights should serve as the foundation for routine corporate practice. Lastly, companies should keep in mind potential U.S. government enforcement actions when yielding to the ruling regime in China.

INTRODUCTION

HRF's Corporate Intimidation & Censorship in China report is aimed at documenting emblematic cases of the Chinese government's intimidation of foreign companies that have caused foreign companies doing business in China to either alter their company messaging to align with the CCP's ideology, or to self-censor out of fear of being excluded from the Chinese market. To achieve this end, the report is divided into six parts.

In section B, we provide a background of the Chinese Communist Party and the Hong Kong pro-democracy movement, and briefly explain the Chinese government's strategy to use its economic power to shape global perception of the country.

Section C documents emblematic cases of foreign companies doing business in China kowtowing to the Chinese government, whether from direct pressure or self-censorship. While the documentation of cases begins in the 1990s, the focus of this section will predominantly be on cases that occurred during the 2019 Hong Kong protests. The objective of this section is to demonstrate how the intimidation of foreign companies grew significantly during the 2019 Hong Kong anti-extradition protests.

Section D lays out the international standards governing business and human rights, including the U.N. Guiding Principle on Business and Human Rights which presents the obligations of companies to uphold fundamental human rights. This section also lays out U.S. standards and regulations, including the IEEPA, FCPA, Global Magnitsky

Act, and ESG factors that companies should consider while doing business in China.

Section E concludes that since the 2019 Hong Kong protests, the CCP has clearly signaled that foreign companies operating in China must help advance the CCP's agenda, or face expulsion from the Chinese market. In response, companies have prioritized economical interests over respect for human rights and have usually failed to comply with internationally recommended principles to safeguard freedom of expression.

The last section of the report, Section F, makes recommendations for foreign companies doing business in China or wishing to enter the Chinese market.

BACKGROUND

Since Xi Jinping rose to lead the Chinese Communist Party in 2013, the Party has been aggressively expanding its influence overseas. To advance its political and ideological agenda, the Chinese government has focused its attention on companies with global influence and pressured them to carry forward the party's political ideology, including when they operate in Hong Kong, a territory formerly shielded from CCP influence. Those that do not comply, or portray "incorrect" messaging, are faced with threats of being ousted from the Chinese market, a loss that most companies are not willing to take.

The result is that foreign companies, particularly those with offices in Hong Kong, have been engaging in self-censorship or editing corporate strategy to please the CCP, in exchange for revenue in China instead of upholding fundamental human rights in their business practices.

THE CHINESE COMMUNIST PARTY (CCP)

According to HRF's political regime analysis, China is a fully authoritarian regime in which there is no separation of powers or judicial independence, and a lack of respect for the fundamental rights of citizens. The one-party state is ruled by the CCP, a political party that was largely inspired by Marxism-Leninism. The CCP's ideology, under dictator Xi Jinping, has embraced a 14-point policy to achieve "socialism with Chinese characteristics" and "the great rejuvenation of the Chinese nation."¹ Under the guise of fostering harmony and state security, the points emphasize protecting the Party's absolute leadership.² In 2018, Xi

further consolidated his power after it was announced that term limits would be eliminated — allowing him to stay in power indefinitely.

Although civil liberties and freedoms are enshrined in Chapter II of the Constitution of the People's Republic of China, in practice, the Chinese government maintains a strong grasp on all aspects of its citizens' lives, in order to heavily suppress any criticism about — and any rhetoric that goes against — its rule and ideologies.³

Since Deng Xiaoping's Open Door Policy⁴ welcomed foreign investors to the Chinese market in 1978, the country's rise as a global manufacturing giant has contributed to its positive economic growth. As China's economy matures and its global economy power grows, the Chinese government, under Xi Jinping's leadership, has been looking outward to increase its global political influence.

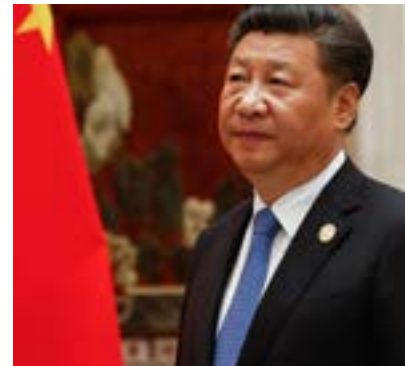
In the early days of China's market opening to foreign investors, policymakers and politicians in the West predicted that as China opened itself to the world economically, its political system would also open up and democratize. However, decades later, instead of democratizing the government, the Chinese government became more authoritarian. Within China's borders, the government routinely imprisons anyone who dares criticize the CCP's policies. Social activism for causes that were largely tolerated in the past, such

¹ Goh Sui Noi, [19th Party Congress: Xi Jinping outlines new thought on socialism with Chinese traits](#), The Strait Times, Oct. 18, 2017.

² [Backgrounder: Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era](#), Xinhua, Mar. 17, 2018

³ [Constitution of the People's Republic of China](#).

⁴ Deng Xiaoping was a leader of the CCP from 1978 to 1992, during which time he advocated for an open market to allow foreign investments, amongst other economic reforms.



Xi Jinping.



Deng Xiaoping (Source: National Archives and Records Administration)

as health rights, women's rights, and LGBT rights, were no longer allowed under the current party leadership. With Xi's invention of the "Chinese Dream," the government relied on propaganda to promote nationalism, absolute loyalty to the party, and effectively reversed individual freedom to the Mao times.⁵

Recently, the Chinese government's control over its image both domestically and abroad, is achieved through a sophisticated multi-pronged strategy. Domestically, it has weaponized technology to create a robust propaganda machine and a highly intrusive surveillance system, while internationally it has capitalized on its enormous political and economic clout. Its domestic propaganda has been especially effective in promoting nationalism. As seen in examples below, Chinese consumers are quick to identify any corporate messaging that violates the party ideology. Thanks to the CCP's tight information control and one-faceted education that omits teachings of pluralism, Chinese citizens typically make no differentiation between party ideology and national pride, meaning that they often take criticisms of the Chinese government or ideas of democracy as personal offenses to their national identity.

PRO-DEMOCRACY MOVEMENTS IN HONG KONG

Hong Kong was a colony of the British Empire from 1842 to 1997. On July 1, 1997, in accordance with the end of a 99-year lease that Britain obtained from China, control over the entire Hong Kong territory was transferred back to China under the Sino-British Joint Declaration, a bilateral treaty

signed between China and the United Kingdom. The Chinese and British governments reached an agreement, outlined in the Sino-British Joint Declaration, that Hong Kong would be governed by the "one country, two systems" principle. Under the principle, Hong Kong would become a special administrative region of China, and unlike mainland China, would be able to continue to enjoy the individual freedoms its citizens are accustomed to under British rule for a transitional period of 50 years, until 2047. The basic policies of China's governing of Hong Kong are outlined in the Hong Kong Basic Law, which also outlines the fundamental rights and freedoms of Hong Kong citizens by incorporating the ICCPR.

Although Hong Kong's government was promised autonomy for 50 years, since Hong Kong's return to China, the Chinese government has exerted pressure on the Hong Kong government to pass bills that would expand the CCP's power in Hong Kong, encroaching on Hong Kong's citizens' freedoms. A pro-democracy movement was born



Hawker selling a "Chinese Dream" calendar.



Crowds from the 2014 Umbrella Movement protests.

⁵ The Chinese Dream is an ideology created by Xi Jinping with the message to consolidate China's power both domestically and internationally. See, e.g., 崔禄春, [实现中国梦的历史新起点](#)

out of frustration that the Chinese government had broken its promise in the Sino-British Joint Declaration. Notably, in 2014, a 79-day protest — better known as the Umbrella Movement — captured international attention.⁶

Beijing's grip on Hong Kong continued to tighten after the Umbrella Movement. In June 2019, the proposal of the extradition bill, or the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019⁷, further prompted the people of Hong Kong to protect their freedoms. The bill would allow the Hong Kong chief executive to extradite fugitives on a case-to-case basis, bypassing legal procedure. While the bill does not specifically target extradition to mainland China, extradition of Chinese fugitives would be especially concerning because of the lack of judicial independence in China. The proposal of this bill led to the outpouring of concern amongst Hong Kong citizens and citizens of other countries passing through Hong Kong, that they may be extradited to China on politically-motivated charges. Millions of people joined protests in the streets from June to December 2019 to demonstrate against the passage of the bill. These protests formed a new pro-democracy movement that built on the momentum of the Umbrella Movement.

The latest example of the Chinese government's aggression toward Hong Kong's freedoms was the approval of a controversial national security legislation during their National People's Congress in May 2020. The proposal would bypass the Hong Kong legislative process and allow the CCP to implement vaguely defined national security laws

onto the special administrative region, ignoring Article 23 of the Hong Kong Basic Law and eroding the “one country, two systems” framework.⁸ The legislation gravely endangers the civil liberties of the Hong Kong people. Should they conduct an action that falls under the loose definition of secession, subversion, terrorism or foreign interference, they are likely to face imprisonment.⁹ The general public in Hong Kong saw the passage as Beijing's latest attempt to attack their fundamental freedoms, and it further galvanized them to once again take to the streets to push back against China's encroachment.

CCP'S INTIMIDATION OF FOREIGN COMPANIES PRIOR TO 2019

Internationally, the Chinese government uses its global influence in trade to advance political ideals that are aligned with party goals¹⁰, employing economic punishment as a strategic tool. To increase China's influence overseas, the Chinese government has targeted foreign companies doing business in China as indirect messengers. Under Xi Jinping, this state control of private companies both inside and outside China has intensified, as compared with the past.

In the past, China relied on foreign investors to legitimize the country as a global trade competitor. However, as China has succeeded in demonstrating itself as a worthy competitor, the gov-



Around two million people protesting the extradition bill on June 16, 2019.

⁶ The Umbrella Movement was a 2014 protest movement that paralyzed Hong Kong's financial center for 79 days. Protesters called for true universal suffrage for Hong Kong's highest executive position, the chief executive. Candidates for Hong Kong's chief executive position must be approved by the Chinese government, and the final position is elected by a small committee.

⁷ Available [here](#).

⁸ Article 23 of the Hong Kong Basic Law mandates that the Hong Kong Legislative Council should make laws related to national security. *See id.*

⁹ Grace Tsoi, [Hong Kong security law: What is it and is it worrying?](#) BBC News, May 29, 2020

¹⁰ See *Friends and Enemies: A Framework for Understanding Chinese Political Interference in Democratic Countries*, Alliance for Securing Democracy, April 22, 2020.

ernment aimed to rewrite the narrative, sending the message that if foreign companies wish to profit in China, they must be willing to toe the party line and carry pro-CCP ideology across their brands. To that end, companies were punished for taking the “wrong side” on sensitive topics relating to Taiwan, Tibet, Hong Kong, and democratic values.

While intimidation of foreign companies existed prior to 2019, these cases were intermittent and lacked a clear pattern. The CCP mostly targeted large, reputable global brands, and focused on advancing the One-China principle.¹¹ This however changed with the 2019 protests in Hong Kong, as intimidation tactics grew more aggressive and frequent.

CCP'S INTIMIDATION OF FOREIGN COMPANIES & SELF-CENSORSHIP RELATING TO THE 2019 HONG KONG ANTI-EXTRADITION LAW

With the 2019 anti-extradition law protests came a significant rise in censorship of foreign companies. When the protests in Hong Kong grew in scale in June 2019, the movement quickly gained support worldwide. Facing pressure from the international community, the Chinese government aimed to reshape public opinion surrounding the protests by weaponizing its economic power, using it as leverage to influence private companies' branding and marketing strategies to its benefit. The Chinese government warned against any corporate public-facing wording that suggested support for democracy or protesters in Hong Kong, going so far as to threaten a cutoff of business activities in China, should the companies decline to comply.

As most companies have significant market interests in China, they typically either complied with the Chinese government's request to remove any “undesirable” messaging, or resorted to self-censorship. If companies declined to comply, as in the case of the National Basketball Association (NBA),¹² the Chinese government took actions against its business activities in China that caused financial loss to the companies. The Chinese government's punishment for the NBA's noncompliance, for instance, served as a stark warning to other foreign companies with business interests in China, causing a wave of self-censorship around topics of human rights and politics in Hong Kong, Taiwan, and mainland China.

¹¹The “One-China principle” is a CCP policy that asserts there is only one sovereign state under the name China, and that Taiwan is a part of China.

¹² *Infra* at 13.

EXAMPLES OF
SELF-CENSORSHIP,
CENSORSHIP,
AND RETALIATION
AGAINST
INTERNATIONAL
COMPANIES DOING
BUSINESS IN CHINA

The two sections below briefly describe examples of direct censorship and retaliation by the Chinese government against international companies doing business in China for advertising language that conflicts with the CCP's political messaging. The sections also provide examples of these companies engaging in corrections and self-censorship in order to accommodate the Chinese government's non-business-related and arbitrary political demands.

EXAMPLES FROM PRIOR TO 2019

As early as the 1990s, foreign companies were punished for divulging sensitive topics that harmed China's "One-China principle." For instance, in 1996, Martin Scorsese's *Kundun*, a biographical film about the 14th Dalai Lama¹³, led to a ban on distributor Disney in China until 1999. Starting in 2016, a new wave of crackdowns aimed at foreign companies doing business in China commenced. The following are a few emblematic examples that occurred prior to 2019 of companies being coerced to change their messaging or self-censor out of fear of offending the Chinese government.

Lancome

In 2016, French luxury cosmetics company Lancome canceled a promotional concert in Hong Kong with singer-songwriter and pro-democracy activist Denise Ho. Ho has been outspoken in her support of the pro-democracy movement in Hong Kong and has participated in the 2014 Umbrella Movement, where she was arrested briefly for her participation. Lancome made the cancellation decision following a piece published in the *Global Times*,

a state-controlled English media outlet from China, stating that Lancome's partnership with Denise Ho was "poison," and calling for Chinese people to boycott the brand.¹⁴

Zara

Zara was ordered by the Cyberspace Administration of China, a CCP branch that controls China's internet censors, to issue an apology for suggesting on its website that Taiwan is a country separate from China.¹⁵ Zara complied and updated its website soon after. Other fashion brands, such as H&M, followed suit and changed their designation of Taiwan.¹⁶

Mercedes-Benz

As part of its propaganda and information control, the Chinese government portrays the exiled Dalai Lama as a traitor-figure who advocated for the autonomy of Tibet.¹⁷ The general public in China, unable to receive external information due to strict internet censorship, shares much of the same sentiment perpetrated by the Chinese government toward the Dalai Lama. Therefore, in 2018, when Mercedes-Benz posted an Instagram advertisement featuring a quote from the Dalai Lama, internet users in China responded angrily to the advertisement. The official CCP newspaper, *People's Daily*, doubled down, writing that Mercedes-Benz was the "enemy of the people," and that the advertisement challenged "the Chinese people." The company apologized for quoting the Dalai Lama and removed the advertisement citing "erroneous messaging."¹⁸



Denise Ho performing at the 2019 Oslo Freedom Forum

¹³Tenzin Gyatso, the 14th Dalai Lama, advocated for Tibetan autonomy and is labeled as a "splitist" by the Chinese government. He has lived in exile since 1959.

¹⁴ Amie Tsang & Alan Wong, [Lancôme Provokes Fury After Canceling a Concert in Hong Kong](#), *N.Y. Times*, June 8, 2016

¹⁵ In accordance with China's "One-China principle," the Chinese government believes Taiwan is an inalienable part of China. However, in reality, Taiwan has never been under the CCP's jurisdiction.

¹⁶ Chen Na, [Zara Apologizes for Listing Taiwan As Country](#), *Sixth Tone*, Jan. 12, 2018

¹⁷ The Chinese government incorporated Tibet in 1950 in the Seventeen Point Agreement, which granted Tibet autonomy. The Chinese government has not allowed true autonomy to Tibet as promised and since then, any rhetoric that supports and advocates for a free Tibet have been heavily suppressed by the CCP. The Dalai Lama is the exiled spiritual and political leader of the people of Tibet.

¹⁸ Sui-Lee Wee, [Mercedes-Benz Quotes the Dalai Lama. China Notices. Apology Follows.](#), *N.Y. Times*, Feb. 6, 2018

Global Airlines

The same year, multiple global airlines, including American Airlines, Lufthansa, United, and Delta, bowed to pressure from the Chinese government and stopped labeling Taiwan as a separate country from China. The update came after China's Civil Aviation Administration wrote to 36 foreign airlines,¹⁹ demanding the change be made in accordance with the Chinese government's long-held position that Taiwan is part of China.²⁰

International Hotel Chains

Adhering to requirements from the Chinese government that companies doing business in China must refer to Taiwan as part of China, in 2018, hotel chains such as InterContinental and Marriott changed their designation of Taiwan to reflect it as a territory of China.²¹ The Marriott chain in particular found itself in hot water after an online questionnaire listed Tibet, Taiwan, Hong Kong, and Macau separately from China. The Chinese government's Cyberspace Administration warned that the hotel chain "seriously violated national laws and hurt the feelings of the Chinese people."²² Marriott promptly issued an apology and listed the regions as part of China.



T-shirt sold by Gap.
(Source: Hong Kong Free Press)

Apple

To control technology companies, the Chinese government requires data of Chinese users to be stored inside the country. However, the lack of rule of law in China raises concerns of privacy and abuse of data access as it relates to impeding freedom of speech. In early 2018, Apple complied with the Chinese government's request to store its iCloud data inside China and partner with a Chinese cloud service company. While Apple cited internal concerns of privacy in making the decision, it ultimately made the move because doing the opposite could mean losing out on the entire Chinese market. The Chinese government can now easily access data from iCloud accounts in China, thus giving them the ability to further surveil the actions and thoughts of internet users in the country.²³ Activists, human rights defenders and religious minorities are especially threatened by Apple's complicity on this matter, as they are often the target of the Chinese government's persecution.

Gap

In 2018, U.S. clothing brand Gap, sold a t-shirt in Canada with a map of China that did not include Taiwan. After criticism from Chinese state-media that Gap did not respect China's sovereignty, Gap apologized and pulled the t-shirt from its shelves in Canada. This is an example of how companies sometimes run afoul of the Chinese government, even when the issue did not originate in China.



This Mercedes Benz advertisement featuring a quote from the Dalai Lama has since been deleted from the account.

¹⁹ William Yang, [American Airlines erases references to Taiwan after China demand](#), The Guardian, Jul. 25, 2018

²⁰ As of May 11, 2020, 22 global airlines agreed to revert to referring to Taiwan as its own country due to requests from the Taiwanese government. The Taiwanese government did not identify the ²² airlines out of concern for potential intimidation from the Chinese government. See Chung Li-hua & William Hetherington, [Airlines correct references to Taiwan: ministry](#), May 11, 2020

²¹ Lawrence Chung, [Taiwan demands InterContinental hotel chain 'rectify' China listing on website](#), South China Morning Post, Aug. 17, 2018

²² Benjamin Hass, [Marriott apologises to China over Tibet and Taiwan error](#), The Guardian, Jan. 12, 2018

²³ Stephen Nellis & Cate Cadell, [Apple moves to store iCloud keys in China, raising human rights fears](#), Reuters, Feb. 24, 2018

Leica

A promotional video depicting photographers using Leica cameras to cover the Tiananmen Square Massacre in 1989 landed Leica in trouble with the Chinese censors. The video was banned from Chinese social media, and for a period of time, the word “Leica” was also blocked by government censors. Leica jumped into self-censorship by distancing itself from the promotional film, stating that it was not commissioned by the company, although the film bore Leica’s logo. It also stated that Leica regretted any “misunderstandings or false conclusions.”²⁴

EXAMPLES FROM 2019

Prior to 2019, numerous examples of the Chinese government’s intimidation of foreign companies already existed, especially pertaining to territorial sensitivity toward Hong Kong, Tibet, or Taiwan. While there was an increase in official requests from the Chinese government for foreign companies to toe the party line, prior to 2018, the frequency of such requests was more sporadic. This changed in 2019 with the rise of Hong Kong’s pro-democracy movement. The following are emblematic examples of foreign companies being pressured to censor or resort to self-censorship on matters relating to the 2019 Hong Kong protests.

Nike

Nike was perhaps the first casualty in the Chinese government’s war against public opinion. In late June, half a month after large-scale protests in Hong Kong broke out, Nike pulled a Japanese designer’s products from its shelves in

China, due to online backlash that the designer supported the protests in Hong Kong. The line of sneakers was designed by renowned Japanese streetwear label Undercover, led by designer Jun Takahashi. Undercover had supported the protests in Hong Kong on its social media, causing anger on social media platforms in China. Nike stopped selling the line in China shortly thereafter, citing “consumer feedback.”²⁵

Cathay Pacific

One of the companies that was most severely pressured by the Chinese government to fall in line with its rhetoric, was Hong Kong-based commercial airline giant Cathay Pacific. Founded during Hong Kong’s colonial times, Cathay Pacific is not a foreign company per se, but has strong British ties and thus became the Chinese government’s top target in shaping public opinion.

In early August, after two months of large-scale protests in Hong Kong, China’s official aviation authority issued a public warning to Cathay Pacific, stating that some airline employees were involved in the protests but were not terminated from their employment. It listed three demands for Cathay Pacific: (1) Terminate the employment for all staff who supported the protests; (2) Only allow staff to fly with the airline to mainland China after a “verification” of identity; and (3) Submit a plan to “strengthen internal control and flight safety.”²⁶ Later, several employees were fired for participating in the protests after their personal, pro-democracy social media posts were reported to the company.²⁷ Pressure from the Chinese government did not cease until CEO Rupert Hogg resigned and was replaced

²¹ Lawrence Chung, [Taiwan demands Inter-Continental hotel chain ‘rectify’ China listing on website](#), South China Morning Post, Aug. 17, 2018

²² Benjamin Hass, [Marriott apologises to China over Tibet and Taiwan error](#), The Guardian, Jan. 12, 2018

²³ Stephen Nellis & Cate Cadell, [Apple moves to store iCloud keys in China, raising human rights fears](#), Reuters, Feb. 24, 2018

²⁴ Owen Churchill & Nectar Gan, [Leica Camera’s advert depicting Tiananmen Square’s ‘Tank Man’ causes uproar from Chinese online](#), South China Morning Post, Apr. 19, 2019

²⁵ Michelle Toh & Laura He, [Nike pulls products in China after designer sparks social media outrage](#), CNN, Jun. 27, 2018

²⁶ Available [here](#).

²⁷ Danny Lee, [Cathay Pacific staff warned over social media use as airline deals with fallout from Chinese aviation authority move](#), South China Morning Post, Aug. 22, 2019

by a former Hong Kong aviation department official. It was reported that Hogg, instead of giving up names of employees who participated in the protests when requested by the Chinese government, provided one name only — his own.²⁸

National Basketball Association (NBA)

In October 2019, Daryl Morey, general manager of the Houston Rockets, tweeted an image on his personal Twitter account that read, “Fight for Freedom, Stand with Hong Kong,” presumably to show his support for the ongoing pro-democracy protests in Hong Kong. The Chinese Basketball Association, an organization governed by the Chinese Communist Party’s State General Administration of Sports, immediately announced that it would suspend its relationship with the Houston Rockets.

State-owned television channels in China, along with Chinese media giant Tencent, followed by announcing that they would no longer broadcast games from the Rockets.



Daryl Morey’s tweet, which has since been erased. (Source: Daryl Morey’s Twitter page)

An initial statement from NBA’s Weibo²⁹ account written in Chinese said that the league was “extremely disappointed” by Morey’s “inappropriate” comment, which “hurt the feelings” of fans in China.³⁰ However, it was later revealed that the NBA never approved such a message. NBA spokesman Mike Bass in turn stated that it was “regrettable” that Morey’s tweet had “offended” fans in China. The NBA’s initial reaction caused a wave of criticism from U.S. senators and the general public. They pointed out that the NBA generally encourages freedom of speech and discussion of social and political issues within the league in the U.S., and by apologizing for Morey’s tweet, the NBA was bowing to censorship and undermining freedom of expression.³¹ These criticisms motivated the league’s commissioner, Adam Silver, to stand firm on his support of free speech, clarifying that the NBA would not regulate the opinion of its employees.³²

Silver’s comments came with a price. Numerous Chinese brands cut ties with the NBA, and state-owned television channel China Central Television (CCTV) suspended the broadcasting of pre-season Rockets games. Nike also voluntarily removed all Houston Rockets-related products from its China webstore.³³ As of May 2020, CCTV still has not aired any NBA games, although games are available to stream in China on other private platforms.³⁴

Entertainment and Sports Programming Network (ESPN)

The NBA incident lingered even after the dust started to settle. Shortly after the NBA incident occurred, major sports TV channel ESPN was criticized by U.S. law-

²⁸ Arthur Villasanta, [Cathay Pacific CEO Praised for not Giving Names of Staff Joining Hong Kong Protest](#), *Int'l Bus. Times*, Aug. 19, 2019

²⁹ Weibo is a Twitter-like platform widely used by online users in China.

³⁰ Yanang Wang, [NBA's reaction to Morey tweet differs in English, Chinese](#), *N.Y. Times*, Oct. 7, 2019

³¹ Daniel Victor, [Hong Kong Protests Put N.B.A. on Edge in China](#), *N.Y. Times*, Oct. 7, 2019

³² Sapan Deb, [Adam Silver Commits to Free Speech as Chinese Companies Cut Ties With N.B.A.](#), *N.Y. Times*, Oct. 8, 2019

³³ SJeff Beer, [As NBA conflict continues, Nike pulls Houston Rockets merchandise from Chinese stores](#), *Fast Co.*, Oct. 10, 2019

³⁴ Michelle Toh, [NBA has a new CEO in China. His first task is to make up with Beijing](#), *CNN Bus.*, May 13, 2020

makers for issuing an internal memo that forbade “political discussion” surrounding the Daryl Morey story, and to keep the discussion on basketball. The self-censoring memo was issued by senior news director Chuck Salituro.³⁵

Philadelphia 76ers

Self-censorship quickly spread across the sports world following David Morey’s tweet backlash, and the Philadelphia 76ers was one of the teams that fed into the fear. During a pre-season game in the U.S. against the Guangzhou Loong Lions, a team from China, a fan was ejected for silently holding signs that stated her support for Hong Kong. She and her husband were heckled by mainland Chinese sports fans at the stadium, and their sign was confiscated by stadium security before they were ejected from the game. The 76ers later issued a statement claiming the ejected people were being disruptive.³⁶

Blizzard Entertainment

Soon after the NBA controversy, Blizzard Entertainment, a leading gaming company that developed the popular video game Hearthstone, was put in a similar situation. Ng Wai Chung, a player from Hong Kong going by the name “Blitzchung,” recited a protest slogan during a livestream of a Hearthstone competition. Blizzard quickly responded by banning Ng from the tournament and confiscating his cash prize, citing an obscure Blizzard rule that players should not “offend the public.”³⁷ Blizzard then went one step further and banned two streamers who were in the same livestream with Ng when he recited the protest slogan.

The controversy did not end there. Angered by Blizzard’s response to Ng’s activism, two American players held up a sign supporting Hong Kong during a game broadcast, and their camera feed was quickly cut by Blizzard. Their camera feed remained off for the rest of the stream.³⁸

Blizzard’s swift self-censorship was likely motivated by its expanding market interest in China, where eSports is a growing field. The company’s self-censorship prompted a mass boycott of its games within the gaming community, and a protest from its own employees.

Vans

During the same time as the Blizzard controversy, shoe and apparel line, Vans, faced a boycott in Hong Kong for pulling a sneaker design from its public design competition that depicted messages of the ongoing pro-democracy protests. It was unclear whether the Chinese government had reached out to Vans to request that the design be taken down, or if Vans was self-censoring.³⁹



The removed Vans competition design. (Source: Vans)

Apple

Apple has repeatedly come under fire for appeasing the Chinese government, and during the 2019 protests in October, the company caused outrage for censoring a Hong Kong protest map

³⁵ Laura Wagner, [Internal Memo: ESPN Forbids Discussion of Chinese Politics when Discussing Daryl Morey’s Tweet about Chinese Politics](#), Deadspin, Oct. 08, 2019

³⁶ Sarah Whitten & Jabari Young, [76ers fan supporting Hong Kong ejected from preseason game against Chinese squad in Philadelphia](#), CNBC, Oct. 09, 2019

³⁷ Peter Allen Clark, [What to Know About Blizzard, Hong Kong and the Controversy Over Politics in Esports](#), TIME, Oct. 21, 2019

³⁸ [“American University Hearthstone team holds up “Free Hong Kong, boycott Blizzard” sign during Collegiate Hearthstone Championship. Blizzard quickly cuts their broadcast.”](#) Reddit

³⁹ Jessie Yeung, [Vans faces Hong Kong boycott over sneaker design controversy](#), CNN, Oct. 07, 2019

app from its App Store. The app, “HK-Map.live,” was a crowdsourced map of protest locations, police presence, and locations that were tear-gassed. While Apple claimed its rejection of the app was due to concern for police safety, in reality, the app was commonly used by Hong Kong residents to avoid tear gas and riot police, who had the reputation to indiscriminately target young people, including passersby on the streets violently.⁴⁰

Google

Like Apple, Google similarly censored an app relating to the Hong Kong protests. A game that was pro-democracy and based on the recent Hong Kong protests, “The Revolution of Our Times,” was removed from the Google Play store because it violated its “Sensitive Events policy,” according to an official Google email notification to the game developer.⁴¹



Tiffany’s ad which as since been deleted. (Source: Tiffany & Co. Twitter page)

Tiffany & Co.

American fine jewelry brand Tiffany & Co. voluntarily removed an online campaign photo showing a model covering one eye after Chinese social media users commented on the similarities between the pose and a popular Hong Kong protest pose, used widely by protesters thereafter a fellow protester was

blinded in one eye by the police. Mainland internet users critiqued that the pose may have been deliberately adopted by the company to show support of the ongoing protests. Tiffany responded by removing the image immediately and issuing an apology.⁴²

YouTube

In late May 2020, one of Google’s subsidiaries, YouTube, was found to be automatically deleting any comments, including two common phrases that were critical of the Chinese government.⁴³ It was discovered that such deletions dated back to as early as October 2019, raising speculation that this censorship was due to the Chinese regime’s sensitivities about the pro-democracy demonstrations in Hong Kong.⁴⁴ The video streaming platform has claimed that the removal of these comments was “an error.”⁴⁵

⁴⁰ Mary Hui, [Apple bowed to China by removing a Hong Kong protests map from its app store](#), Quartz, Oct. 19, 2019

⁴¹ 網民自製「時代革命」手遊 盼爭國際關注 指遭 Google 下架, The Stand News, Oct. 10, 2019

⁴² [Tiffany deletes tweet after mainland anger](#), RTHK, Oct. 8, 2019

⁴³ Igor Bonifacic, [YouTube blames bug for censoring comments on China’s ruling party](#), Engadget, May, 26, 2019

⁴⁴ [Is youtube censoring comments that include “五毛”?](#), YouTube Help

⁴⁵ Chris Mills Rodrigo, [YouTube says comments critical of Chinese Communist Party were removed in error](#), The Hill, May 26, 2020

SUMMARY

The frequency of government intimidation from China and self-censorship of foreign companies increased significantly surrounding the Hong Kong pro-democracy protests. It is likely that because the 2019 Hong Kong protests garnered strong international support, the Chinese government found it especially important to shape international opinion. While many 2019 cases were prompted by self-censorship rather than direct pressure from the government, it is apparent that the Chinese government's strategy of corporate intimidation has been effective in forcing foreign companies to fall in line and effectively act as the corporate wing of the CCP's propaganda machinery.

With the rapid expansion of the Chinese market, Western companies are increasingly concerned with losing market share in a highly competitive country, and therefore often choose to undermine freedom of expression in favor of financial gain. But as seen in the case of Blizzard and the NBA, the kowtowing could potentially backfire and cause criticism in the company's Western markets.

"[T]he Chinese government's strategy of corporate intimidation has been effective in forcing foreign companies to fall in line and effectively act as the corporate wing of the CCP's propaganda machinery."

INTERNATIONAL
& U.S. STANDARDS
ON BUSINESS AND
HUMAN RIGHTS

Foreign companies that do business in China may find themselves caught between the liberal values that they were founded upon and authoritarian pressure from the Chinese government. To illustrate this conflict, one can look to U.S. companies that, in recent years, have increasingly taken positions in social debates. For instance, Nike’s “Dream Crazy” campaign in the U.S., featuring racial justice activist and former National Football League player Colin Kaepernick, won the company an Emmy for outstanding commercial.⁴⁶ Likewise, Gap has created campaigns in support of the LGBTQ community.⁴⁷ In the 2020 George Floyd protests that spread across the U.S., numerous companies, including many listed above, took a stand with African Americans who called for equality and police accountability.



Nike’s “Dream Big” campaign. (Source: Nike)

However, when it comes to the companies’ dealings with China, such liberal values of freedom of expression and equality seem to be ignored. In the Hong Kong protests, people similarly marched and called for accountability for police brutality and respect for democratic values. The response from the same companies that supported protests in the U.S. was much different. This inconsistency in messaging hurts the companies’ credibility globally. To guide their business decisions, companies should not only look to profits, but also to moral

responsibility and international standards on business and human rights.

OBLIGATION TO RESPECT FUNDAMENTAL HUMAN RIGHTS UNDER INTERNATIONAL LAW

The United Nations Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises has issued a set of guiding principles on business and human rights. The guiding principles state that business enterprises must respect internationally-recognized human rights.⁴⁸ This responsibility is independent from legal responsibilities, which may have varying requirements from country to country. When conflicting requirements from places of operation are present, a company must “seek ways to honour the principles of internationally recognized human rights” to the best of its ability, and should be able to show its efforts in ensuring human rights are protected.⁴⁹

One of the most important internationally-recognized human rights, as enshrined in the UDHR and the International Covenant on Civil and Political Rights (ICCPR), is freedom of expression. Article 19 of the UDHR states:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”⁵⁰

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– Article 19 of the UDHR

⁴⁶ Guardian Sport, [Nike’s ‘Dream Crazy’ advert starring Colin Kaepernick wins Emmy](#), Sept. 16, 2019

⁴⁷ Minda Smiley, [Gap Wants You to ‘Love All Ways’ in Honor of LGBTQ Pride Month](#), Adweek, May 21, 2019

⁴⁸ Guiding Principles on Business and Human Rights, United Nations, HR/PUB/11/04, 2011, para. 12

⁴⁹ Id. at para. 23

⁵⁰ [Universal Declaration of Human Rights](#), article 19

Companies should ensure that their marketing practices in China do not impede freedom of expression, and do not impede any person — both citizens of China and other global consumers — from receiving information and ideas.

OBLIGATION TO AVOID COMPLICITY UNDER INTERNATIONAL LAW

Companies may justify changing their marketing language to appease the Chinese government by arguing that this action does not directly contribute to human rights abuses, but such an argument is erroneous. By changing corporate messaging at the request of the Chinese government, or by self-censoring, foreign companies that do business in China are allowing themselves to be coerced by an authoritarian government that routinely violates fundamental freedoms outlined in the UDHR and ICCPR.

Moreover, by censoring themselves, companies are aiding and abetting the Chinese government in its implementation of censorship, which violates the right to freedom of expression. While in this case the companies are not the primary party committing the human rights abuses, the U.N. Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises has stated that “[t]he corporate responsibility to respect human rights includes avoiding complicity Complicity refers to indirect involvement by companies in human rights abuses — where the actual harm is committed by another party, including governments and non-State actors.”⁵¹

Large business enterprises are often highly recognizable, and their images are ingrained in global culture. Their corporate messages, through marketing, can have a great impact on international human rights. With great influence comes great responsibility, and companies should respect human rights and achieve consistency in messaging, instead of picking and choosing their messages solely based on market profit. Companies should consider that, according to the U.N., “the baseline responsibility of companies is to respect human rights.”⁵² If they fail to meet this responsibility, as seen in Blizzard’s case, the companies could be subject to courts of public opinion in their home market.

Foreign companies doing business in authoritarian countries like China must sometimes make difficult decisions to either uphold universal human rights values they normally respect in their home countries, or to comply with the host country’s capricious and authoritarian requests, in an effort to advance their shareholders’ interests.

Advancing their shareholders’ interests must not be used to justify helping an authoritarian government like China’s to perpetuate censorship both in China and abroad. As the Chinese government has had a long history of suppressing individual freedom and placing limitations on foreign businesses, companies wishing to do business in China should include a human rights plan in their initial risk analysis before entering the market. The U.N. recommends such an assessment to include “explicit references to internationally recognized human rights.”⁵³

“The baseline responsibility of companies is to respect human rights.”

– John Ruggie, Special Representative of the Secretary-General on the issue of Human Rights

⁵¹ John Ruggie, [Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/8/5](#), Apr. 7, 2008, para. 73.,

⁵² *Id.* at para. 54

⁵³ *Id.* at para. 61

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA) CONSIDERATIONS

In light of the recent “trade war” between the U.S. and China, the U.S. government has put a strong focus on U.S. companies doing business in China. The White House went so far as to call for companies to move production out of China, citing the International Emergency Economic Powers Act’s (IEEPA) provision that there is “unusual and extraordinary threat to the national security of the U.S.”⁵⁴

Implementation considerations aside, it is clear that the U.S. government is placing a strong emphasis on scrutinizing U.S. companies’ practices in China. This new policy direction is likely motivated by a lack of legal safeguards for foreign companies in China, rampant corporate espionage, intellectual property theft, and the Chinese government’s attempt to influence company messaging, as documented above. For instance, during the NBA controversy, bipartisan U.S. senators voiced concern publicly that the NBA yielded to China and undermined freedom of expression in the U.S.⁵⁵

Based on the U.S. government’s policies, U.S. companies operating in China can expect strong scrutiny in their company policies and messaging. Should companies be open to appeasing the Chinese government, whether unwillingly under coercion or willful self-censorship, they would likely face criticism in the government and from the public back home.

FOREIGN CORRUPT PRACTICES ACT (FCPA) CONSIDERATIONS

The Foreign Corrupt Practices Act (FCPA) has been a strong focus of the U.S. Department of Justice (DOJ). The FCPA does not directly pertain to U.S. companies bowing to pressure from the Chinese government; rather, it prohibits these entities from bribing overseas officials or government agents to further the entities’ interests. In 2019, of the 17 cases that the DOJ prosecuted, eight cases pertained to violations in China.⁵⁶

While the FCPA does not focus on the Chinese government’s influence on U.S. companies, U.S. companies should keep in mind that, bowing to arbitrary and capricious pressure from the Chinese government puts them at a higher risk of inappropriate influence by Chinese public officials, and this may open the door to investigations of whether the companies’ practices violated the FCPA and provide an incentive for the DOJ to give serious consideration of any tips or accusations to that effect.

From the U.S. government’s standpoint, a company’s willingness to cooperate with the Chinese government on company messaging in order to stay in the Chinese market can be a strong indication of the company’s reflexive obedience to CCP officials and government entities, making it more prone to FCPA investigations.

GLOBAL MAGNITSKY ACT CONSIDERATIONS

The Global Magnitsky Act was enacted following the signing of an executive order to block or revoke the U.S. visas and to block all U.S.-based property and

⁵⁴ [50 U.S.C. § 1701](#)

⁵⁵ Jacob Pramuk, [Senators pile on the NBA for yielding to China over Rockets GM Daryl Morey’s pro-Hong Kong tweet](#), CNBC, Oct. 07, 2019

⁵⁶ See [SEC Enforcement Actions: FCPA Cases, U.S. Securities and Exchange Commission](#), Jan. 09, 2020

interests in property of foreign individuals and entities involved in serious human rights abuses and acts of corruption abroad.

Companies with international operations likely are already familiar with the Act through the Office of Foreign Assets Control (OFAC) regulations, as those sanctioned by the Global Magnitsky Act are added to the OFAC list of prohibited foreign entities.

At first glance, the Global Magnitsky Act may not seem relevant for foreign companies doing business in China, as the entities sanctioned are by and large foreign entities rather than U.S. companies. However, the Act in fact also allows for the sanctioning of any person, including U.S. citizens, where there is evidence of having “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” serious human rights abuses or corruption conducted by foreign persons.⁵⁷

The Act’s executive order goes further to include in its sanctions any non-foreign entity “owned or controlled by, or [known] to have acted or purported to act for or on behalf of” any person whose property and interests in property would be blocked under the Act’s stipulations.⁵⁸ This means that, should Chinese entities be sanctioned in the future for serious human rights abuses, U.S. companies that have acted or purported to act for or on behalf of those Chinese entities — even if indirectly — may also be subject to sanctioning under the Global Magnitsky Act.

U.S. companies with joint ventures in China risk becoming entangled in

Chinese state officials’ pressures to engage in serious human rights abuses — whether through material, financial, or technological support — and could subsequently be sanctioned.

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) CONSIDERATIONS

A growing preference among investors for companies with strong ESG ratings has led to companies incorporating ESG factors into their practices. Moreover, strong ESG performance is increasingly proving to be in line with a company’s core mission of maximizing shareholder value as these investments have been outperforming traditional non-ESG investments.⁵⁹

Safeguarding human rights will not only entice investors interested in ethical investment, as recent studies have shown that there is a 90% positive correlation between high-ranking ESGs and corporate financial performance.⁶⁰

First coined in a 2005 report that analyzed the ESG factors in financial investment, ESG factors are today closely rated by multiple rating agencies, and they are heavily weighted in multiple institutional investment vehicles. The relevant factor in this case would be the social aspect of ESG, which includes human rights and ethical considerations that help guide companies in their business decisions.

Company policy in dealing with pressure from authoritarian governments, particularly when it may affect interna-

“[S]hould Chinese entities be sanctioned in the future for serious human rights abuses, U.S. companies that have acted or purported to act for or on behalf of those Chinese entities — even if indirectly — may also be subject to sanctioning under the Global Magnitsky Act.”

tionally-recognized human rights, will increasingly be considered a key factor in the social evaluation of ESG.

In order to truly advance their shareholders' interests of maximizing the value of their investments, foreign companies doing business in China therefore should respond to pressures of self-censorship by standing firm and upholding freedom of speech, instead of yielding to threats from the Chinese government and changing their messaging.

⁵⁷ [*Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption*](#), 82 *Fed. Reg.* 60840, Dec. 26, 2018.

⁵⁸ *Id.*

⁵⁹ Madison Darbyshire, [*ESG Funds Continue to Outperform Wider Market*](#), *Fin. Times*, Apr. 3, 2020

⁶⁰ Gunnar Friede, Timo Busch, and Alexander Bassen, [*ESG and Financial Performance: Aggregated Evidence from more than 2000 Empirical Studies*](#) (Dec. 19, 2015)

CONCLUSION

Conclusion

While the Chinese government has, for many years, sporadically censored foreign companies' messaging both in and outside of China, such efforts to intimidate companies into self-censoring drastically increased with the 2019 Hong Kong protests. There is now a clear pattern that foreign companies are expected to help advance the CCP's agenda while doing business in China, or face expulsion from the Chinese market altogether. As the Chinese government attempts to reinvent its image following global support of Hong Kong's pro-democracy movement, any company that, through its marketing message, supports pro-democracy causes in Hong Kong, is intimidated until it falls within the party line.

In response to pressure from the Chinese government, companies should adhere to international guidelines on business and human rights, and respect the fundamental human rights outlined in the UDHR and ICCPR. Companies should keep in mind that corporate responsibility to respect international human rights exists independent from compliance with local regulations, and to not be complicit in committing human rights abuses.

RECOMMENDATIONS
FOR FOREIGN
COMPANIES DOING
BUSINESS IN CHINA

Recommendations

1. Prior to entering the Chinese market, companies should weigh the pros and cons of doing so, and consult experts in Chinese politics and human rights to inform their decision.
2. Companies should not base their China investment decisions solely on short-term profit expectations, but instead should incorporate the human rights dimension in their business decisions as ignoring it increases the company's international and U.S. liabilities and are likely to negatively affect financial outcomes.
3. Companies should familiarize themselves with, and strive to fulfill, their obligation to uphold fundamental human rights as outlined in the UDHR and ICCPR, based on the recommendations in the U.N. Guiding Principles on Business and Human Rights.
4. Companies must ensure that they do not directly or indirectly aid and abet the Chinese government's suppression of human rights.
5. Companies should ensure that their messaging is consistent across different global markets, and avoid being hypocritical by disseminating CCP propaganda in China.
6. Companies should uphold the same human rights values they defend and promote in their home countries.
7. Companies should keep in mind U.S. laws and regulations on corporate practices overseas, and the current increased sensitivity around operating in an authoritarian country like China.
8. Companies should incorporate international human rights compliance as a key ESG factor likely to affect their operations and financial performance.
9. Companies should consider consulting local and international civil society groups before entering the Chinese market or only when human rights concerns arise.