Seahonor Express

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Contents

Legal

Company Law of the People's Republic of China (Revised)

Issued by: The Standing Committee of the Fourteenth National People's Congress of the PRC
Issue No.: Decree No. 15 of the President of the PRC
Effective Date: July 1,2024
Links: http://www.npc.gov.cn/c2/c30834/202312/t20231229_433999.html

The new Company Law substantially adds and amends about 70 articles to the 218 articles in 13 chapters of the existing Company Law, making significant changes to the corporate governance structure and many other regimes. As limited liability companies (“LLC”) account for the majority of companies, some of the major impacts of the new Company Law on LLCs are listed as below:

1. Reforming capital contribution regime

- Shareholders of LLCs must accomplish the entire capital contribution within five years from incorporation. For those LLCs established before the implementation of the new Company Law whose capital contribution period exceeds the one stipulated in this law, a transitional period will be given to gradually adjust the capital contribution period as per the requirements of the new Company Law. The State Council will subsequently issue the specific measures on this regard.
- LLCs are allowed to use capital reserve fund to cover losses in accordance with the regulations.
- A simplified capital reduction policy is provided, allowing companies to make up for losses by reducing registered capital in accordance with regulations. This is on the condition that no distributions shall be made to shareholders or exempting shareholders from the obligation to pay their capital contributions or shares.
- New regimes on capital contribution obligation are introduced, including loss of rights and benefits attached to the unpaid capital for the defaulting shareholders, early expiry of the shareholder’s capital contribution period, and the joint liability of the transferor and transferee after transfer of the share with defective capital contributions.

2. Optimizing corporate governance

- The Board of Supervisors (Supervisors) is no longer mandatory.

  i. LLCs may opt for a single-tier corporate governance structure, i.e. establishing the audit committee composed of directors under the board of directors, in lieu of a Board of Supervisors or a single supervisor.

  ii. LLCs of a small scale or with a small number of shareholders, may have no supervisors with unanimous consent of all shareholders.

- The regulations on the number and composition of board members are revised. If LLC has a board of directors, the minimum three directors’ requirements are remaining unchanged, but the cap on the number of members has been lifted; For LLC with more than 300 employees, unless a Board of Supervisors is set up with at least one employee supervisor, it must have at least one employee director on its Board.
- The Legal Representative of the company shall be taken by the director or manager who represents the company in attending to company affair. The method of appointment of the Legal Representative shall be

stipulated in the articles of association.

3. Aggravating the liabilities of controlling shareholders, actual controllers and directors, supervisors and senior management

- It strengthens regulating on the participation of directors, supervisors and senior management in related-party transactions, and adds the reporting obligations and the abstention rules for related-party transactions, etc.
- It aggravates the responsibilities and liabilities of the board of directors, supervisors, and senior management, including: a) the board of directors' obligation to urge the shareholders to complete capital contributions, and compensation for failure to fulfill their obligations; b) the liability of directors, supervisors and senior management who are responsible for shareholders' withdrawal of capital contributions or illegal distribution of profits; and c) the liability of directors and senior management who have committed intentional or gross negligence during performance of their duties and caused damages to third parties.
- It is stipulated that the controlling shareholder or actual controller of a company who does not serve as a director but actually executes the affairs of the company shall have a duty of loyalty and diligence to the company. The controlling shareholder or actual controller who instructs a director or senior manager to engage in acts detrimental to the interests of the company or shareholders, shall be jointly and severally liable with such director and senior management.

4. Removing restrictions on single-member limited liability company and allowing the establishment of single-member companies limited by shares

Convention Abolishing the Requirement of Legalization for Foreign Public Documents

Issued by:	Ministry of Foreign Affairs
Effective Date:	November 7, 2023
Links:	https://www.mfa.gov.cn/web/wjbxw_673019/202310/t20231023_11165858.shtml

The Convention is the international treaty with the widest scope of application and the largest number of contracting members under the framework of the Hague Conference on Private International Law, and has entered into force and implemented in China on November 7, 2023. The unified format and content of the apostille certificate has replaced the traditional cumbersome double authentication and the consular authentication certificates of various countries in various forms, greatly simplifying the procedure of cross-border circulation of official documents.

Therefore, from now on, official documents sent between mainland China and other contracting countries for use require only an Apostille Certificate issued by the countries they come from, and consular authentication is no longer required. In China, the Ministry of Foreign Affairs (MFA) or the local foreign affairs offices entrusted by MFA is the government agency responsible for managing Apostille Certificates and issues them for official documents issued in Chinese mainland.

Foreign Exchange

Notice on Further Deepening Reform to Facilitate Cross-border Trade and Investment

Issued by: State Administration of Foreign Exchange
Issue No.: Huifa（2023）No. 28
Release Date: December 8, 2023
Links: https://www.safe.gov.cn/safe/2023/1208/23593.html

There are nine new measures on foreign exchange facilitation polices in the notice, four of which are related to cross-border trade and five to capital accounts. Special attention shall be paid to the following aspects:

- Loosening restrictions on netting of receipts and payments for processing trade if the trading parties can meet the specified requirements.
- Improvement of cross-border trade receipts and payments under entrusted agent model. If the entrusted agent is unable to receive payment for exported goods or pay for imported goods for special reasons (such as bankruptcy), the bank may allow the entrusting party to receive or pay for goods after KYC check. This policy, to a certain extent, breaks through the foreign exchange principle of “whoever exports collects and whoever imports pays” in goods import & export business.
- Revision of the negative list for the use of foreign exchange income under capital accounts (i.e., the capital injected by foreign shareholder and the debt lent by foreign party) and their settlement funds. The original fourth point is: “the fund shall not be used for the construction or purchase of non-self-used real estate (except for real estate enterprises)”, which is now amended to: “the fund shall not be used for the purchase of non-self-used residential real estate (except for enterprises engaged in real estate development and real estate leasing).”
- Cancellation of the requirement on approval for opening foreign debt special bank accounts in different location from the enterprise’s registered address.

Notice on Expansion of High-Level Opening-Up Trials for Cross-Border Trade and Investment

Issued by: State Administration of Foreign Exchange
Issue No.: Huifa（2023）No. 30
Release Date: December 15, 2023
Links: https://www.safe.gov.cn/safe/2023/1215/23626.html

This notice applies to six pilot regions including Shanghai, Jiangsu, Guangdong (including Shenzhen), Beijing, Zhejiang (including Ningbo) and Hainan. This is the further expansion of the trials of high-level opening-up for cross-border trade and investment carried out by the State Administration of Foreign Exchange, after first implemented in Lingang of Shanghai, Nansha of Guangzhou, Beilun of Ningbo and Yangpu of Hainan in early 2022. The relevant branches of State Administration of Foreign Exchange in the foresaid pilot regions shall formulate detailed implementation rules in accordance with this notice later.

There are eight opening-up policies, concerning five related to current accounts and three to capital accounts.

Special attention shall be paid to the following aspects:

- Loosening the restrictions on the payment for reimbursement or share of costs between Chinese and overseas entities. Qualified enterprises in the pilot regions are allowed to receive or make payments for reimbursement and share of costs from/to their overseas affiliated companies occurred for more than 12 months (current regulation only allows no more than 12 months), or from/to overseas non-affiliated companies for less than 12 months (it was banned by the current regulation), after the authenticity and rationality of the transactions being reviewed by the qualified banks in the pilot regions.

- Domestic reinvestment by foreign-invested enterprises is exempted from registration for foreign exchange. In the case of domestic reinvestment by foreign-invested enterprises, if the invested enterprises or the equity transferor is an enterprise registered within the jurisdiction of the pilot regions, it is not required to go through the foreign exchange registration procedures for receiving domestic reinvestment.

- Part of the foreign exchange registration under capital accounts can be handled directly by banks. Non-financial enterprises in pilot regions borrowing foreign debt or going public abroad can directly apply for the relevant registration procedures at banks.

Tax

Compendium of Continued, Optimized and Improved Tax Incentives (2023 edition)

Issued by: State Taxation Administration
Release Date: November 24, 2023
Links: https://www.chinatax.gov.cn/chinatax/n810219/n810724/c5216996/content.html

The compilation includes 70 documents on tax incentives policies published in 2023, 6 related collection and management announcements, 6 policy interpretations, 10 groups of instant Q&A, and 33 relevant policy documents from previous years, answering practical questions of general concerns to taxpayers. Many of these tax incentives policies will be extended to December 31, 2027, for example:

- Announcement on Continuing the Implementation of Preferential Policies on Urban Land Use Tax for Land Used for Warehousing Facilities for Bulk Commodities of Logistics Enterprises (Announcement [2023] No.5 of the Ministry of Finance and the State Taxation Administration)

- Announcement on Tax and Levy Policies to Further Support the Development of Small and Micro Enterprises and Individual Businesses (Announcement [2023] No.12 of the Ministry of Finance and the State Taxation Administration)

- Announcement on VAT Reduction and Exemption Policies for Small-scale VAT Taxpayers (Announcement [2023] No.19 of the Ministry of Finance and the State Taxation Administration)

- Announcement on the Continuation of the Individual Income Tax Policy on Allowances for Foreign Individuals (Announcement [2023] No.29 of the Ministry of Finance and the State Taxation Administration)

Guidelines on Tax and Levy Incentives to Support the Development of Small and Micro Enterprises and Individually-Owned Business (2.0)

Issued by: State Taxation Administration
Release Date: December 19, 2023
Links: https://fgk.chinatax.gov.cn/zcfgk/c100022/c5218824/content.html

Compared with Version 1.0 issued in August 2023, Version 2.0 combs and summarizes 50 policies related to small and micro enterprises and individually-owned businesses. They are categorized into the following 4 parts to introduce the beneficiaries, preferential content, conditions, methods, policy basis, and policy cases.

- Reducing tax burden (12 items)
- Promotion of the development of inclusive finance (13 items)
- Support for innovation and entrepreneurship (12 items)
- Tax incentives for entrepreneurship of key groups (13 items)

Accounting

Interim Provisions on Accounting Treatment Related to Enterprise Data Resources

Issued by: Ministry of Finance
Issue No.: Caikuai [2023] No. 11
Effective Date: January 1, 2024
Links: https://kjs.mof.gov.cn/zhengcefabu/202308/t20230821_3903354.htm

- For the data resources obtained in the course of enterprises' business activities, they can be recognized as relevant assets (including intangible assets and inventories). It also regulates the relevant accounting treatment in two situations where the conditions for recognition of assets are not met. The requirements for the presentation and disclosure of data resources are also clarified.
- Enterprises should adopt the prospective application to implement this provision, and expenses related to data resources that have been expensed to profit or loss before the implementation of this provision shall not be adjusted.

Accounting Standards for Enterprises Interpretation No. 17

Issued by: Ministry of Finance
Issue No.: Caikuai [2023] No. 21
Effective Date: January 1, 2024
Links: https://kjs.mof.gov.cn/zhengcefabu/202311/t20231109_3915491.htm

- Clarifying the principles for classifying current and non-current liabilities in the balance sheet.

- A liability that meets the classification conditions as a non-current liability under Accounting Standards for Business Enterprises No.30 - Presentation of Financial Statements, should still be classified as a non-current liability, even if the enterprise has the intention or plan to settle the liability early within one year after the balance sheet date, or has settled the liability early between the balance sheet date and the approval date of the financial report.

Recent Hot Topics

- In cross-border equity transfer transactions (including domestic-to-foreign and foreign-to-domestic), if the industrial and commercial registration and foreign exchange registration for FDI have been completed, can the consideration for the equity transfer still be adjusted? What problems will be encountered in practice?
- How can the enterprise stay in compliance, considering delayed release of new regulations on cross-border data flows? What are the future regulatory trends?
- Have you been tax inspected in 2023? Have you been fully prepared to response in 2024?

If you are interested in the above topics, please feel free to contact us:

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