



## Newsletter

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February 29, 2024

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## Update

### **Exchanges Issue Documents to Further Regulate Bond Issuance**

Shanghai Stock Exchange, Shenzhen Stock Exchange and Beijing Stock Exchange released their respective *Circular on Further Regulating Bond Issuance* (the “Circular”) on January 12, 2024, all of which take immediate effect.

According to the Circular, the exchanges support qualified issuers in conducting rational bond financing. Under the principles of complying with laws and regulations and ensuring openness and transparency, they would improve the financing review services and provide financing support for the issuers. The bond interest rate or price shall be determined in the way of quote, bidding or agreement. If any directors, supervisors or senior officers of an issuer or shareholders holding more than 5 percent in the issuer or other connected parties participate in the subscription of the issuer’s bonds, the details of such subscription shall be disclosed by the issuer as important matters in the announcement of the issuance results.

## **State Council Holds Executive Meeting Studying Measures for Further Attraction and Utilization of Foreign Investment**

On February 23, 2024, Chinese Premier Li Qiang chaired a State Council executive meeting which heard a report on the handling of suggestions from deputies to the National People's Congress and proposals from members of the National Committee of the Chinese People's Political Consultative Conference last year, and studied measures to make greater efforts to attract and utilize foreign investment.

The meeting noted that stabilizing foreign investment should be a focus of this year's economic work, and efforts must be made to widen market access, level the playing field further, and smooth the flow of innovation factors. It calls for continuously creating a market-oriented, law-based and international world-class business environment, stressing the need to shore up foreign investor confidence in developing businesses in China, and boost the quality and level of trade and investment cooperation.

The meeting approved the Guidelines on Further Improving Payment Services, stressing that efforts should be made to promote the use of mobile payment, bank card payment, cash payment and other payment methods to make payments easier for elderly and foreign nationals in China.

The Meeting also adopted the Regulations on Water Conservancy (Draft), the Regulations on Ecological Conservation Compensation, and the Regulations on the Implementation of the Law on the Protection of Consumers' Rights and Interests.

## **China Adopts Newly Revised Company Law**

The Standing Committee of the 14th National People's Congress voted to adopt the newly revised *Company Law* at its seventh session on December 29, 2023. The revised law will come into force on July 1, 2024.

The revised law has 15 chapters, which include General Provisions, Company Registration, Establishment and Organizational Structure of a Limited Liability Company, Transfer of Shares of a Limited Liability Company, Establishment and Organizational Structure of a Company Limited by Shares, Issuance and Transfer of Shares of a Company Limited by Shares, Special Provisions on the Organizational Structure of a State-funded Company, Qualifications and Obligations of Directors, Supervisors, and Senior Management of a Company, Corporate Bonds, Finance and Accounting of a Company, Merger and Split-up of a Company and Increase and Capital Reduction of Registered Capital, Dissolution and Liquidation of a Company, Branches of Foreign Companies, Legal Liability and Supplementary Provisions.

## **Three Chinese Authorities Hold Symposium on Accelerating Legislation to Boost Private Economy**

On February 21, 2024, the Ministry of Justice, the National Development and Reform Commission, and the Legislative Affairs Commission of the Standing Committee of the National People's Congress jointly organized a symposium on the legislation of the Private Economy Promotion Law and listened to the

views and suggestions of representatives of private enterprises, as well as experts and scholars on the legislation.

The symposium called for focal work to address the core concerns of private enterprises, such as protecting the property rights of private enterprises and the rights and interests of entrepreneurs in accordance with the law, fair participation in market competition, equal access to production factors, fair law enforcement and impartial justice, delayed payments for small and medium-sized enterprises, etc. It also called for establishing and improving relevant systems, maintaining consistency and stability in policy formulation and implementation through the thinking and methods of the rule of law, further boosting confidence, stimulating the endogenous driving force and innovative vitality of various business entities, and promoting the accelerated development of new quality productive forces.

### **China Introduces Measures to Support NEV Trade Cooperation and Development**

On February 7, 2024, the Ministry of Commerce (MOFCOM) released the *Guidelines on Supporting the Cooperation and Healthy Development in the Trade of New Energy Vehicles* (the “Guidelines”) to introduce 18 measures in seven aspects.

The Guidelines include improving the export procedures of new energy vehicles (NEVs) and power batteries, formulating technical standards on the use of passenger car containers, and studying the technical proposal for the application of power batteries in railway transport; encouraging banking institutions to provide financial services for the domestic and foreign upstream and downstream supply chain in the NEV industry, to conduct export credit insurance, and to set the risk tolerance for export credit insurance in the NEV, power batteries and other industries; supporting NEV firms and related enterprises in conducting the pilot program for a higher-level trade and investment facilitation; promoting the alignment of domestic and foreign standards in the fields of NEVs, charging facilities and power batteries, and helping enterprises tackle trade restrictions imposed by foreign countries.

### **Shanghai Issues Action Plan 7.0 to Improve Business Environment**

On February 18, 2024, Shanghai Municipal People’s Government released the *Action Plan of Shanghai to Adhere to Benchmarking Reform and Continuously Build a World-Class Business Environment* (the “Action Plan”), calling for taking actions and measures in 2024 to benchmark reform, improve enterprise service, enhance regulatory and law enforcement, innovate regional benchmark, and improve business environment collaboratively.

The Action Plan 7.0 specifies that institutional reforms will be carried out in the ten areas of market access, business premises, public facilities, labor employment, finance, international trade, taxation, commercial dispute resolution, market competition, and bankruptcy. Shanghai will fully implement the name declaration commitment system, deepen and expand the enterprise investment project commitment system and other pilot reforms, undertake relevant regulatory policies in such fields as green financing, guaranteed transactions, and electronic payments, and intensify efforts to cultivate and provide services to AEO enterprises. The document proposes to build an integrated business environment demonstration zone in Pudong New Area, continuously expand the categories of imported products that are exempted from

mandatory certification and other special administrative measures, and explore customized business environment improvement plans for the development of the biopharmaceutical industry across the entire industrial chain.

### **Shanghai Unveils 117 Work Taks to Align with International High-Standard Economic and Trade Rules**

On February 6, 2024, Shanghai Municipal People’s Government released the *Plan for the Implementation of the General Plan for Comprehensively Aligning with International High-Standard Economic and Trade Rules and Pushing forward the High-level Institutional Opening-up of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ)* (the “Plan”).

The Plan outlines 117 tasks in nine aspects, specifies details on electronic payment, cross-border transmission of financial data, fintech, cross-border asset management, telecommunications services, import and export of goods, commercial cryptography, logistics business models, digital technology applications, intellectual property protection, and government procurement. It calls for exploring the liberalization of the restrictions on non-resident M&A loans in the Lin-gang Special Area, conducting research to allow qualified asset management companies to undertake cross-border asset-backed securities transfer business, and exploring the establishment of an reinsurance “international board” rules system that is in line with global practices. It also supports the pilot investment of insurance funds in gold and other commodities, vowing to conduct research and improve the digital identity authentication system that aligns with global practices, promote research on ethical norms in the artificial intelligence field, formulate guidelines for ethical norms in artificial intelligence, fuel the research and development of innovative drugs with artificial intelligence technology, and accelerate the commercialization of intelligent connected vehicles.

### **Shanghai Plans to Improve the ESG Capabilities of Foreign-related Enterprises**

On February 26, 2024, Shanghai Municipal People’s Government held an executive meeting, calling for accelerating the establishment of the product carbon footprint management systems, creating green and low-carbon supply chains, improving the environment, social and governance (ESG) capabilities of foreign-related enterprises, and building world-class arbitration institutions.

The meeting principally approved the *Three-year Action Plan on Improving the Environment, Social and Governance Capabilities of Foreign-related Enterprises in Shanghai (2024-2026)*, and the *Action Plan on Further Strengthening the Capacity Building and Accelerating the Development of World-class Arbitration Institutions*. It noted that businesses performing well in ESG disclosure and rated good will be given priority for the access to supportive policies in credit, foreign trade and consumption, and a calculation certification system that aligns with international rules will be built. The meeting also urges to promote the application of international rules and the “going out” of local certification standards, accelerate the establishment of the standards for the statistical calculation of the local product carbon footprints, help foreign trade firms achieve the “visibility, traceability and recognition” of their carbon footprints, and guide key industries such as steel and iron, chemicals, automobile, and electronics in pioneering the carbon footprint calculations.

# Article(s)

## Summary of Key Revisions in the New Company Law

by Kerry Zhang

The newly revised Company Law will be implemented on July 1, 2024. This revision mainly involves the capital system of the company, the organization, and the responsibilities of the directors, supervisors and real controllers. This article compiles and summarizes the contents of this substantive revision as follows:

### I. Company Capital System

#### (i) Capital contribution period for shareholders of limited liability companies

The new Company Law stipulates that the contribution period for shareholders of a limited liability company is five years.

Current Company Law	New Company Law
<p><b>Article 26</b></p> <p>The registered capital of a limited liability company shall be the amount of capital contribution subscribed by all its shareholders who are registered with the company registration authorities.</p> <p>Where the laws, administrative regulations and the State Council decisions stipulate otherwise on paid-up registered capital and the minimum amount of registered capital of limited liability companies, such provisions shall prevail.</p>	<p><b>Article 47</b></p> <p>The registered capital of a limited liability company shall be the amount of capital contributions subscribed for by all the shareholders as registered with the company registration authority. <b>The amount of capital contributions subscribed for by all the shareholders shall, according to the articles of association, be fully paid up by the shareholders within 5 years as of the date of establishment.</b></p> <p>Where it is otherwise provided for in any law, administrative regulation or decision of the State Council on the actual payment of registered capital, the minimum amount of registered capital and the time limit for capital contributions by shareholders of a limited liability company, such provisions shall prevail.</p>

#### (ii) Stock rights and creditor's rights can be used for capital contribution

The new Companies Law clarifies that stock rights and creditor's rights can be used for capital contributions, expanding the ways in which shareholders can make capital contributions.

Current Company Law	New Company Law
<p><b>Article 27</b></p> <p>A Shareholder may make capital</p>	<p><b>Article 48</b></p> <p>A shareholder may make capital contributions in</p>

<p>contribution in currency, or in kind, intellectual property, land use right or other non-monetary property that may be assessed in currency and transferred according to law, except the property that may not be used as capital contributions according to any law or administrative regulation.</p> <p>The non-monetary property as capital contributions shall be assessed and verified, which may not be overvalued or undervalued. If there are provisions on the assessment of value in any law or administrative regulation, such provisions shall prevail.</p>	<p>currency, or in kind, intellectual property, land use right, <b>stock rights, creditor's rights</b> or other non-monetary property that may be assessed in currency and transferred according to law, except the property that may not be used as capital contributions according to any law or administrative regulation.</p> <p>The non-monetary property as capital contributions shall be assessed and verified, which may not be overvalued or undervalued. If there are provisions on the assessment of value in any law or administrative regulation, such provisions shall prevail.</p>
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(iii) System of disentanglement of shareholders for non-payment of contribution

The new Company Law stipulates that a shareholder who fails to pay the capital contribution in full and on time shall be liable to compensate the company for the loss caused. If a shareholder fails to pay the capital by the expiration of the grace period for reminder, the company may issue a notice of forfeiture; from the date of issuance of the notice, the shareholder shall forfeit his/her shareholding in the unpaid capital.

Current Company Law	New Company Law
<p><b>Article 28</b></p> <p>Shareholders shall make their respective capital contributions subscribed for in the articles of association on time and in full amount.</p> <p>If a shareholder makes its capital contributions in currency, it shall deposit the full amount of monetary capital contributions into a bank account opened by the limited liability company. If the capital contributions are made in non-monetary property, the procedures for the transfer of the property rights therein shall be gone through according to law.</p> <p>If a shareholder fails to make its</p>	<p><b>Article 49</b></p> <p>Shareholders shall make their respective capital contributions subscribed for in the articles of association on time and in full amount.</p> <p>If a shareholder makes its capital contributions in currency, it shall deposit the full amount of monetary capital contributions into a bank account opened by the limited liability company. If the capital contributions are made in non-monetary property, the procedures for the transfer of the property rights therein shall be gone through according to law.</p> <p>If a shareholder fails to make its capital contributions <b>on schedule and in full amount</b>, it shall, apart from making full amount capital contributions to the company, <b>be liable for</b></p>

<p>capital contribution <b>in accordance with the said provisions</b>, it shall, apart from making full amount capital contributions to the company, <b>be liable for other shareholders who have made their capital contributions in full accordance with the schedule.</b></p>	<p><b>compensation for the losses it causes to the company.</b></p>
<p><b>Article 30</b></p> <p>Where it is discovered <b>after the incorporation</b> of a limited liability company that the actual value of non-cash properties used for capital contribution for company incorporation is significantly <b>lower than the value stipulated in the articles of association of the company, the shareholders who made the capital contribution shall make up for the difference</b>; and other shareholders at the time of company incorporation shall bear joint liability.</p>	<p><b>Article 50</b></p> <p>Where any shareholder <b>fails to make actual capital contributions according to the provisions of the articles of association, or the actual value of non-monetary property for actual capital contributions is obviously lower than the amount of capital contributions subscribed for at the time of establishment</b> of a limited liability company, other shareholders at the time of the establishment shall bear joint and several liability <b>with such shareholder to the extent of the insufficient capital contributions.</b></p> <p><b>Article 51</b></p> <p>After a limited liability company is established, <b>the board of directors shall verify the capital contributions of shareholders. If it finds that any shareholder has not made capital contributions on schedule and in full amount as provided for in the articles of association, the company shall send a written notice of call to the shareholder to call up capital contributions.</b></p> <p>Where any loss is caused to the company due to failure to fulfill the obligations as prescribed in the preceding paragraph in a timely manner, the responsible director shall make compensation.</p> <p><b>Article 52</b></p> <p>Where any shareholder fails to make capital contributions on the date of capital contribution as provided for in the articles of association, and a company issues a written notice of call for capital contribution according to the first paragraph of</p>

	<p>the preceding Article, it may specify the grace period for the capital contribution, which shall be not less than 60 days as of the issuance of the notice of call. If, upon the expiration of the grace period, the shareholder still has not fulfilled the obligation of capital contribution, the company may, upon a resolution of the board of directors, send a notice of forfeiture to the shareholder, and the notice shall be given in written form. As of the issuance of the notice, the shareholder shall forfeit its the equities for which the capital contribution has not been paid.</p> <p>The forfeited equities in accordance with the provisions of the preceding paragraph shall be transferred according to law, or the registered capital thereof shall be reduced, and the equities shall be written off. If the equities are not transferred or written off within 6 months, other shareholders of the company shall make corresponding capital contributions in full amount in proportion to their capital contributions.</p> <p>If the shareholder has any dissent to the forfeiture of rights, it shall file a lawsuit with the people’s court within 30 days as of the receipt of the notice of forfeiture</p>
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(iv) Acceleration of Capital Contribution Obligation

The new Company Law clearly stipulates that in the event that a company is unable to settle its debts as they fall due, the capital contribution obligation of shareholders of a limited liability company shall be accelerated upon the request of the company or creditors.

Current Company Law	New Company Law
/	<p><b>Article 54</b></p> <p>Where a company is unable to pay off the due debts, the company or the creditors of the due credits may request the shareholders who have subscribed for the capital contributions but whose time limit for capital contributions has not expired to make capital contributions in advance.</p>



(v) Transfer of Equity Interests in a Limited Liability Company

The New Company Law has abolished the requirement for a shareholder of a limited liability company to obtain the consent of a majority of the other shareholders for the transfer of equity interests to persons other than the shareholders, and only requires notification to the other shareholders, and clarifies the specific matters to be notified by way of enumeration. The amendment has simplified the procedures for shareholders to transfer their shares to others and provided guidelines for shareholders to fulfill the notification obligation, which is conducive to safeguarding the freedom of shareholders to transfer their shares as well as the right of first refusal of other shareholders.

Current Company Law	New Company Law
<p><b>Article 71</b></p> <p>The shareholders of a limited liability company may transfer all or part of their equity interests among themselves.</p> <p>A shareholder proposing to transfer its equity interests to a non-shareholder <b>shall obtain the consent of more than half of the other shareholders.</b> The shareholder shall inform the other shareholders of the proposed equity transfer in writing and <b>seek their consent.</b> Failure to reply within 30 days from receipt of the written notice shall be <b>deemed as consent to the proposed transfer. Where more than half of the other shareholders do not consent to the proposed transfer, the non-consenting shareholders shall acquire such equity interests, failing which they shall be deemed to have consented to the proposed transfer.</b></p> <p><b>Where the shareholders consent to the proposed transfer,</b> the other shareholders shall have pre-emptive right to acquire such equity interests on similar terms. Where two or more shareholders intend to exercise their pre-emptive rights, they shall negotiate and determine the acquisition ratio. Where the negotiation</p>	<p><b>Article 84</b></p> <p>Shareholders of a limited liability company may transfer all or part of their equities to other shareholders of the company.</p> <p>Where a shareholder transfers its equities to a person who is not a shareholder of the company, <b>it shall notify other shareholders in writing of the quantity of equities to be transferred, transfer price, payment method and the term of the transfer.</b> The other shareholders shall have a right of first refusal under the equivalent conditions. Where any shareholder fails to respond within thirty days after the receipt of the written notice, <b>it shall be deemed to have waived the right of first refusal.</b> If more than two shareholders exercise the right of first refusal, they shall determine the purchase percentage through negotiation. If no agreement is reached upon negotiation, they shall exercise the right of first refusal in proportion to their respective capital contributions at the time of equity transfer.</p> <p>If the equity transfer is otherwise provided for in the articles of association, such provisions shall prevail</p>

<p>fails, the shareholders shall exercise their pre-emptive rights based on the ratio of capital contribution at the time of the proposed transfer.</p> <p>Where there are provisions in the articles of association of the company for transfer of equity interests, such provisions shall prevail.</p>	
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(vi) Rules for the issuance of par and no-par shares of a company limited by shares  
The new Company Law systematically stipulates that a company may, through its articles of association, decide on its own whether to issue par or no-par shares and on the free conversion of par and no-par shares, and that a company shall credit more than half of the proceeds from the issuance of no-par shares to its registered capital.

Current Company Law	New Company Law
<p><b>Article 125</b></p> <p>The capital of a company limited by shares is divided into shares of equal par value.</p>	<p><b>Article 142</b></p> <p>The capital of a company shall be divided into shares. <b>All the shares of the company shall alternatively be shares with or without par value in accordance with the articles of association. Where par value shares are adopted, all the shares shall be of equal value.</b></p> <p><b>The company may, according to the articles of association, convert all the issued par value shares into no par value shares, or vice versa.</b></p> <p><b>Where no par value shares are adopted, more than half of the proceeds from the issuance of the shares shall be included in the registered capital.</b></p>

(vii) Class share issuance rules  
The new Companies Act introduces the concept of class shares in companies limited by shares. According to this provision, class shares can be shares with preferential rights or shares with inferior rights; shares with more voting rights than ordinary shares or shares with fewer voting rights than ordinary shares; and shares with restricted rights, such as the right to transfer.

Current Company Law	New Company Law
<p><b>Article 131</b></p> <p>The State Council may formulate</p>	<p><b>Article 144</b></p> <p><b>A company may, according to the articles of</b></p>

<p>separate regulations on companies issuing other types of shares which are not provided in this Law.</p>	<p><b>association, issue the following classified shares, which have different rights from those of the common shares:</b></p> <p><b>(i) shares with priority or inferior rights to profits or remaining property in distribution;</b></p> <p><b>(ii) shares with more or less voting rights per share than those of the common shares;</b></p> <p><b>(iii) shares whose transfer is subject to the consent of the company and other restrictions; or</b></p> <p><b>(iv) other classified shares provided for by the State Council.</b></p> <p><b>A company making a public offering of shares shall not issue any of the classified shares as prescribed in Items (ii) and (iii) of the preceding paragraph, except those issued prior to the public offering.</b></p> <p><b>Where a company issues the classified shares as mentioned in Item (ii) of Paragraph 1 of the present Article, the number of voting rights per classified share shall be the same as that of the common share for the election and replacement of the supervisors or the members of the audit committee.</b></p>
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(viii) Ways for companies to make up for losses

The new Companies Law allows companies to use capital reserves to make up for losses in accordance with the regulations, breaking the restriction of the existing Companies Law that does not allow the use of capital reserves to make up for the company's losses.

<b>Current Company Law</b>	<b>New Company Law</b>
<p><b>Article 168</b></p> <p>The capital reserve of a company shall be used to make good the losses of the company or expand the business and production of the company or converted into additional capital. <b>However, the statutory capital reserve shall not be used to make good the losses of the company.</b></p>	<p><b>Article 214</b></p> <p>The reserve of a company shall be used for making up losses, expanding the production and business scale or increasing the registered capital of the company.</p> <p><b>Where the reserve of a company is used for making up losses, the discretionary reserve and statutory reserve shall be firstly used. If losses still cannot be made up, the capital reserve can be used</b></p>

In the event of a conversion of statutory capital reserve into additional capital, the balance of the statutory capital reserve after the conversion shall not be less than 25% of the registered capital of the company before the increase.	<b>according to the relevant provisions.</b>  Where the statutory reserve is converted to <b>increase registered capital</b> , the amount of such reserve retained shall not be less than 25% of the registered capital of the company prior to the conversion.
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## II. Organization of the Company

### (i) Number of votes at shareholders' meetings

The New Company Law has added a new proportionality threshold that resolutions made at a shareholders' meeting of a limited liability company shall be passed by shareholders representing a majority of the voting rights.

Current Company Law	New Company Law
<p><b>Article 43</b></p> <p>The rule of procedure and voting procedures of a board of shareholders shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.</p> <p>Resolutions passed by a shareholders' meeting on amendment to the articles of association of the company, increase or reduction of registered capital, and company merger, division, dissolution or change of company structure shall be passed by shareholders holding two-thirds or more of the voting rights.</p>	<p><b>Article 66</b></p> <p>The discussion methods and voting procedures of the shareholders' meeting shall be prescribed in the articles of association, unless it is otherwise provided for by this Law.</p> <p><b>A resolution made by the shareholders' meeting shall be adopted by the shareholders representing more than half of the voting rights.</b></p> <p>A resolution made by the shareholders' meeting on modifying the articles of association, increasing or decreasing the registered capital, as well as merger, division, dissolution or change of corporate form of the company shall be adopted by the shareholders representing more than two thirds of the voting rights.</p>

### (ii) Improving the system of shareholders' right to know

On the basis of the existing rights of shareholders, the new Company Law adds that shareholders may, on their own or by commissioning accounting firms, law firms and other intermediaries, inspect the company's accounting documents, inspect and copy the register of shareholders, and may inspect the above materials of the company's wholly-owned subsidiaries.

Current Company Law	New Company Law
<p><b>Article 33</b></p> <p>Shareholders shall have the right to check and make copies of the articles of</p>	<p><b>Article 57</b></p> <p>Shareholders are entitled to consult and copy the articles of association, register of shareholders, minutes</p>

<p>association, minutes of shareholders' meetings, resolutions of the board of directors and board of supervisors and financial reports of the company.</p> <p>Shareholders may request to check the accounts of the company. A shareholder who requests to check the accounts of the company shall make a written request and state the purpose. If the company has reasonable grounds to believe that the shareholder who makes the request has an ulterior motive and may cause damage to the legal interests of the company, it may reject the request and shall give a written reply to the shareholder stating the reason within 15 days from the date of the written request of the shareholder. Where the company rejects the request, the shareholder may apply to a people's court for access to the company's accounts.</p>	<p>of shareholders' meetings, resolutions of meetings of the board of directors or board of supervisors, as well as financial and accounting reports of a company.</p> <p>The shareholders may request to consult the accounting books and accounting vouchers of the company. Where a shareholder requests to access the accounting books or accounting vouchers of the company, it shall make a written request and state the purposes therefor. If the company, with justifiable reasons, considers that the shareholder's request to consult the accounting books or accounting vouchers has any improper purpose and may damage the lawful rights and interests of the company, it may reject the request of the shareholder, and shall, within 15 days as of the day when the shareholder makes the written request, give the shareholder a written reply and state the reasons therefor. <b>If the company refuses to provide access, the shareholder may bring a lawsuit to a people's court.</b></p> <p><b>To consult the materials as mentioned in the preceding paragraph, a shareholder may entrust such intermediaries as an accounting firm or law firm to do so.</b></p> <p><b>When the shareholder and the accounting firm, law firm or other intermediaries entrusted thereby consult or copy the relevant materials, they shall comply with the laws and administrative regulations on protecting state secrets, trade secrets, personal privacy, personal information, etc.</b></p> <p><b>Where a shareholder requests to consult or copy the relevant materials of the wholly-owned subsidiaries of the company, the provisions of the preceding 4 paragraphs shall apply.</b></p>
<p><b>Article 97</b></p> <p>Shareholders shall have the right to inspect the articles of association of the company, register of shareholders, <b>corporate bonds counterfoil book,</b></p>	<p><b>Article 110</b></p> <p>Shareholders are entitled to consult or <b>copy</b> the articles of association, register of shareholders, minutes of shareholders' meetings, resolutions of meetings of the board of directors and of the board of supervisors</p>

<p>minutes of meetings of the board of shareholders, resolutions of the board of directors, resolutions of the board of supervisors and finance reports and may give suggestions on or query the operations of the company.</p>	<p>and financial and accounting reports and may bring forward suggestions or raise inquiries about the business operation of the company.</p> <p><b>Where the shareholders who separately or aggregately hold 3% or more of the company's shares for 180 consecutive days or more request to consult the accounting books or accounting vouchers of the company, the provisions of Paragraphs 2 through 4 of Article 57 hereof shall apply. Where the articles of association prescribe a relatively lower proportion of shareholding, such provisions shall prevail.</b></p> <p><b>Where the shareholders request to consult or copy the relevant materials of a wholly-owned subsidiary of the company, the provisions of the preceding two paragraphs shall apply.</b></p> <p><b>When consulting or copying the relevant materials, shareholders of a listed company shall comply with the Securities Law of the People's Republic of China and other laws and administrative regulations.</b></p>
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(iii) Powers and functions of the board of directors of a company, composition, resolution procedures and dismissal of directors

The new Company Law no longer restricts the maximum number of directors on a company's board of directors, retaining only the minimum number of three (except for limited liability companies or companies limited by shares that are small in size or have a small number of shareholders), and clearly stipulates the circumstances under which the board of directors should have employee representatives.

Current Company Law	New Company Law
<p><b>Article 44</b></p> <p>The board of directors of limited liability companies shall comprise <b>three to 13 members</b>, unless otherwise provided in Article 50.</p> <p><b>The board of directors of a limited liability company invested and incorporated by two or more State-owned enterprises or two or more</b></p>	<p><b>Article 68</b></p> <p>If the board of directors of a limited liability company has <b>more than three members</b>, it may include an employees' representative of the company. <b>Where a limited liability company has 300 or more employees, the board of directors shall include the employees' representatives of the company unless the board of supervisors has been established and includes employees' representatives of the company</b></p>

**other State-owned investment entities** shall comprise employees' representatives; the board of directors of other limited liability companies may comprise employees' representatives. Employees' representatives who sit on the board of directors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The board of directors shall appoint one chairman and may appoint a deputy chairman. The appointment of chairman and a deputy chairman shall be stipulated by the articles of association of the company.

#### **Article 108**

The board of directors of companies limited by shares shall comprise **5 to 19** members.

The board of directors may comprise employees' representatives. Employees' representatives who sit on the board of directors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The provisions of Article 45 on the term of appointment of directors of limited liability companies shall apply to directors of companies limited by shares.

The provisions of Article 46 on duties and powers of the board of directors of limited liability companies shall apply to the board of directors of companies limited by shares

according to law. The employees' representatives in the board of directors shall be democratically elected by the employees through the employees' representative congress, employees' congress or by other means.

The board of directors shall have one chairman and may have deputy chairmen. The measures for election of the chairman and deputy chairmen shall be prescribed in the articles of association.

#### **Article 120**

A joint stock limited company shall set up a board of directors, except it is otherwise provided for in Article 128 hereof.

The provisions of Article 67, Paragraph 1 of Article 68, Article 70, Article 71 hereof shall apply to joint stock limited companies.

(iv) Replacing the supervisory board or supervisors with an audit committee composed of directors  
 The new Company Law provides that, regardless of whether it is a limited liability company or a company limited by shares, a company may set up an audit committee consisting of directors (which may include employee representative directors) in its board of directors, and replace the supervisory board or supervisors with an audit committee.

Current Company Law	New Company Law
/	<p><b>Article 69</b></p> <p>A limited liability company may, under the articles of association, set up an audit committee composed of directors in the board of directors, which shall exercise the functions and powers of the board of supervisors as prescribed by this Law, with no board of supervisors or supervisors established. Employees' representatives who serve as members of the board of directors may become members of the audit committee.</p>
/	<p><b>Article 121</b></p> <p>A joint stock limited company may, under the articles of association, set up an audit committee composed of directors in the board of directors, which shall exercise the functions and powers of the board of supervisors as provided for in this Law. It may not have a board of supervisors or supervisors.</p> <p>The audit committee shall be composed of at least 3 members, and more than half of the members shall not assume any position other than the director in the company and shall not have any relationship with the company that may affect their independent and objective judgments. Among the members of the board of directors of the company, an employees' representative may become a member of the audit committee.</p> <p>A resolution made by the audit committee shall be adopted by more than half of the members thereof.</p> <p>For voting on a resolution of the audit committee, each member shall have one vote.</p> <p>The discussion methods and voting procedures of the audit committee shall be prescribed in the articles</p>



	<p><b>of association, unless it is otherwise provided for by this Law.</b></p> <p><b>A company may set up other committees in the board of directors under the articles of association.</b></p>
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(v) Exceptions where a company may not establish a supervisory board

The new Company Law provides that a limited liability company may not have a supervisory board if all shareholders unanimously agree. Smaller companies or companies with a smaller number of shareholders may not have a supervisory board and may have only one supervisor.

<b>Current Company Law</b>	<b>New Company Law</b>
<p><b>Article 51</b></p> <p>The board of supervisors of a limited liability company <b>shall comprise not less than three members.</b> Limited liability companies with relatively fewer shareholders or of a relatively smaller scale may appoint <b>one to two</b> supervisors instead of establishing a board of supervisors.</p>	<p><b>Article 83</b></p> <p><b>A limited liability company with a small scale or a relatively small number of shareholders may dispense with the board of supervisors and have a supervisor, who shall exercise the functions and powers of the board of supervisors as provided for in this Law; or it may dispense with the supervisor upon the unanimous approval by all of the shareholders.</b></p>
/	<p><b>Article 133</b></p> <p><b>A joint stock limited company with a relatively small scale or relatively small number of shareholders may dispense with the board of supervisors, but may have one supervisor, who shall exercise the functions and powers of the board of supervisors as prescribed by this Law.</b></p>

(vi) Forms of intra-company meetings may be held by electronic means

The new Company Law expressly permits the provisions of meetings and voting of the Shareholders' Meeting, the Board of Directors and the Supervisory Board to be conducted through online means, with the exception of those otherwise provided for in the Articles of Association.

<b>Current Company Law</b>	<b>New Company Law</b>
/	<p><b>Article 24</b></p> <p><b>The shareholders' meeting, board of directors or board of supervisors of a company may hold a meeting or vote by way of electronic communications, unless it is otherwise prescribed by the articles of association of the company.</b></p>

### III. Responsibilities of Directors, Supervisors, Controlling Shareholders and Actual Controllers

- (i) Duty of loyalty and diligence of controlling shareholders, de facto controllers and directors and supervisors

The new Company Law expressly regulates the duty of loyalty and diligence of controlling shareholders, de facto controllers and directors and supervisors, as well as the liability of controlling shareholders and de facto controllers for instructing directors and senior management to engage in acts detrimental to the interests of the company or its shareholders.

<b>Current Company Law</b>	<b>New Company Law</b>
<p><b>Article 147</b></p> <p>Directors, supervisors and senior executives shall comply with the provisions of laws and administrative regulations and the articles of association of the company and bear fiduciary duties towards the company.</p>	<p><b>Article 180</b></p> <p><b>Directors, supervisors and senior executives shall assume the obligation of loyalty to the company and take measures to avoid the conflict between their own interests and those of the company and may not seek any improper interests by taking advantage of their powers.</b></p> <p>The directors, supervisors and senior executives shall assume the duty of diligence to the company. When performing their duties, they shall, for the best interests of the company, exercise the reasonable care that shall be generally possessed by a manager.</p> <p>The provisions of the preceding two paragraphs shall apply to the controlling shareholder or actual controller of a company who does not serve as a director but actually executes the affairs of the company.</p>
/	<p><b>Article 192</b></p> <p>Where any controlling shareholder or actual controller of a company instructs any director or senior executive to carry out any act damaging the interests of the company or the shareholders, it shall bear joint and several liability with the director or senior executive.</p>

- (ii) Restrictions on connected transactions by directors and supervisors

The New Company Law has refined the restrictions on connected transactions by directors and supervisors, added supervisors and close relatives of directors and supervisors as the applicable subjects of the connected transaction procedures, stipulated the disclosure obligations of directors and supervisors in

respect of connected transactions, and permitted the articles of association to stipulate that the board of directors or the shareholders' meeting shall be the approving authority.

Current Company Law	New Company Law
<p><b>Article 148</b></p> <p>A director or senior executive shall not enter into contracts with the company or carry out transactions with the company in violation of the provisions of the articles of association of the company or without the consent of the board of shareholders or a shareholders' general meeting.</p>	<p><b>Article 182</b></p> <p>Where any director, supervisor or senior executive <b>directly or indirectly</b> concludes a contract or conducts a transaction with his/her company, <b>he/she shall report the matters relating to the conclusion of the contract or transaction to the board of directors or shareholders' meeting, which shall be subject to the resolution of the board of directors or shareholders' meeting according to the articles of association.</b></p> <p>Where any of the near relatives of the directors, supervisors or senior executives, or any of the enterprises directly or indirectly controlled by the directors, supervisors or senior executives or any of their near relatives, or any of the related parties who has any other related-party relationship with the directors, supervisors or senior executives, concludes a contract or conducts a transaction with the company, <b>the provisions of the preceding paragraph shall apply.</b></p>

#### **IV. Other obligations and liabilities of directors and supervisors**

- (i) The New Company Law has added the obligations of the board of directors to verify and call for the payment of shareholders' capital contributions, as well as the liability of the directors responsible in the event of a breach of the foregoing obligations.

Current Company Law	New Company Law
/	<p><b>Article 51</b></p> <p>After a limited liability company is established, the board of directors shall verify the capital contributions of shareholders. If it finds that any shareholder has not made capital contributions on schedule and in full amount as provided for in the articles of association, the company shall send a written notice of call to the shareholder to call up capital contributions.</p> <p>Where any loss is caused to the company due to</p>

	<b>failure to fulfill the obligations as prescribed in the preceding paragraph in a timely manner, the responsible director shall make compensation.</b>
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- (ii) The new Company Law further improves the provision that shareholders and directors and supervisors shall be liable for compensation in case of illegal distribution of profits by the company.

<b>Current Company Law</b>	<b>New Company Law</b>
<p><b>Article 166</b></p> <p>Where the <b>board of shareholders, the shareholders' general meeting or the board of directors</b> violates the provisions of the preceding paragraphs to make profit distribution to the shareholders <b>before making up losses and accrual of statutory capital reserve</b>, the shareholders shall return such distributed profits to the company.</p>	<p><b>Article 211</b></p> <p>Where a <b>company</b> distributes profits to shareholders in violation of the provisions of this Law, the shareholders shall refund the profits distributed to the company, <b>and the shareholders and the liable directors, supervisors and senior executives shall be held liable for compensation if any loss is caused to the company.</b></p>

- (iii) The new Company Law has added new provisions on the liability of shareholders and directors and supervisors for damages to the company in case of illegal capital reduction.

<b>Current Company Law</b>	<b>New Company Law</b>
/	<p><b>Article 226</b></p> <p><b>When a company reduces its registered capital in violation of the provisions of this Law, its shareholders shall refund the funds they have received, and if the capital contributions of the shareholders are reduced or exempted, such capital contributions shall be restored to the original status; if any loss is caused to the company, the shareholders and the liable directors, supervisors and senior executives shall bear the liability for compensation.</b></p>

- (iv) The new Company Law expands the subject of liability for capital evasion from a single shareholder to include directors, supervisors and senior management.

Current Company Law	New Company Law
<p><b>Article 35</b></p> <p>After a company has been established, none of the shareholders may illicitly withdraw the capital contributions.</p>	<p><b>Article 53</b></p> <p>After a company has been established, none of the shareholders may illicitly withdraw the capital contributions.</p> <p><b>In the case of violation of the provisions of the preceding paragraph, the shareholder shall return the capital contributions withdrawn. If it causes any loss to the company, the responsible directors, supervisors and senior executives shall bear the joint and several liability with the shareholder.</b></p>

- (v) The new Company Law has added the provision that a company shall not provide financial assistance in principle and is allowed to provide financial assistance under specific circumstances, and has included directors and supervisors in the scope of liable subjects.

Current Company Law	New Company Law
/	<p><b>Article 163</b></p> <p><b>No company may provide gifts, loans, guarantees or other financial aids for others to obtain the shares of the company or the parent company thereof unless it carries out an employee stock ownership plan.</b></p> <p><b>For the benefits of the company, the company may, upon a resolution by the shareholders' meeting or by the board of directors under the articles of association or the authorization of the shareholders' meeting, provide financial aids for others to obtain the shares of the company or the parent company thereof, provided that the total accumulative amount of the financial aids shall not exceed 10% of the total issued share capital. A resolution by the board of directors shall be adopted by two thirds of all the directors.</b></p> <p><b>Any director, supervisor or senior executive who is liable for any loss to the company due to violation of the provisions of the preceding two paragraphs shall make compensations.</b></p>

- (vi) The new Company Law has added a new provision on the liability of directors and senior

management for damages caused to third parties as a result of the performance of their duties, which strengthens the liability of the company and is conducive to the protection of external rights holders.

Current Company Law	New Company Law
/	<p><b>Article 191</b></p> <p><b>Where any director or senior executive causes any damage to any other person in the performance of duties, the company shall be liable for compensation. If any director or senior executive is intentional or has gross negligence, he/she shall also be liable for compensation.</b></p>

- (vii) The new Company Law has added new provisions on the attribution of the consequences of the acts of legal representatives, the legal consequences of exceeding their authority and the ways of internal recourse.

Current Company Law	New Company Law
/	<p><b>Article 11</b></p> <p><b>A company shall bear the legal consequences arising from the civil activities conducted by the legal representative in the name of the company.</b></p> <p><b>Any restrictions on the functions and powers of the legal representative imposed by the articles of association or the shareholders' meeting shall not be asserted against a bona fide third party.</b></p> <p><b>Where the legal representative of a company causes damage to others while performing his/her duties, the company shall assume the civil liability. After assuming the civil liability, the company may, in accordance with the provisions of law or the articles of association of the company, claim indemnification against the legal representative who is at fault.</b></p>

- (viii) The new Company Law stipulates that the liquidation group of a company shall be “composed of directors” as a principle, with the exception that “the articles of association of the company stipulate otherwise or the shareholders’ meeting resolves to elect another person”, and explicitly stipulates the liability of a liquidator who fails to fulfill the liquidation obligations in a timely manner.

Current Company Law	New Company Law
<p><b>Article 183</b></p> <p>Where a company is dissolved in accordance with the provisions of item (I), (II), (IV) or (V) of Article 180, a liquidation group shall be established to commence liquidation within 15 days from the occurrence of the event which triggers the dissolution. <b>The liquidation group of a limited liability company shall be formed by the shareholders; the liquidation group of a company limited by shares shall comprise members appointed by the directors or the board of shareholders. Where the liquidation group is not established by the deadline to conduct liquidation, the creditors may apply to a people's court to appoint a liquidation group to conduct liquidation. The people's court shall accept the application and form a liquidation group promptly to conduct liquidation.</b></p>	<p><b>Article 232</b></p> <p>Where a company is dissolved according to the provisions of Item (I) (II) (IV) or (V) of Paragraph 1 of Article 229 hereof, it shall be liquidated. <b>The directors, who are the liquidation obligors of the company, shall form a liquidation group to carry out liquidation within 15 days from the date of occurrence of the cause of dissolution.</b></p> <p>The liquidation group shall be composed of the directors, unless it is otherwise provided for in the company's articles of association or it is otherwise elected by the shareholders' meeting.</p> <p>The liquidation obligors shall be liable for compensation if they fail to fulfill their obligations of liquidation in a timely manner, and thus any loss is caused to the company or the creditors.</p>

Overall, the new Company Law strengthens the obligations and responsibilities of shareholders, directors and supervisors, which is conducive to regulating the capital contribution and business management behaviors of shareholders, directors and supervisors, circumventing the current corporate governance chaos, and improving the credibility of the company as a legal person.

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