

# Reconstructing the Charitable Donation System of Listed Companies -- Focusing on the Charitable Value of the Third Distribution Theory

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## ABSTRACT

As one of the important responsibilities to safeguard the rights and interests of the third party, improve the social image of the company and ensure the positive social cognition of investors in the process of corporate governance, social responsibility has the characteristics of arbitrariness, non-systematization and volatility in the concrete implementation process. Although a large number of companies regard charitable donation as a way to assume social responsibility, corporate managers' understanding of social responsibility often varies from person to person, leading to different status of charitable donation in different companies. In the current legislation, corporate social responsibility mainly focuses on the protection of consumer rights, environmental protection, employee welfare and other traditional responsibilities, and less attention is paid to the existence of charitable donations. Moreover, due to the late start of China's charity law, there are still many legislative gaps, and charitable donations for corporate legal persons are still in the exploratory stage. The disregard and lag of legislation make it difficult for companies to be protected by law and get corresponding incentives in the process of implementing charitable donations. The author thinks that the key to solve the dilemma lies in the deficiency of the respective contents of charity law and company law, and extract the commonness of these two departments' laws, and then improve the system from top to bottom through the third distribution theory, so as to change the long-term confrontation of legislative ideas.

**Keywords:** *The Third Distribution Charity law Corporate social responsibility*

## 1. INTRODUCTION

Company is the product of the combination of wealth, wisdom and market. It reflects people's character. The significance of company law to the company is not only to establish the operation rules of the company in the market, but also to promote the establishment of a positive corporate society; Since ancient times, corporate charitable donation has been an important way for companies to give back to the society. If the company law can clearly and actively induce most companies to have strong charitable intentions, it will greatly improve the harmonious atmosphere of our society. By combining the "third distribution" theory, which is native to China, this paper puts forward the argument of combining the third distribution with corporate social responsibility, and puts it into this paper. The purpose of this paper is to explore the establishment of a corporate ch

aritable donation system suitable for China's economic and social development. At the same time, the significance of this paper is to creatively combine corporate social charity with the "third distribution concept", which adds unique factors to the legislative environment of China's company law. The author hopes to draw a better blueprint for China's future charitable donation system through the elaboration of this paper

## 2. CURRENT SITUATION OF SOCIAL RESPONSIBILITY OF LISTED COMPANIES IN CHINA

### 2.1. Enrich the social responsibility system

The company is the most common market subject in modern commercial activities, but the company system was not directly applied to business at the beginning of

its emergence. Municipal companies and East India Company in early Europe were also frequently used for the extension of government public functions. In the process of continuous development, the company's advantages, concentration, efficiency and professionalism coincided with the development of the business, and then evolved into the current business company model. There is no doubt that the company should make profits, but does the company have the corresponding responsibility to eliminate the influence caused by the company to the relevant stakeholders in the process of making profits? For this, once had a huge argument in theory, in the 30 s of the capitalist world crisis, represented by the bill and Byrd jurists had launched a fierce debate in the United States, whether the company should bear the social responsibility of repeated argumentation, to undertake the social responsibility of the subject company from a pure academic discussion rose to the height of the legislation. The business community believes that corporate social responsibility is a good way to solve the negative effects of market economy, such as corruption, environmental pollution and human rights problems. However, the academic community generally believes that the concept of CORPORATE social responsibility itself is the product of vague concept and unclear understanding. Such a big contrast in understanding between the business community and the academic community is indeed a very interesting phenomenon.<sup>[1]</sup>

China's company law has made a mandatory standard for corporate social responsibility, raising corporate social responsibility to corporate legal obligations, which leads to the company in China when it is not good to fulfill social responsibility, it is necessary to bear adverse consequences. In the long run, it is very advantageous to elevate corporate social responsibility to legal responsibility, but it also faces strong challenges from reality: In essence, corporate social responsibility is the relationship of rights and obligations generated in the process of corporate business activities. In reality, with the rapid economic development, corporate social responsibility is changeable and diverse, and the law itself lags behind the reality. Therefore, corporate social responsibility should be assumed by thousands of people and should not be treated equally. Therefore, the social responsibility stipulated by law is often conceptualized so that judges can exercise their discretion in specific recognition, but it is not effective for a long time. As a result, our corporate social responsibility should be constantly enriched with the constant revision of legislation, adding new content in time and eliminating incompatible parts. Article 19 of the revised Draft of the Company Law published on December 25, 2021 stipulates that when conducting business activities, a company shall, on the basis of abiding by its obligations prescribed by laws and regulations, fully consider the

interests of its employees, consumers and other stakeholders, as well as social public interests such as ecological and environmental protection, and assume social responsibilities. The state encourages companies to participate in public welfare activities and publish social responsibility reports. New types of social responsibility, such as environmental protection and consumer rights protection, have been explicitly incorporated into the existing responsibility system, reflecting the legislative attitude towards social responsibility -- advancing with The Times and constantly improving. In such a situation, charitable donation, a product of corporate governance for a long time, deserves our consideration for its social responsibility status.

## ***2.2. The status of corporate charitable Donation in the legal system***

China's charitable donation industry has been misunderstood and questioned until the reform and opening up, slowly faced by the public, after a long period of department rules and regulations, we gradually embarked on the road of legalization. From charitable activities and the order of the charitable act, not only clear the charity event will focus on poverty alleviation in China, the poor and disaster happened in good deeds, and at the same time including career development, promote the general public welfare activities to protect the ecological environment, has formed a large charity charity law as the core system.<sup>[2]</sup>

As one of the oldest and direct ways of undertaking social responsibility in commercial activities, charitable donation is known for its flexibility, high speed and low cost. Fundamentally, what drives the realization of charity is the donor's subjective willingness, which is a moral incentive and can reduce the cost input of our system construction. Philanthropic companies also win more favor from consumers in the market. During the flood in Henan province in 2021, large donations made by ethnic companies led by Hongxing Erke to the affected areas created huge reputation and brand benefits. From the perspective of corporate governance, corporate social responsibility also includes the company's responsibility and service to the society. The author believes that corporate charitable donation achieves point-to-point social assistance, eliminates social ills point-to-point, and compensates for the impotence caused by giving up particularity of law due to universality. However, it should not be forgotten that corporate charitable donation activities are contrary to the company's profit goal, which will inevitably lead to the conflict of interests of the company's stakeholders, and the establishment of a reasonable, effective and balanced interest balance mechanism has become the natural choice to build a legal system for corporate donation.<sup>[3]</sup>

### **3. THE DILEMMA OF CHARITABLE GIVING**

In recent years, the scale of charitable donations of listed companies in China still lags behind that of the United States, Japan and other large countries with economic aggregate. The reason is related to the lack of legislation in China. Some management worthy of promotion or reference has not yet been taken seriously by the legislature, and some legal crystallization generated in the era of planned economy needs to be replaced in time. In fact, corporate charitable donation is regulated by both company law and charity law, and there are still some injunctions between the two, which also restricts the realization of corporate charitable donation.

#### ***3.1. The legal definition of charitable donation of listed companies is vague***

Listed companies as the market economy development of our country has the most dazzling pearl, also condensed the most extensive social investment, the social responsibility of reflect the more obvious and important in the body, the legislative organs at all levels in introduced a large number of laws and regulations on the regulation at the same time, objectively has exposed the legal science, business, practice the lack of awareness of social responsibility.

The core of charitable donation is slightly different from corporate social responsibilities such as consumer rights protection, environmental protection and employee rights protection. First, the specific responsibilities mentioned above must be generated in specific business activities, but corporate charitable donation may theoretically exist apart from the specific operation of the company, and some may even exceed the original goals of the company. Second, with the responsibility of the company is not liable may lead to more serious type, corporate social responsibility as a responsible social responsibility does not produce specific, but some companies because of too much disregard social responsibility could face civil liability because of the serious illegal and even criminal responsibility, sanlu lessons, But it started out as a product liability; However, non-execution of charitable donations generally does not produce extremely serious legal consequences. Although China's civil code provides that charitable donations through notarization procedures cannot be revoked, generally speaking, charitable donations can be revoked according to the intention of the donor.

By comparing our current law in the difference between the charitable donations and other social responsibility, it is not hard to see, although both are part of the corporate social responsibility, but it is composed of different sources, charitable donations from donors choice, and the general type of more emphasis on social

responsibility of the company is usually produced in the process of the management behavior, in other words, It comes from the production and operation activities of the company. Different sources have established different legislative logics. For general types of corporate social responsibility, we can adopt a stricter legislative attitude and make bold regulations on it. However, for charitable donation, we need to firmly grasp the voluntary intention of charity, and adopt positive legislative means such as encouragement and incentive.

Different types of social responsibility, if regulation, in the same position will be set by the chain reaction - from the "listed company management rules" the 87th regulation, the listed company to keep the company continues to develop, improve business performance and safeguard the interests of the shareholders at the same time, should be in the community welfare, relief involved, public welfare undertakings, etc., Actively fulfill social responsibilities. Listed companies are encouraged to pair up to help poor counties or villages, and actively connect with and support poor areas in developing industries, training talents and promoting employment. In fact, this article is famous for two parts: one is that the social responsibility of listed companies should focus on the realization of public interests and enhance the welfare of the whole society; the other is that listed companies are required to participate in national construction and fight poverty. It may be asked that when specific matters are not clear, the sudden emergence of a specific task of social responsibility, the result must be to induce the company's charitable activities to a certain party. However, social responsibility is actually rich, and only by providing a variety of choices can a good social responsibility system be established. Evaluation in the specific link, the data of city stock exchange on the shenzhen stock exchange listed company information disclosure work appraisal method ", also produced the same problems in the assessment method, the part information disclosure of listed companies, disclosure of social responsibility of the company to participate in major national strategy can obtain higher scores alone, but like other social responsibility to perform the graded unifies.

It is inappropriate for company charitable donation to be placed in the same type of protection as employee welfare and consumer rights protection. In fact, this point has been clearly answered in the governance affairs of listed companies. Through searching and reading the social responsibility reports of listed companies, we can draw an obvious conclusion: many companies regard charitable donation to the society as a major content of social responsibility. Take Haier and Gree, the leading companies in the field of home appliances, for example. Since its listing, Haier Group has been making targeted special donations for rural Hope primary schools and integration of agriculture, animal husbandry and producers in remote areas. By the end of 2019, Haier has

invested more than 110 million yuan in total, helping build the first Hope primary school in 1995. Haier has assisted the construction of 306 Hope schools (305 Hope primary schools and 1 Hope middle school), making it the Chinese company that assisted the construction of the most Hope schools in the Hope Project of the Youth League Central Committee.<sup>[4]</sup> Gree, another giant in the field of home appliances, directly engages in charity, donating money and materials for specific charitable businesses. The scope and type of charity are not fixed. On 5th, 2017, Gree Electric Youth League Committee cooperated with Xiangzhou Public welfare organization "Qinghui". Organized "Qi Public welfare love Meaning" public welfare activities, helping the object for Nujiang Liuku, Yangchun Gangmei, Meizhou Fengshun sand tian poor mountainous area poor mountain children, the content is to raise school supplies for children in poor mountainous area, stationery and sports supplies and children's "wish list" pledges; In 2018, in order to sincerely pay tribute to the contemporary soldiers who are loyal and dedicated to protecting the country, Gree Electric Appliances presented 10 sets of "photovoltaic Soldier home" to Xizang border troops, committed to improving the working and living conditions of soldiers in the alpine and harsh areas of Tibet border.<sup>[5]</sup>

Haier and Gree are the two giants in the field of home appliances, and their attitudes towards charitable activities have reference value for us to understand the collective charitable donation of listed companies. Considering the vagueness of legal norms, it is not difficult to read from the social responsibility report that listed companies' philanthropy is an important way for them to shoulder their social responsibilities, and it can still flourish in the absence of specific legislation. However, this natural state highly depends on the will of the company itself. If the law does not promote charitable donation, it is likely to weaken the intention of the company to donate. At the same time, establishing a social responsibility system including charitable donation can also standardize the donation procedure and highlight procedural justice. Taking Midea, another leading company, as an example, the author found that Midea Group did not present the content of charitable donation in its social responsibility report from 2017 to 2018. However, in its 2019 social responsibility report, Midea emphasized that it has been supporting charities for 20 years, with a total investment of more than 7 billion yuan. This inevitably makes readers suspicious -- the social responsibility report of the past two years did not mention the content of charitable donation, and the sudden release of such a large donation project in 2019 seems to be a case of false information disclosure. Standardizing the way of charitable donation is conducive to enhancing the credibility of corporate charitable donation, enhancing the knowledge of other subjects in the stock market about corporate charitable cause, and timely canceling the

illegal behavior of transferring corporate property in the name of charity.

### ***3.2. The charity law imposes too many restrictions on corporate charitable giving***

Compared with the imperfect provisions on charity in the field of corporate social responsibility in the Company Law, listed companies have shown a positive situation in which charitable activities worthy of reference have been continuously absorbed by the legislature and incorporated into the new law, the core problems exposed by the charity law are more complex. As an important means of the third distribution, charity is an important supplement to China's social security system. The introduction of the Charity Law in 2015 marked the completion of China's charitable donation system, but some parts of the specific system still retain the brand of the original public institutions.

The scale of corporate charitable donations or the personnel handling them are far more complex than individuals, and charitable donations for individuals are less affected by laws. In many cases, charitable donations for some needy people are realized under the norms of moral sentiment, which also leads to their effective conditions far higher than laws. Most companies do not have the intention to donate at the beginning, which leads to the majority of companies do not establish or rely on immature internal donor organizations. However, if a company hastily establishes a special charity and public welfare department, it may bring heavy burden to the company and affect the enthusiasm of the company to donate.

Combining with the characteristics of corporate philanthropy, the author thinks that, efficient company charitable donations to mature the formation of the social charity mechanism, will be the cost of the charity in public, the concrete implementation were two factors: first, build efficient company charitable donation channel, ensure company donation can quickly to accept donors, the maximum extent, prevent loss in the process of charity; Second, improve the charitable trust mechanism to save the company's charitable costs. However, both of them have defects in China's charitable donation cause.

The first, There are many restrictions on charitable donation channels for Chinese companies. In order to encourage the development of charity, most countries have stipulated the charity tax reduction system, and China is no exception. But many charity incentives existing legislation in our country, there is no clear national unified deployment, and mostly referring to each individual provisions of tax, such as income tax on personal and corporate income tax law and tax aspects of value-added tax and import and export tax regulations, behavior deed tax and stamp duty tax regulations, and

more messy series of circular, opinions, etc.<sup>[6]</sup> According to Article 80-82 of China's Charity Law, natural persons, legal persons and other organizations that donate property for charitable activities enjoy tax preferences in accordance with the law, and relevant departments should handle relevant procedures in a timely manner. According to Article 51 of the Regulations on the Implementation of the Corporate Income Tax Law, public welfare donations referred to in Article 9 of the Corporate Income Tax Law refer to donations made by companies through public welfare social organizations or people's governments at or above the county level. Donations for public welfare undertakings as stipulated in the Public Welfare Undertakings Donation Law of the People's Republic of China. According to this article, the precondition for corporate income tax reduction or exemption is that the charitable donation of the company must be recognized as the donation of public welfare undertakings, which undoubtedly raises the approval threshold of corporate charitable donation tax exemption. At the same time, article 10 of the Public Welfare Undertakings Donation Law stipulates that natural persons, legal persons or other organizations can choose public welfare social groups and non-profit public welfare institutions to donate in accordance with their donation intentions. The donated property shall be the lawful property which the person has the right to dispose of. Again, this puts new limits on the recipients of our charitable donations. In combination with the provisions from the charity Law to the public welfare donation Law, we briefly outline the charitable donation path of China's listed companies: If you want to achieve the conditions of the charitable tax cuts, listed companies must to comply with the willingness of community public welfare organization and the nonprofit public welfare institution for donations, in this donation channel, we build is not "company - the donor" fast channel, but a "company - qualified public welfare organization or institution - giving people" of the channel, This is clearly not an efficient way to achieve our philanthropic goals.

Second, in our country, the construction of a system of charitable trust people also negligence, according to the stipulations of article 44-46 the charitable act, charitable trust belongs to the public trust, refers to the principal for charity purpose, its property entrusted to the trustee in accordance with the law, the trustee shall, according to the client will be managed and disposed of in the name of the trustee, to carry out charitable activities. The admittance of trustees determines the development quality and level of charitable trusts to a certain extent [On the qualification of Trustees of Charitable Trusts in China: Zhou Gan, Journal of China University of Political Science and Law, the fifth issue, 2021. A charity trustee may be a charitable organization or trust company designated by the trustor as the trustee. According to the law, the choice of charitable trustees includes not only

charitable organizations and trust companies, but also citizens, public institutions, partnerships and grassroots self-governing organizations. However, Article 52 of the Measures for the Administration of Charitable Trusts clearly stipulates that, except for lawfully established trust companies or lawfully registered or recognized charitable organizations, no unit or individual is allowed to carry out activities in the name of "charitable trusts". This shrinking of the scope of trustees is all the more inopportune at a time when citizens are increasingly willing to give to charity.

#### **4. THROUGH THE THIRD DISTRIBUTION THEORY SYSTEM RECONSTRUCTION**

##### ***4.1. Re-understand the legal value of the third distribution theory***

In addition to their own problems, there are also significant differences between corporate law and charity law in the legislative concept. When a company makes a charitable donation, it is supervised by charity law as a charitable donor, which is an external basic framework. However, corporate charitable donation also belongs to an act of corporate social responsibility and is also restricted by the Company law. How to continuously promote the integration of corporate social responsibility and philanthropy is a problem worth thinking about. The author believes that the "third distribution theory" initiated by Professor Li Yining can be used to deepen the perfection of corporate social responsibility theory.<sup>[7]</sup>

The third distribution system belongs to the social wealth distribution system. Professor Li Yining proposed this principle based on the traditional secondary distribution theory. And then it came up in multiple areas. Over the years, many scholars have developed and expanded his ideas in different fields. In the discussion, the academic system with the third distribution as the core is gradually constructed. The theory of the third distribution can be elaborated as the adjustment of resource allocation through moral force to achieve common prosperity on the basis of socialist market economy and socialist labor distribution. To sum up, the resource allocation of moral regulation belongs to the third allocation, but the third allocation has more triggering factors. The third distribution may be triggered by the instinct and habit at the very beginning and the psychology of people seeking honor and self-redemption regulated by the system and culture. That is to say, in addition to initial allocation and redistribution, all resource allocation activities featuring mutual assistance and sharing among non-specific subjects belong to the third allocation, which is a social mechanism.

The third distribution theory with the process of governance, be incorporated into the national political

activities, marks the third distribution idea into the national management system of key file is 2013 "the central committee of the communist party of China about certain major issue decision" comprehensively deepen reform, decision points out that improve the system of tax reduction and charitable donations, We will support charities in playing a positive role in helping the poor. In the Opinions on Supporting The High-quality Development and Construction of Common Prosperity Demonstration Zone in Zhejiang province in 2021, the CPC Central Committee and The State Council stressed the need to establish and improve the incentive mechanism of returning to society, give full play to the role of the third distribution, develop charity, and improve the system and mechanism conducive to the sustainable and healthy development of charity organizations.

As a cross theory of sociology and economics, the thought of the third distribution finally settled on charity in the field of law, and in fact its theoretical value is underestimated. The third allocation in the perspective of market economy, is the nature of opposition to complete free market, hope that through to adapt to the social resources allocation mechanism to realize resource rational distribution, characterized by social moral regulation of the economy, and in the specific legal system building, gradually formed the charity law as the core of the legal system. By taking the initiative to assume social responsibilities, listed companies can show their financial ability and better business philosophy, realize their own publicity and enhance investors' confidence (people are more willing to believe in an honest and kind company in investment). On the one hand, listed companies have a huge volume and are the product of social wealth convergence. Adjusting the flow of wealth of listed companies is a huge distribution, and there is room for the intervention of the third distribution thought. On the other hand, both of them have reached a consensus on the construction of social morality, and both of them have the value orientation of guiding the society to be positive. This way of moral adjustment of economy needs the joint efforts of both of them.

## ***4.2. Two-way adjustments in the legislative field***

### ***4.2.1. Consolidate the status of the Charity Law as the basic law***

Charity law, as the direct embodiment of the third distribution theory in the field of law, should play a central role in charitable donation of listed companies and actively face the problem of poor charitable donation of listed companies at present. In theory, the idea of the third allocation should be further implemented. Professor Li Yining reiterated at the 2018 NetEase Internet Conference that the third allocation should be voluntary and only voluntary. Don't ignore the power of morality.

Our charity law should maintain and promote good will as its duty. China's philanthropy was once misunderstood during the period of socialist construction, but it has slowly returned to the public eye in the 40 years since the reform and opening up, but the corresponding hierarchical public institution system still exists. The public institutions represented by the Red Cross society have failed to live up to the expectations of the society for many times, with frequent scandals. According to the current social reports, many social charity organizations have problems in fund management and personnel management. If social charity organizations cannot effectively complete the task of transparency in fund management, the public will have doubts about the direction of fund use of social charity organizations, which will inevitably lead to the lack of public credibility of social charity organization<sup>[4]</sup>.

In the other channel of charitable donation of listed companies, the scope of choice of charitable trustees also needs to keep pace with The Times and constantly broaden. The construction of charitable trustees needs to be de-administrated. Trust companies are born with trust as their business content. In some long-term trust businesses, trust costs are often considerable. But in charitable trust, the trustee may also be tied to charity work, but suffer from the inability to complete the person or organization, specified in the trust to "choose" cannot completely meet the needs of charitable trust, under the condition of market economy such as ours, there is a lot of has the functions of public service organizations and individuals to work in the charitable trust, Law firms, village and neighborhood committees, and moral models who contribute to society all have the ability and desire to do charity work. These organizations and individuals are also good candidates for charity trustees.

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#### 4.2.2. *The social responsibility theory connotation expands in time*

The theory of corporate social responsibility has made great progress in the western society, which has also absorbed a lot of contents of economics, management and politics -- the third distribution theory also has something worth learning from. One of the most urgent is to clarify the sources of different social responsibilities. Charitable donation comes from moral sentiment, and has a completely different origin from the products caused by its own influence, such as workers' rights and environmental protection, but they are ultimately rooted in social welfare. Therefore, it is a practical need to design different institutional models, and it does not mean favoring one over the other. In view of the deficiencies of the current legal system in the governance of listed companies, the author puts forward three suggestions:

First, state policies and charitable donations should be separated as soon as possible, and the two should take effect separately. The 87 contents of the governance code of listed companies should be separated as soon as possible.

To promote CSR project construction in listing governance, CSRC needs to exert its leadership, optimize the securities exchange market and establish CSR content in legislation in a timely manner. This is also a valuable experience from the development of our social responsibility. For example, In 2019, Haier Group revised and passed the Haier Corporate Social Responsibility and established the Haier Charity Fund. This reflects how companies increasingly view charitable giving as part of corporate governance. Securities supervision institutions should actively guide these valuable legal practices and make them a blueprint for our future legislation.

## 5. CONCLUSION

At present, the Company Law is facing a new round of amendments. Corporate social responsibility is one of the key points of the current revision of the Company Law. The author thinks that the revised draft of the new law is slightly inadequate for the current revision of the social responsibility legislation. In practice, the company attaches great importance to the charitable donation of the company. The amendment of our Company Law should absorb practical experience in time and correctly draw lessons from the realistic and well-grounded charitable donation present situation of listed companies in specific social responsibilities. It is worth mentioning that the value of the third allocation in law field is greatly underestimated, especially today we need to reshape corporate social responsibility theory, our inherent protection of the rights and interests of workers, environmental protection and consumer rights and interests in the legislative and economic development

today, gradually become the consensus of people, and companies in the growing today, New social responsibilities need to be mentioned -- charitable donation, scientific and technological innovation, and even national security. More and more corporate law theories need to be reconstructed, which needs to absorb the contents of other departments and even other disciplines.

The significance of this paper lies in that, on the one hand, the reform of China's company law needs to further absorb the essence of different kinds of theories and develop together with the times. The third distribution theory is an original distribution theory of our country, which has fresh social factors and helps us understand and create laws and regulations in line with China's value system; On the other hand, justice is one of the greatest values pursued by our nation, and different laws have the necessity to fight for it. This paper aims to combine the two and add justice to the company law.

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