

China Insight



Substantively Revised *PRC Company Law* will enter into effect on 1 July 2024

On 29 December 2023, the Standing Committee of the National People's Congress of the People's Republic of China ("**PRC**") adopted and promulgated a substantive revision of the *PRC Company Law* ("**2023 Company Law**"), which will enter into effect on 1 July 2024.

The now final version of the 2023 Company Law is the result of a lengthy drafting process. 3 comprehensive previous draft versions had been released for public comments in 2021, 2022 and 2023, before the final and fourth draft has been adopted.

The 2023 Company Law comprises 15 Chapters and 266 Articles in total. It constitutes a major update and introduces multiple changes compared to the current version of the *PRC Company Law*. The current version had first been promulgated on 29 December 1993 and entered into effect on 1 July 1994, and has last been amended with effect of 26 October 2018 ("**2018 Company Law**"). The 2023 Company Law, inter alia, provides for changes regarding capital contributions, corporate governance as well as responsibilities of shareholders and key personnel of companies.

The 2023 Company Law will have major impact on all existing and future companies in the PRC, whether they are foreign-invested or domestic, and whether they are limited liability companies or companies limited by shares.

Accordingly, shareholders and PRC companies should familiarize themselves with the new law and assess the impact it may have on PRC companies and their operations in the PRC.

Below, we highlight certain key aspects of the 2023 Company Law. Since nearly all foreign-invested companies in the PRC have the form of a limited liability company ("**LLC**") we focus on the impact of the new law on LLCs (as compared to companies limited by shares).

As a preliminary note, the topics discussed herein do not cover all the changes the 2023 Company Law will bring along. This newsletter focuses on major updates of really significant importance to investors and companies. In addition to the content covered by this newsletter, the 2023 Company also provides for other changes, e.g. it provides for a separate chapter for company registration issues regarding establishment, alteration and termination (see Articles 29 to 41), certain changes regarding capital reductions, etc.

1. Changes regarding Capital Contributions

- Introduction of a 5-year maximum contribution period

Until 2014, the shareholders of a LLC were required to contribute the full amount of the LLC's registered capital within 2 years as of the establishment of the LLC. This had then been further relaxed, and currently the shareholders of a LLC can freely decide on the capital contribution schedule in the LLC's Articles of Association. Under the current regime, the capital contribution schedule can generally extend to the whole lifetime of a LLC.

However, this will change under the 2023 Company Law, which re-introduces a maximum capital contribution period. According to the 2023 Company Law, the shareholders of a LLC must fully contribute their respective portion to the registered capital in accordance with the LLC's Articles of Association within 5 years from the establishment of the LLC. For a company limited by shares, the promoters shall already make full capital contribution before the establishment of the company.

This new 5-year contribution period will in any case apply to all LLCs to be established on or after 1 July 2024. With regard to LLCs already existing at that time, the 2023 Company Law provides that these LLCs "*shall gradually adjust*" to the 5-years' contribution period, and that if "*the contribution period or amounts are significantly abnormal, the company registration authority may, in accordance with the law, require timely adjustments*". It is further provided that the State Council will provide for specific implementation measures in this regard.

Background of this new regulation could be that numerous LLCs opted for a relatively high registered capital combined with a very long contribution period to appear of a bigger scale than they actually are. Another aspect, with regard to foreign-invested LLCs, could be to facilitate the inflow of foreign exchange cash into the PRC. As to already existing LLCs, the current wording of the 2023 Company Law is rather vague and not sufficiently clear. In order to be fully compliant with the 2023 Company Law, shareholders of existing LLCs will likely be required to either fully contribute their respective portion to the registered capital within a 5-years' period starting from 1 July 2024 (i.e., until 30 June 2029) or to decrease the LLC's registered capital before that time. It is to be hoped that the mentioned implementation measures of the State Council will be issued timely and provide for more clarity and guidance on this topic.

- More possibilities for capital contributions in kind

Under the current 2018 Company Law, capital contributions in kind can generally be made by intellectual property rights, land use rights and other non-financial assets the value of which may be assessed in financial terms and ownership of which may be transferred in accordance with the law. The 2023 Company Law extends this in a way that generally also "*equity*" and "*debt claims*" can be used for capital contributions in kind, provided that they can be valued in monetary terms and legally be transferred.

This change is welcomed and provides for more flexibility for investors.

- Liabilities for Shortfall in Capital Contribution and "Forfeiture of Shares"

The 2023 Company Law increases liabilities of shareholders compared to the 2018 Company Law for failure to make timely capital contributions, and introduces a possible "forfeiture of shares". In particular, for LLCs, the following applies:

- When a LLC is established and if a shareholder fails to make payment of its capital contribution in accordance with the LLC's Articles of Association, or if the actual value of non-monetary assets contributed falls significantly below the subscribed capital amount, not only the non-compliant shareholder itself but also all other shareholders of the LLC at

the time of establishment shall bear joint and several liability within the shortfall of the capital contribution.

- After the establishment of a LLC, the Board of Directors ("**BoD**") shall verify the status of the shareholders' capital contributions. If it is found that a shareholder has not timely and fully paid its contribution in accordance with the LLC's Articles of Association, a written payment demand shall be issued by the LLC to the specific shareholder. Directors who fail to fulfill the above obligation in a timely manner, resulting in losses to the LLC, shall be liable for compensation.
- Under the prerequisites of the preceding bullet point, the LLC may grant a grace period in the written payment demand of at least 60 days starting from the issuance date of the payment demand. If the respective shareholder still fails to fulfill its contribution obligations upon expiration of such grace period, the LLC may, upon a resolution of its BoD, issue a written notice of forfeiture to such shareholder. From the date of the notice of forfeiture, the respective shareholder loses its rights to its equity interests for which no contribution has been made.

The forfeited equity interests shall be transferred in accordance with the law or be cancelled by way of a decrease of the registered capital of the LLC. If such transfer or cancelation is not completed within 6 months, the other shareholders of the LLC shall fully pay the outstanding capital contribution in proportion to their respective equity interests in the LLC.

If the affected shareholder has objections to the forfeiture, it may initiate legal action at a People's Court within 30 days from the date of receiving the notice of forfeiture.

- Further, even if the capital contribution period has not yet expired, if a LLC is unable to meet its due obligations, the LLC or the creditors of the due debts have the right to demand early contributions from shareholders whose subscribed capital contributions are not yet due for payment.

The above new stipulations tighten the compliance obligations of shareholders as well as of the BoD of LLCs regarding capital contributions. Shareholders and the BoD of LLCs are advised to familiarize themselves and to comply with the new rules.

2. Changes regarding Company Organs and Corporate Governance

- Increased Requirements on Employee Representatives

Under the 2018 Company Law, at least 1/3 of the members of the Supervisory Board are required to be employee representative(s), and wholly State-owned enterprises as well as companies established by two or more State-owned enterprises are required to have employee representatives in their BoD.

The 2023 Company Law provides for changes in this regard. According to the 2023 Company Law, unless a Supervisory Board is set up and includes at least 1/3 employee representative(s), LLCs with at least 300 employees must have employee representative(s) in their BoD. Further, the maximum number of BoD members (previously: 3 to 13) has been abolished (now: at least 3). The employee representative(s) in the BoD shall be elected by the LLC's employees through an employee representative assembly, employee assembly, or other forms of democratic elections.

This constitutes a major change compared to the 2018 Company Law, under which a LLC (including those with at least 300 employees) could prevent having any employee representatives at all by opting for having only 1 or 2 Supervisors instead of a Supervisory Board, in which case no employee representatives were required. Under the 2023 Company

Law, LLCs with at least 300 employees must mandatorily have employee representative(s), either in the Supervisory Board or in the BoD, and it is not possible to prevent this anymore. Affected LLCs should consider what they prefer, i.e. having employee representative(s) in the Supervisory Board or in the BoD. In addition, if there should be employee representative(s) in the BoD, also the specific method for their election, i.e. by way of a representative assembly, employee assembly, or other forms of democratic elections, must be considered and decided.

- Changes regarding Supervisors and newly introduced Audit Committee

Under the 2018 Company Law, a LLC must in principle have a Supervisory Board comprising at least 3 persons (including at least 1 employee representative). However, LLCs with a smaller number of shareholders or of a smaller scale can opt to only have 1 or 2 Supervisors instead (then no employee representative is required).

Under the 2023 Company Law, a LLC must, in principle, still have a Supervisory Board comprising at least 3 persons (including at least 1 employee representative). LLCs with a smaller number of shareholders or of a smaller scale can now opt to have 1 Supervisor instead of a Supervisory Board. I.e., the option of having 2 Supervisors no longer exists which may, in particular, have impact on existing joint ventures with 2 shareholders, which typically have 2 Supervisors.

Further, the 2023 Company Law provides for the option not to have a Supervisory Board or a Supervisor at all under the following circumstances:

- (i) Any LLC may establish a newly introduced Audit Committee composed of a not specified number of members of the BoD. In such case, the Audit Committee shall exercise the statutory functions of the Supervisory Board, and it is not required to have a Supervisory Board or a Supervisor. An employee representative among the members of the BoD, if any, may also become a member of the Audit Committee.
- (ii) For LLCs with a smaller number of shareholders or of a smaller scale, all of its shareholders can unanimously agree not to have a Board of Supervisors or a Supervisor at all.

Also this constitutes a major change compared to the 2018 Company Law. As to the possibility of having an Audit Committee, it appears to some extent contradictory that the Directors within the Audit Committee shall have the responsibility to supervise, *inter alia*, the BoD and accordingly also themselves. This applies the more, since also the 2023 Company Law still states that no Director or senior manager may concurrently serve as Supervisor. Overall, the (already rather low) importance of Supervisors in LLCs under PRC law appears to be further diminished by the 2023 Company Law.

- Increase of Range of Persons Eligible to Serve as Legal Representative

- Under the 2018 Company Law, only the Chairman of the BoD, the Executive Director (if there is no BoD) or the General Manager could serve as legal representative of a LLC.

The 2023 Company Law increases the range of persons who can serve as legal representative by stating that "*any director or company manager representing the company for the execution of company affairs*" can serve as legal representative.

This means that in the future also ordinary members of the BoD can serve as legal representative, which was not possible under the 2018 Company Law.

- For the legal representative, the 2023 Company Law further provides for the following rules:

- The legal consequences of civil activities conducted by a company's legal representative in the name of the company shall be borne by the company.
- Restrictions on the powers of a company's legal representative by the company's Articles of Association or the Shareholders' Meeting shall not be enforceable against *bona fide* third parties.
- If a company's legal representative, in the course of performing duties, causes harm to others, the company shall bear civil liability. After assuming civil liability, the company may seek compensation from the legal representative at fault in accordance with the law or the company's Articles of Association.

The above is actually not new and in line with current PRC laws and regulations. However, the 2023 Company Law now expressly stipulates these principles for the first time.

- Deletion of Catalogue with Responsibilities of General Manager

While the 2018 Company Law contained a (non-mandatory) catalogue of responsibilities of the manager (i.e., the General Manager) of a LLC, such catalogue has been deleted in the 2023 Company Law. The 2023 Company Law only states that a LLC may appoint a company manager, who shall be appointed or removed by the BoD, and that the company manager shall report to the BoD and exercise functions and powers as specified in the Articles of Association or as authorized by the BoD. The company manager attends meetings of the BoD as a non-voting attendee.

Although the catalogue of responsibilities of the General Manager in the 2018 Company Law was not mandatory, this likely provides for more flexibility regarding the functions of the General Manager of a LLC.

- Changes regarding the Responsibilities of the Shareholders' Meeting and the BoD

Compared to the 2018 Company Law, the 2023 Company Law provides for some changes regarding the responsibilities of the Shareholder's Meeting and the BoD. The items "*determining the company's business guidelines and investment plans*" and "*deliberating on and approve annual budget plans and final account plans of the company*" have been deleted as responsibilities of the Shareholder's Meeting. Within the responsibility of the BoD, the item "*determining the company's business plans and investment schemes*" has been kept unchanged, while the item "*formulating the annual budget plans and final account plans of the company*" has also been deleted.

Further, under the 2023 Company Law, the Shareholders' Meeting may authorize the BoD to make resolutions regarding the issuance of corporate bonds.

This will provide more flexibility to some extent. E.g., "*deliberating on and approve annual budget plans and final account plans of the company*" as well as resolutions regarding the issuance of corporate bonds can then be shifted to the responsibility of either the Shareholders' Meeting or the BoD in the future. Compared to the 2018 Company Law also some more clarity is provided by stating that (only) the BoD is responsible for "*determining the company's business plans and investment schemes*".

- Changes regarding the Quorum and Decision Making of Company Organs

While the 2018 Company Law provided that "*unless otherwise provided in this law, methods of deliberation and voting procedures at Shareholders' Meetings shall be specified by a company's Articles of Association*", the 2023 Company Law requires that "*a resolution of the Shareholders' Meeting shall be adopted by shareholders representing a majority of the voting rights*".

Similarly, while the 2018 Company stated that "*unless otherwise provided in this law, methods of deliberation and voting procedures of the board of directors shall be specified by the company's Articles of Association*", the 2023 Company Law requires that "*a meeting of the board of directors shall only be held with the presence of a majority of the directors*" and that "*any resolution of the board of directors shall be adopted by a majority of all the directors*".

Thus, the 2023 Company Law reduces flexibility in this regard and the possibility to provide for different and more flexible concepts in the Articles of Association of a LLC. This may have impact on respective stipulations and deadlock mechanisms in current Articles of Association, and potentially amendments will be necessary.

- Compensation in case of Dismissal of a Director

Another important change introduced by the 2023 Company Law is that now, if a Director is dismissed without good cause before the end of his/her term, the Director may claim compensation from the LLC.

This stipulation raises several questions: first, (as compared to the General Manager who is often employed by the LLC), Directors of LLCs are in many cases not employed by the LLC, so that the right for compensation in case of dismissal from their position as Director seems questionable. Further, it is not further specified what "*good cause*" for the dismissal would be. It is also unclear, whether it would be possible to reach agreement with Directors (prior to or after their appointment), that they waive such compensation right in advance. It is to be hoped that future implementing regulations or interpretations provide for further guidance on this.

- Express Introduction of Meetings and Voting via Electronic Communication

While already very common in practice and included in many Articles of Association, the 2023 Company Law now expressly introduces that meetings and the voting of the Shareholders' Meeting, the Board of Directors and the Supervisory Board may be conducted through electronic communication methods, except as otherwise stipulated in the company's Articles of Association.

This new stipulation reflects the current practice in most companies and is welcomed.

Overall, the 2023 Company Law grants more flexibility to LLCs regarding their company organs, the allocation of respective responsibilities and general corporate governance. Subject to the LLC's Articles of Association, the BoD may play a more important role in a LLC than under the current law. However, the requirement of mandatorily having employee representative(s) in LLCs with at least 300 employees also brings along obstacles and may be regarded as detrimental by shareholders and LLCs. Further, in particular joint ventures with 2 shareholders, may be required to make changes regarding their Supervisors, e.g. by having only 1 Supervisor or no Supervisor at all or potentially having an Audit Committee composed of Directors in the future.

3. Changes regarding the Transfer of Equity Interests in LLCs

- Abolishment of Requirement to Consent

The 2018 Company Law required that where any shareholder proposes transferring his equity interests to any non-shareholder, such proposal is subject to the consent of a majority of the other shareholders and the relevant shareholder shall give the other shareholders written notice of the details of the proposed transfer of equity interests and obtain their consent. Where a majority of the shareholders whose consent is sought disagree with the proposed transfer, the shareholders who disagree with the proposed transfer shall purchase the equity interests to be transferred.

Such consent requirement has been abolished by the 2023 Company Law. The 2023 Company Law only stipulates that shareholders transferring their equity interests to parties outside the existing shareholders shall provide written notice to other shareholders on matters including the quantity, price, payment method, and deadline for the equity transfer, and other shareholders shall have the right of first refusal to purchase on the same terms. If a shareholder does not respond within 30 days of receiving the written notice, it is considered a waiver of the right of first refusal.

In practice, however, we expect that not much will change by this. Also under the 2018 Company Law, the required consent was deemed to be given, if any of the other shareholders failed to respond within 30 days of receiving the written transfer notice or if they refused to acquire the equity interests to be transferred. However, under the 2023 Company Law, no Letter of Consent of other shareholders will be required anymore in case of a transfer of equity interests and a Letter of Waiver of Pre-emptive Right will suffice.

- **Changes regarding Outstanding Capital Contributions**

Under the current law, according to a relevant interpretation of the Supreme People's Court, in case of a share transfer, the buyer is only jointly and severally liable with the seller for outstanding capital contribution obligations, if the buyer was aware or should have been aware of the outstanding payment. Further, if the buyer who has borne the liability pursuant to the above seeks recourse from the seller who has not performed its capital contribution obligations or has not fully performed its capital contribution obligations, the People's Court shall uphold the request, unless otherwise agreed between the parties concerned.

According to the 2023 Company Law, where a shareholder transfers its equity interests representing subscribed capital contributions not yet due for payment, the transferee shall assume the obligation to pay such capital contribution. If the transferee fails to do so in time and in full, the transferor shall bear supplementary liability for the shortfall in contribution.

Where a shareholder transfers its equity interests without having paid the contributions by the deadline as stipulated in the Articles of Association or where the actual value of non-monetary assets contributed falls significantly below the subscribed capital amount, the transferee shall bear joint and several liability with the transferor within the shortfall in contribution, unless the transferee does not know and should not have known the above situation.

Due to the above, the 2023 Company Law to some extent increases potential liabilities of the buyer for outstanding capital contributions. This must be taken into account in the future for due diligences, share transfers and the drafting of Share Transfer Agreements (e.g., via representations and warranties, closing conditions, other contractual protection mechanisms or being reflected in the transfer price).

- **Additional Scenario on the Re-purchase of Equity Interests**

In addition to the scenarios where a shareholder may request a LLC to repurchase its equity interests as set out in the 2018 Company Law, which are re-iterated in the 2023 Company Law, the 2023 Company provides for an additional scenario in this regard. I.e., where a controlling shareholder of a LLC abuses shareholder rights, causing serious harm to the interests of the LLC or other shareholders, other shareholders shall have the right to request the LLC to repurchase their equity interests at a reasonable price.

4. Enhanced Responsibilities of Key Personnel of a Company

Compared to the 2018 Company Law, the 2023 Company provides for more detailed responsibilities of Directors, Supervisors and senior managers as well as, newly introduced, of controlling shareholders and actual controllers. In particular, the following applies:

- Directors, Supervisors and senior managers as well as, newly introduced, controlling shareholders and the actual controllers who do not serve as directors but actually execute company affairs shall bear a duty of loyalty and duty of diligence to the company.

Regarding the duty of loyalty, they shall take measures to avoid conflicts of interest between their personal interests and the interests of the company, and they shall not use their authority to seek improper benefits. Regarding the duty of diligence, they shall, in the performance of their duties, exercise the usual and reasonable care that a manager should have for the maximum benefit of the company.

- If Directors, Supervisors and senior managers, directly or indirectly, enter into a contract or engage in a transaction with the company, they shall report this to the BoD or the Shareholder's Meeting and obtain approval in accordance with the company's Articles of Association. The above applies to concluding contracts or conducting transactions with the company by (i) its Directors, Supervisors and senior managers; (ii) close relatives of the persons under item (i); (iii) enterprises directly or indirectly controlled by the persons under items (i) and (ii); and (iv) persons having other related-party relationships with persons under item (i).
- Directors, Supervisors and senior managers shall not use their positions to seek any business opportunity available to the company for themselves or others, except if (i) the activity has been reported to the BoD or the Shareholders' Meeting and been approved in accordance with the company's Articles of Association; or (ii) the company cannot exploit such business opportunity according to laws, administrative regulations or the company's Articles of Association.
- Directors, Supervisors and senior managers shall not operate businesses, either self-owned or owned by others, similar to those of the company they serve, without reporting to the BoD or the Shareholders' Meeting and obtaining approval in accordance with the company's Articles of Association.
- With regard to the preceding 3 bullet points, Directors with related-party concerns shall not participate in the voting, and their voting rights shall not be counted in the total voting rights. If the number of Directors without related-party concerns present at the board meeting is less than 3, the matter shall be submitted for deliberation to the Shareholders' Meeting.
- It is further newly introduced that for losses caused to others by a Director or senior manager during the performance of their duties, the company shall be liable for compensation; if there is intent or gross negligence on the part of the Director or senior manager, the person shall also be liable for compensation.
- In cases where a controlling shareholder or actual controller of the company instructs any Director or senior manager to engage in an action harmful to the interests of the company or its shareholders, that person, i.e. the controlling shareholder or actual controller, shall bear joint and several liability with the Director or senior manager.
- It is further noteworthy that the 2023 Company Law expressly provides that a company may purchase liability insurances to cover the compensation liability borne by the Directors due to the performance of company duties, i.e. D&O insurances. In such case and if such insurance is renewed, the BoD shall report the insured amount, coverage, premium rate, etc., to the Shareholder's Meeting of the company.

Companies as well as their Directors, Supervisors, senior managers and, newly introduced, controlling shareholders and actual controllers should be aware of these increased responsibilities and potential related liabilities.

5. Expanded use of Reserves and Registered Capital

- The 2018 Company Law states that a company's common reserves shall be used to cover losses made in past years, to enhance the company's productivity and expand its business or to increase its registered capital. It is further expressly stated that a company's capital reserve shall not be used to cover the company's losses. The "capital reserve" is part of the investor's capital contribution (i.e., investment costs), although the capital reserve amount, as equity investment premium, is not registered with the competent registration authority as such. Accordingly, it could be derived from the 2018 Company Law that the investment costs should generally not be used to recover the losses.
- This will change under the 2023 Company Law. According to the 2023 Company Law, under certain circumstances, both the capital reserve as well as the registered capital can be used to cover losses.
 - Regarding a company's reserves, the 2023 Company Law re-iterates that a company's reserves shall be used to cover its losses, expand its production and business, or increase its registered capital. In addition, the 2023 Company Law newly introduces that when using a company's reserves to cover its losses, any discretionary reserve and statutory reserve balances shall be used first to cover such losses; if there is still a shortfall, the capital reserve may be used in accordance with regulations.
 - The 2023 Company Law further states that after a company covers losses as set out in the preceding bullet point, if there are still losses, the company may decrease its registered capital to make up for the losses. In such case, the company shall not distribute to shareholders the capital amount for decrease that is used for loss recovery or exempt shareholders from the obligation to make the committed capital contribution.

In case of a decrease of the registered capital pursuant to the above, no notification of the company's creditors (as usually required for a capital decrease) is necessary, and only a public announcement shall be made through a newspaper or the National Enterprise Credit Information Publicity System within 30 days of adopting the resolution on the decrease of the registered capital by the Shareholders' Meeting.

After a company decreases its registered capital as provided above, profits may not be distributed until the aggregate amount of the statutory reserve and discretionary reserve reaches 50% of the company's registered capital.

Due to the above, in comparison to the 2018 Company Law, the 2023 Company Law provides for the possibility to use, under certain circumstances, the capital reserve and/or the registered capital to cover losses.

6. Changes on a Company's Dissolution and Liquidation

- While the 2018 Company Law states that the liquidation team of a LLC shall be comprised of its shareholders, the 2023 Company Law provides that the liquidation team shall be composed of Directors, unless it is otherwise stipulated by the company's Articles of Association or appointed by resolution of the Shareholders' Meeting.
- The 2023 Company Law now expressly mentions and refers to the possibility of simplified de-registration procedures. Generally, compared to normal liquidation procedures, the set-up and recordal of a liquidation team and formulation of a liquidation plan and a liquidation report are not required in simplified de-registration procedures, which also take shorter time. The 2023 Company Law provides for the following in this regard:

- If a company incurs no debts during its existence or has settled all its debts, as assured by a unanimous commitment of the shareholders, the company may be de-registered through simplified procedures.
- The de-registration of a company through simplified procedures shall be announced through the National Enterprise Credit Information Publicity System, with an announcement period of no less than 20 days.
- Upon the expiration of the announcement period without objection, the company may apply for de-registration to the company registration authority within 20 days.
- In the event of the deregistration of a company through simplified procedures, if shareholders provide a false commitment regarding the content specified in the first bullet point above, they shall bear joint and several liability for the debts outstanding before the de-registration.

Actually, simplified de-registration procedures are not new and already exist and are implemented nationwide since 1 March 2017 (see the *Guiding Opinions of the State Administration for Industry and Commerce on Comprehensively Advancing the Reform of the Simplified De-registration of Enterprises*). However, this possibility has now officially been introduced into the 2023 Company Law.

7. Expanded Application of "Piercing the Corporation Veil"

Generally, a company as an independent legal person is liable for its debts to the extent of all its assets, and shareholders are liable to the company only to the extent of their respective subscribed capital contributions (in case of a LLC) or to the extent of their respective subscribed shares (in case of a company limited by shares).

However, under certain circumstances, there are exceptions to such principle, and shareholders (or its controlled companies) shall assume joint and several liability for the debts of the company, i.e. so-called "piercing of the corporation veil".

The 2023 Company Law stipulates 3 circumstances of "piercing of the corporation veil", the second of which is newly added compared to the 2018 Company Law:

- If any shareholder of a company evades the payment of debts by abusing the company's independent status as a legal person or the limited liability of shareholders, thereby seriously damaging the interests of any creditor of the company, the shareholder shall bear joint and several liability for the debts of the company.
- If any shareholder utilizes 2 or more companies under its control to carry out actions specified in the preceding paragraph, each of these companies shall bear joint and several liability for the debts of any of the companies.
- In the case of a company with a sole shareholder, if the shareholder cannot prove the independence of the company's assets from its own assets, the shareholder shall bear joint and several liability for the company's debts.

The above slightly increases the circumstances where a "piercing of the corporation veil" can occur, and has the purpose to further prevent misuse and to protect rights and interests of a company's creditors.

8. Communist Party Involvement

- The 2018 Company Law as well as the 2023 Company Law both state that Chinese Communist Party organizations shall, in accordance with the Constitution of the Chinese Communist Party,

be set up in companies and shall carry out Party activities. Companies shall provide the necessary conditions for carrying out the Party activities of the Chinese Communist Party organizations.

- In addition, the 2023 Company Law newly introduces a respective provision specifically for State-invested companies, which includes both wholly State-owned companies and companies controlled by State capital. According to such wording, we understand that this also applies for foreign-invested enterprises, if they are controlled by State capital. It is stated that the organization of the Communist Party of China (CPC) established within a State-invested company shall exercise leadership in accordance with the Constitution of the Communist Party of China, study and discuss material business and management matters of the company, and support the company organs to exercise their functions and powers in accordance with the law.

9. Conclusion

In conclusion, the 2023 Company Law constitutes a milestone update in PRC legislation and will have a major impact on all existing and future companies in the PRC. Investors and all companies in the PRC are strongly advised to familiarize themselves with the new law and to assess the impact it may have on their PRC companies and their operations in the PRC. Depending on the specific situation of a respective company, actions may be required to be taken, such as a capital decrease, change of the corporate governance structure, amendment to the Articles of Association or negotiations with the joint venture partner(s), etc. Investors and companies should also pay close attention to any future implementing regulations, interpretations, etc. which may provide for further details and guidance on various stipulations of the new law.

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