

Luckin Coffee: A Look at Corporate Governance in the Chinese Market

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EXECUTIVE SUMMARY

The Luckin Coffee case presents an opportunity for an important analysis of corporate governance challenges of Chinese businesses and regulators because of the 2020 scandal and the fact that it carries on business in China and is a publicly traded company in the US. In the past, company failures have led to local and sometimes global queries about the processes through which companies' objectives are set and pursued. The regulatory changes ensuing from corporate scandals can be far-reaching, controversial, and leading to global regulatory contagion. In the Luckin scandal, its real and potential implications involved two of the world's dominant economies. The concerns from the Luckin scandal are the issues on which this chapter is focused. The chapter explores the concepts and regulatory solutions that are relevant to the Luckin scandal. The dynamics of the Chinese market and the consequences of the scandal are explored in the chapter. Ultimately, the need for caution in the discourse on regulatory response to scandals such as the Luckin case is articulated in the chapter.

INTRODUCTION

Corporate and accounting scandals have often caused public concern about the processes through which companies' objectives are set and pursued in the context of the social, regulatory and market environment. Scandals such as the Luckin Coffee (LK) accounting fraud case have been no different. (Stevenson & Wong, 2020) The potential challenge of the public concern for the causes of these scandals has often been that they put pressure on regulatory bodies who in turn could and, at times, do institute regulations that are controversial at best. For instance, in 2001, the Chinese government came under increasing public pressure to improve its policy towards corporate governance structures because of scandals involving listed companies in China such as Guanxia Industry Co. Ltd, Macat Optics and Electronics Co. Ltd, Sanjiu Pharmaceutical Co. Ltd and Lantian Co. Ltd. (Shan & Round, 2012, p. 1317) A popular example of the global repercussions of company failures is in how the scandals involving large corporations such as Enron and WorldCom led to enactment of regulation that would be a model for regulators seeking to interfere with the governance of corporations in several jurisdictions, including Japan. (Suzuki, n.d.) The scandal led to the creation of the Sarbanes–Oxley Act of 2002 (SOX) (USA) and other similar legal documents such as the Financial Security Law of France 2003, German Corporate Governance Code 2002 were also promulgated in response to the perception that stricter rules on the governance of corporations was required in various parts of the world. Following the passing into law of the SOX, it became an example of how corporate governance reforms could reignite the age-old quandary about the consequence of government interference in business boardroom decisions. Its passing into law in the US spurred up an appetite or calls for similar laws to be passed in other parts of the globe.¹ (Lin, 2004, pp. 11-15) (Nwogugu, 2019, p. 544) (Bhabra & Hossain, 2018, p. 1034) At the same time, the SOX was being criticized for reasons such as the widely touted view that the Act was dissuading foreign companies from entering the U.S capital market. (Colon, 2005) It was opined that some of the very aspects of SOX that have been the most criticized are also the most widely copied. (Loewenberg, 2008) In Canada, the SOX influenced model of corporate governance regulation was adopted by enacting Bill 198 2002 (which is commonly referred to as C-SOX) was criticized for being politically motivated and not based on empirical facts or a critical evaluation of the local environment. (Bhabra, Hossain, & Karmakar, 2020, pp. 262-263) Therefore, some stakeholders have expressed criticisms about the necessity and consequence of the regulatory reaction to corporate governance scandals. Alongside the detractors of the SOX 2002, there are proponents that have countered any negative sentiments about the Act by highlighting its positive impact. (Peregrine, 2021) Consequently, the objective of this chapter is not based on the need to duel on the propriety or

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