

Corporate Commercial Client Alert

China Trade & Investment

12 September 2023

Third Draft Amendment to China's Company Law Released for Public Opinion

Edwarde Webre and Jackie Chen

Subsequent to the release of the second draft amendment (the "Second Draft Amendment") to the Company Law of the People's Republic of China ("Company Law") in December 2022, a third draft amendment (the "Third Draft Amendment") was released on September 1, 2023 for public comment. The proposed amendments introduce significant changes to the Company Law aimed at enhancing corporate governance practices and protecting the rights of shareholders.

Compared to the Second Draft Amendment, the key highlights of the Third Draft Amendment are as follows:

1. Regarding shareholders capital contribution liabilities, the Third Draft Amendment provides that the registered capital of limited liability companies must be fully paid within five years from the date of a company's establishment, unless an earlier date is set in the company's articles of association. In addition, directors who fail to fulfil their obligations to verify the contributions made by shareholders and pursue the payment of any outstanding contributions that have not been paid in full on time shall be held liable to the company for compensation.
2. Regarding the protection of shareholders' rights, the Third Draft Amendment has placed strong emphasis on:
 - (1) improving shareholders of companies limited by shares' right to review and copy relevant company materials;
 - (2) prohibiting companies from increasing the percentage of shareholding required to propose a shareholders' proposed resolution;
 - (3) introducing provisions to address situations where controlling shareholders abuse their rights and significantly harm the interests of the company and other shareholders. In such cases, minority shareholders are granted the right to require the company to acquire their shares at a reasonable price; and
 - (4) requiring a company to proportionally reduce the capital contribution or shareholding of shareholders when it reduces its registered capital, unless otherwise specified by law.
3. Controlling shareholders and actual controllers who do not serve as directors but who effectively control the company's operations shall be subject to a director's fiduciary duties and diligence obligations towards the company.
4. The Third Draft Amendment strengthens the democratic management of the Company. It proposes the establishment and enhancement of a democratic management system, with the employee congress as the fundamental form. Furthermore, the inclusion of employee representatives in the board of directors is suggested in the Third Draft Amendment for all companies while inclusion shall be mandatory for companies with over 300 employees that do not have a board of supervisors, as set out in the Second Draft Amendment.
5. Regarding corporate bonds, the Third Draft Amendment confirms the permissibility of the public and private issuance of corporate bonds, clarifies the authority responsible for registering enterprise bonds, replaces bond certificates with a bond holder registry, expands the types of companies that can issue convertible bonds from public companies to all companies limited by shares, and introduces provisions on the rules and effectiveness of bondholder meetings and includes regulations pertaining to bond trustees.

6. The Third Draft Amendment also introduces provisions to reinforce legal liabilities and penalties for non-compliance. It imposes fines ranging from 10,000 to 50,000 yuan on individuals directly responsible for fraudulent practices, such as providing false information during company registration. Moreover, violations of accounting laws and asset evaluation regulations will be penalized in accordance with relevant laws and regulations.

The Third Draft Amendment reflects the Chinese government's ongoing commitment to improving corporate governance practices and protecting shareholders' rights. We will continue to monitor developments with respect to the amendment of the Company Law. Should you have any questions or concerns regarding corporate governance matters, please do not hesitate to reach out to us.

Want to know more?

Cynthia Chung
Partner
cynthia.chung@deacons.com
+852 2825 9297

Machiuanna Chu
Partner
machiuanna.chu@deacons.com
+852 2825 9630

Elsie Chan
Partner
elsie.chan@deacons.com
+852 2825 9604

Helen Liao
Partner
helen.liao@deacons.com
+852 2825 9779

Mark Stevens
Partner
mark.stevens@deacons.com
+852 2825 5192

Edwarde Webre
Consultant
edwarde.webre@deacons.com
+852 2825 9730

The information contained herein is for general guidance only and should not be relied upon as, or treated as a substitute for, specific advice. Deacons accepts no responsibility for any loss which may arise from reliance on any of the information contained in these materials. No representation or warranty, express or implied, is given as to the accuracy, validity, timeliness or completeness of any such information. All proprietary rights in relation to the contents herein are hereby fully reserved.

0923© Deacons 2023

www.deacons.com