

## Introduction of PRC Company Law (Revised in 2023)

From July 1st 2024, 2023 PRC Company Law (“**2023 Company Law**”) will replace 2018 PRC company law (“**2018 Company Law**”) and then be implemented in the Chinese mainland.

Compared to 2018 Company Law, 2023 Company Law has revisions related to limited liability company, mainly in the following aspects: 1) shareholders’ capital contribution; 2) voting procedure of board of shareholders and board of directors; 3) improvement of duties of loyalty and of diligence of directors, supervisors and senior executives; and 4) improvement of liquidation system. This article will give some brief of those 4 main revisions.

### **1. Shareholders’ Capital Contribution**

**1.1 Capital contribution term.** In principle, 2018 Company Law doesn’t set mandatory term for the shareholders to fully contribute their subscribed capital. However, 2023 Company Law requires the shareholders to fully inject subscribed capital within 5 years from the date of company incorporation.

Particularly, State Administration for Market Regulation issued *the Provisions of the State Council on Implementation of the Registration Administration System for Registered Capital under the Company Law of the People’s Republic of China (Draft for Comments)* (the “**Draft for Comment**”, not implemented yet), for public comments on 6th February 2024.

According to the Draft for Comments, in terms of the limited liability companies incorporated before the implementation of 2023 Company Law: starting from 1st July 2027, if the shareholders’ remaining capital contribution term is less than 5 years, the companies are not required to amend its article of association in respect of the shareholders’ capital contribution term; starting from 1st July 2027, if the shareholders’ remaining capital contribution term is longer than 5 years, during the period from 1st July 2024 to 30th June 2027 the companies are required to amend its article of association in respect of the shareholders’ capital contribution term, with **30th June 2032** as the deadline for the shareholders to fully inject their subscribed capital.

**1.2 Board of directors’ obligation to urge capital contribution.** 2023 Company Law requires that: the board of directors shall verify the shareholders’ capital contributions situation, specifically: if the shareholders fail to contribute their subscribed capital per the company’s article of association, the board of directors shall arrange the company to send a written notice to urge the shareholders to inject their subscribed capital in a grace period (the “**Grace Period**”, which shall be not less than 60 days from the issuance of such notice).

If the companies suffer the losses due to the board of director’s failure to fulfill the forgoing obligation, the responsible directors shall indemnify the company for its losses.

**1.3 Shareholders’ forfeiture of their equity interest.** If the shareholders fail to contribute their



subscribed capital during the Grace Period, upon a resolution of the board of directors the company can send a written notice to such shareholders for forfeiting their equity interest in proportion to their un-paid capital.

As for the forfeited equity interests, those shall be handled within 6 months from such forfeiture notice, in either of the following 2 ways: 1) the company conducts capital decrease and deregisters the forfeited equity interests; or 2) the forfeited equity interests shall be transferred to the others.

If the forfeited equity interests cannot be deregistered or transferred within such 6 months, the other shareholders of the company shall supplement the un-paid capital in proportion to their current shareholding ratio.

## 2. Voting Procedure of Board of Shareholders and Board of Directors

**2.1 Voting procedure of board of shareholders.** 2018 Company Law requires the shareholders resolution regarding the following matters shall be passed by the shareholders holding 2/3 or more of the voting rights: 1) amendment to the company's articles of association; 2) increase or decrease of registered capital; 3) company merger, division, dissolution or change of company structure.

2023 Company Law not just inherits the foregoing voting procedure, but also sets new mandatory rule as follows: the shareholder resolutions regarding any other matters shall be passed by the shareholders holding half of the voting rights.

**2.2 Voting procedure of board of directors.** 2018 Company Law has neither quorum to hold the board meeting nor mandatory voting procedure to pass board resolution.

However, 2023 Company Law requires that: the quorum to hold the board meeting is **more than half of the entire directors**, and moreover, the board resolution shall be passed by **more than half of the entire directors**.

## 3. Improvement of Directors, Supervisors and Senior Executives' Duties of Loyalty and Diligence

**3.1 Duties of loyalty and diligence.** 2018 Company Law sets a general principle as follows: the directors, supervisors and senior executives shall assume the duties of loyalty and diligence, and 2023 Company Law expands such principle as follows: 1) the directors, supervisors and senior executives shall assume the duty of loyalty, and furthermore shall take measures to avoid the conflict of interest with the company, and furthermore shall not seek any improper benefits by taking advantage of their powers; 2) they shall assume the duty of diligence, and furthermore shall exercise diligence and care in a reasonable way, for the best interests of the company.

**3.2 Procedure to conduct business with the company.** 2018 Company Law just requires the



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shareholders' resolution as the precondition for the directors, supervisors and senior executives to sign the contract or conduct the business with the company.

2023 Company Law further requires that: the shareholders resolution or board resolution (per the Company's articles of association) is the precondition for the following persons/entities to sign the contract or conduct business with the company: 1) directors, supervisors, and/or senior executives; 2) close relatives of directors, supervisors and/or senior executives; 3) the entities directly or indirectly controlled by directors, supervisors and/or senior executives or their close relatives; 4) any other persons/entities who/which have any other related relationship with the directors, supervisors and/or senior executives.

#### 4. Improvement of Deregistration Procedure

**4.1 Simplified deregistration.** Although State Administration for Market Regulation issued *Guiding Opinions on Comprehensively Advancing the Reform of the Simplified Deregistration of Enterprises* in 2016 and in practice the administrations for market regulations have been encouraging the companies to undergo the **Simplified Deregistration**, 2018 Company Law didn't mention such Simplified Deregistration.

2023 Company Law clearly specifies the Simplified Deregistration, with main rules as follows: if the company doesn't have any debt or has settled its debts, the company doesn't need to set up a liquidation committee for handling liquidation of the company, and instead, the shareholders shall undertake non-existing of debts or settlement of all debts and further undertakes to take joint and several liability for the company's debit for making false commitment, and then the company can directly make announcement of its Simplified Deregistration via **National Enterprise Credit Information Publicity System for at least 20 days** (the "**Announcement Period**"). The public can raise objection (if any) to such Simplified Deregistration during the Announcement Period, and as long as there is no objection raised by the public during the Announcement Period, the company can directly file deregistration application to the competent administration for market regulation upon expiry of such period.