

China Insight



2024 – Topics that may Concern You

Corporate

- **Major update to the *PRC Company Law* will take effect on 1 July 2024**

On 29 December 2023, the Standing Committee of the National People’s Congress issued a major update to the current *PRC Company Law*. The revised *PRC Company Law* will enter into effect on 1 July 2024.

Key changes the revised *PRC Company Law* will bring for PRC limited liability companies (“PRC LLCs”) inter alia, the following changes:

- Reduction of the contribution schedule for full payment of the registered capital to 5 years after establishment. PRC LLCs already existing before 1 July 2024 must “gradually make adjustments” to ensure compliance with the revised *PRC Company Law*.
- Abolishment of the requirement of other shareholders’ consent for transfer of equity interests in a PRC LLC.
- If a controlling shareholder of the company abuses shareholder rights with prejudice against the interest of the PRC LLC or other shareholders, the other shareholders may request the PRC LLC to acquire the controlling shareholder's equity interests at a reasonable price.
- Abolishment of the maximum number of members of the Board of Directors (currently, 13).
- Requirement that the Board of Directors of a PRC LLC with at least 300 employees must include employee representatives, unless there is a Supervisory Board which has employee representatives.
- Instead of a Supervisor or a Supervisory Board, a PRC LLC may now have an Audit Committee comprised of an unspecified number of members of the Board of Directors which then exercises the functions of the Supervisory Board.
- Increased liabilities for Directors, Supervisors and Senior Managers.

We will provide more details and input on the above in upcoming separate newsletters.

- **Adapting Joint Ventures in accordance with the *PRC Foreign Investment Law* and the *PRC Company Law***

Until 31 December 2019, Sino-foreign Equity Joint Ventures ("EJV") and Sino-foreign Cooperative Joint Ventures ("CJVs") were governed by special laws, and the structure of EJVs and CJVs under these special laws was different to those of wholly foreign-owned enterprises ("WFOE") and domestic limited liability companies ("DLLCs") according to the *PRC Company Law*. In particular, in EJVs, the Board of Directors was the highest company authority (and not the Shareholders' Meeting as it is the case for WFOEs and DLLCs).

However, this has changed with the entry into effect of the *PRC Foreign Investment Law* ("FIL") on 1 January 2020. As of the same date, also the above-mentioned special laws for, inter alia, EJVs and CJVs were abolished, and the FIL (together with the *PRC Company Law*, the *PRC Partnership Law*, and so on) became the main legal basis for foreign investment in the PRC.

According to the FIL, the organization form, institutional framework and standard of conduct of existing entities, which are not consistent with the *PRC Company Law* or the *PRC Partnership Law*, will need to be changed respectively within 5 years after the FIL came into effect, that is at the latest by 31 December 2024. This has considerable impact on EJVs and CJVs. Among others, the highest company authority must be changed from the Board of Directors to the Shareholders' Meeting. All existing EJVs and CJVs should now start to adapt to the new structure, which may require comprehensive amendments to the Joint Venture Contract and the Articles of Association and re-negotiations with the Chinese joint venture partners. For more information on the FIL, please refer to our [newsletter](#) published earlier.

- **Adaptation needed for the Insolvency Law**

The global economic recession and the impact of COVID-19 have forced many enterprises to restructure their China business, some of them to even apply for insolvency. The current *PRC Insolvency Law* was promulgated 15 years ago and needs to be adapted to suit up-to-date PRC law and the current insolvency practice. Initially, a first amended draft of the *Insolvency Law* was supposed to be planned in 2022, which, however, has so far not yet been officially released for soliciting public comments. We expect that an official amended law draft will be released for public comments in 2024 earliest. We suggest awaiting the official release of the State Council's Legislative Work Plan for 2024 which may contain the schedule for the first amendment draft of this law.

Commercial

- **Supreme People's Court Interpretation on General Provisions of the Contract Part of the *PRC Civil Code* Released**

On 5 December 2023, the Supreme People's Court of the People's Republic of China promulgated its *Interpretation on Several Issues Concerning the Application of the General Provisions of the Contract Part of the Civil Code of the PRC* (the "Interpretation"). The Interpretation entered into effect at the same day of its promulgation, i.e. on 5 December 2023, and will have impact in 2024.

The Contract Part is one of the core parts, if not the most important part, of the *PRC Civil Code*. Contracts are relevant for and used in basically all kinds of business transactions and fields of law, and are, therefore, of paramount importance for all kinds of business operations as well as the economy as a whole. The Interpretation provides detailed and comprehensive guidance and interpretation on various topics and important issues related to the General Provisions of the Contract Part of the *PRC Civil Code*.

For further details on this, please see our [newsletter](#) with an overview of the Interpretation.

- **Amended draft of the *Product Quality Law***

The current *PRC Product Quality Law* was initially promulgated in 1993 and amended respectively in 2000, 2009 and the last time in 2018. Due to reasons like development of the PRC legal practice for product liability, enhanced customer protection, diversified sales tools (e.g. e-commerce), etc., it has become more and more necessary to amend and update this law in order to regulate product liability issues in a better structured and systematic way.

On 18 October 2023, the State Market Supervision Administration released a draft of the amended *Product Quality Law* to seek public comments until 18 November 2023. It is yet not clear when the drafting process will be completed and the draft will be submitted to the PRC State Council for review. We suggest awaiting the official release of the State Council's Legislative Work Plan for 2024 where, very likely, further steps on the amendment of this law will be scheduled.

Competition

- **Development in China's Competition Law Regime**

In 2023, the Chinese regulatory authorities issued a series of regulations and guidelines to support the implementation of the new *PRC Anti-Monopoly Law*. These include the Provisions on Prohibiting Monopoly Agreements (please refer to our [newsletter](#) for details), the Provisions on Prohibiting Abuses of Market Dominant Positions, the Provisions on the Review of Concentration of Undertakings (please refer to our [newsletter](#) for details), the Provisions on Prohibiting Abuses of Intellectual Property to Eliminate or Restrict Competition (please refer to our [newsletter](#) for details) and other supporting regulations.

These regulations provide more detailed interpretation of the new *PRC Anti-Monopoly Law* and clarify the legal criteria for certain specific anti-competitive behaviours in China. In addition, China has experimented with new regulatory measures. For example, the "Three Documents and One Letter" system, introduced in November 2023, has enriched the antitrust regulatory toolkit, providing companies with more opportunities to correct and increasing the predictability of administrative penalties.

We expect the introduction of new competition-related regulations to continue in 2024. In addition, China's competition regulatory system is expected to become more sophisticated in the coming year, and may focus on issues that have not previously come under scrutiny. Companies and investors are advised to remain attentive to these developments.

Cross-border Data Transfer

- **Tendency to facilitate and smooth cross-border data transfer**

With the promulgation of the *Measures for the Standard Contract for Outbound Transfer of Personal Information* ("Measures") by the Cyberspace Administration of China ("CAC") on 22 February 2023 and the following implementing rules published by the local cyberspace authorities in 2023, the standard contract approach has been established for normal companies which have business needs to cross-border transfer personal information. As the Measures set a transition period until 30 November 2023, most multinational companies have followed the Measures to make the record-filing of the standard contract in the second half of 2023.

For normal multinational companies, it is inevitable to have data exchange with foreign companies for carrying out ordinary business. It is burdensome to some degree for such multinational companies to proceed with the standard contract approach. On 28 September 2023, the CAC released the *Draft Provisions on Regulating and Facilitating Cross-Border Data Transfer* ("Draft Regulation"), which aim to exempt normal multinational companies from the record-filing of the standard contract under certain conditions. For instance, companies that are expected to outbound transfer no more than 10,000 persons' personal information within one year may be exempt. We consider that the Draft Regulation indicates that the CAC is likely to ease the regulation on cross-border data transfer in small

size or for common business purpose. We expect to see the final version of the Draft Regulation in 2024, which may greatly facilitate cross-border data transfer for normal companies.

- **Facilitate the data transfer within the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland, Hong Kong)**

The CAC and the Innovation, Technology and Industry Bureau of the Government of the Hong Kong Special Administrative Region promulgated the *Implementation Guidelines on the Standard Contract for Cross-boundary Flow of Personal Information Within the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland, Hong Kong)* ("Implementation Guidelines") on 10 December 2023. The Implementation Guidelines provide a special and simplified standard contract approach for data transfer within the Guangdong-Hong Kong-Macao Greater Bay Area, covering both data transfer from Hong Kong to certain mainland cities in the Greater Bay Area and also data transfer from such mainland cities to Hong Kong. The aim of the Implementation Guidelines is to facilitate the data transfer within the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland, Hong Kong) and eligible companies can choose whether to take this approach on a voluntary basis. Since the Implementation Guidelines were recently promulgated, companies in the banking, credit and medical industries were first invited to be pilot enterprises. Nevertheless, it is not clear whether this special and simplified standard contract approach can fully replace the standard contract approach as stipulated under the *PRC Personal Information Protection Law*. In 2024, we wait to see the actual effects of the Implementation Guidelines in practice and expect to have official clarification on relationship between the two standard contract approaches.

Artificial Intelligence

- **Increased regulation on compliance of artificial intelligence ("AI")**

In order to keep pace with the rapid development of AI, the Chinese government promulgated the first regulation relating to AI generated content worldwide, i.e. the *Interim Measures for the Management of Generative Artificial Intelligence Services* ("Interim Measures"). The Interim Measures came into effect on 15 August 2023. The Interim Measures have a broad application scope which applies to utilization of all generative AI technology for the purpose of providing generative AI services to the public within the territory of the People's Republic of China. This means that the Chinese government aims to put the generative AI technology under intense regulation and control.

In the past few years, the Chinese government has promulgated many important regulations on AI technology, such as the *Administrative Provisions on Recommendation Algorithms in Internet-based Information Services*, the *Administrative Provisions on Deep Synthesis in Internet-based Information Services* and the *Measures for Science and Technology Ethics Reviews (for Trial Implementation)*. In addition, the draft of the *PRC Artificial Intelligence Law* is awaiting deliberation of the Standing Committee of the National People's Congress. Therefore, it is obvious that the Chinese government is paying increasing attention to the regulation on AI technology. We expect to see dynamic legislative developments and a more matured legal system in the area of AI in 2024.

Intellectual Property

- **Revision draft of the *PRC Trademark Law***

The China National Intellectual Property Administration ("CNIPA") published the revision draft of the *PRC Trademark Law* ("Revision Draft") on 13 January 2023. The Revision Draft aims to strengthen the obligation to make actual use of trademarks, strike down bad faith applications and reinforce enforcement against trademark infringement and illegal acts. Considering that the Revision Draft was prepared by the CNIPA alone and incorporated material changes on the current trademark regulation schemes, it will need to be deliberated and considered seriously by the legislative authority and may not be promulgated in the following one or two years. Nevertheless, according to the recent practice of the CNIPA, it is noticeable that the CNIPA has already enhanced their standards on examining use evidence in non-use cancellation proceedings and tended to refuse a large volume of trademark

applications at one time. Therefore, we expect that in 2024, the CNIPA will keep aligning their practice in accordance with the spirits of the Revision Draft.

Employment

- **Unlocking opportunities and addressing challenges in employment management in the digital age**

In the dynamic era of digital transformation, companies encounter both opportunities for growth and complexities in management and compliance.

The advancement of technology has made remote and hybrid work a common practice, although the applicability varies across businesses. Companies should tailor suitable work modes for employees based on job characteristics and business needs. Meanwhile, comprehensive rules and regulations should be established to address legal issues which might arise from different work modes, including but not limited to establishing a secure remote work environment, processing personal data properly, handling work-related injuries, managing working hours and work performance, and safeguarding business secrets in electronic office environments.

Especially noteworthy is the swift evolution of AI, bringing both opportunities and challenges to employment management. On one hand, AI is gradually being used to support and optimize HR activities, such as recruitment, performance assessment and compensation and benefits, facilitating organizations in saving time and manpower on routine and repetitive tasks. On the other hand, using AI at work, especially generative AI, may also entail concerns such as risks of bias, discrimination, intellectual property infringement, disclosure of trade secrets, and cost considerations. Effectively managing these issues becomes an inevitable challenge for companies. Therefore, companies should carefully monitor technical and legal developments to avoid compliance risks.

- **Enhancing daily employee management in challenging times**

Given the persistent challenges in the economic landscape, the frequency of organizational restructuring and business closures escalated significantly in 2023, and this trend is expected to endure into 2024. The complex economic situations will not only necessitate organizational adaptations but also intensify the complexity of employer-employee relationships, thereby leading to a surge in labor disputes. When confronted with the challenges of labor disputes, importance of daily management becomes particularly important. Companies which are negligent in daily management will find themselves in a quite unfavorable position in defending themselves.

Further, the Chinese government intends to continuously enhance employee welfare and protection by issuing a national judicial interpretation especially regarding renewal of employment contract, compensation for annual leave, change of employee's work position and reinstatement of employment relationship, etc. According to the latest Draft Judicial Interpretation (II) on Labor Disputes released by the PRC Supreme People's Court on 12 December 2023 for public opinions, for example, it proposed to allow employees to demand compensation for all their unused annual leave accumulated during their employment periods within one year after they leave the employer.

Considering these challenges, it is important for companies to prioritize the standardization of daily employee management. This includes a dedicated focus on the development, enhancement and rigorous implementation of HR policies, including without limitation, in working hours, overtime, leave management, compliance management., etc. so as to better exercise companies' autonomous management rights within the framework of legal and regulatory compliance to mitigate legal risks and avoid labor disputes.

- **Navigating the evolving social security landscape: compliance, flexibility and strategic considerations**

Continuing the trend observed in recent years, the Chinese government maintains its commitment to intensifying oversight over social security contributions. This trend is once again reflected in the Draft

Judicial Interpretation (II) on Labor Disputes. The draft explicitly declares agreements between companies and their employees to forgo paying social insurance fees as invalid. Notably, even in cases where they mutually agree to waive social insurance fees contribution, employees will still have the right to request the termination of the employment for the non-payment of social insurance fees and seek economic compensation from the companies according to law.

Besides, the tendency to broaden social security coverage is also noteworthy. Policies have been introduced in various regions to extend work-related injury insurance coverage to a broader range including interns and individuals working beyond statutory retirement age, and to allow individuals at working age to participate in social security system as freelancers without limitation to their permanent residence permits. This will help companies reduce potential risks and responsibilities while involving in non-labor relationships.

Companies are advised to strictly comply with legal obligations to contribute to social security for all employees according to law and keep an eye on changes in social security policies. In regions where applicable, companies may consider adopting more flexible employment arrangements, such as engaging more interns and individuals beyond statutory retirement age as well as freelancers, thereby reducing labor costs and maintaining workforce flexibility.

Tax

- **Emphasis on the extension of preferential tax policies to boost the economy**

The past year has witnessed an economic recession which was far beyond the expectation of the public voices in late 2022. In order to boost the economy, the State Administration of Taxation ("SAT"), together with other governmental authorities at central level, promulgated intensively in the third quarter of 2023 a series of regulations that extend the validity period of various preferential tax policies for the following years till 31 December 2027. Generally speaking, most of these preferential tax policies have been existing and are not new, but the unified extension of the expiry date to 31 December 2027 and the concentrated promulgation of the policy renewal have attracted the public's attention effectively and reflected the central government's resolution in boosting the economy. We have picked certain renewed policies that may be relevant to the companies' routine business in our [newsletter](#) published in August 2023. In particular, renewal of preferential Individual Income Tax policies regarding certain benefits granted to foreigners and annual bonus of PRC tax resident individuals was also released in our separate [newsletter](#) distributed on 31 August 2023.

- **Continuous support for advanced manufacturing and technological innovation**

Support for technological innovation and advanced manufacturing has been a hot topic especially in the recent years when the sanctions between the PRC and the USA have expanded to advanced technology fields. To face up to the potential challenges, the central governmental authorities and the SAT have promulgated, as supplements to the current structure of the technology-boosting-related preferential tax policies such as the reduced Corporate Income Tax ("CIT") rate of High New Technology Enterprises, general pre-CIT super-deduction of R&D costs, import tax exemption for R&D centers, etc., regulations to raise the pre-CIT super-deduction ratio of R&D costs to 120% for integrated circuit enterprises and industrial machine tool manufacturers and to continue offering VAT super-credit for enterprises in advanced manufacturing industries. For more information on this topic, please refer to our [newsletter](#) published for September and October 2023.

Compliance

- **New China strategy by German government**

A new China Strategy has been released on 13 July 2023 by the German Government. Key implications of the new China Strategy include, among other topics, that companies shall consider increasingly geopolitical risks in their decision-making process in relation to their operations in China. Companies shall, for example, strictly monitor their supply chains to the extent whether critical dependencies exist and take actions of diversification to reduce such risks. Foreign headquarters, which are planning

their compliance and internal audits on their China operations in the new year 2024, should consider addressing the implications of the new China Strategy in their risk assessments.

- **Anti-Corruption**

Anti-Corruption remains in 2024 a top task for companies and executives doing business in China. The Chinese regulator aims at further strengthening China's anti-corruption regime following the ongoing anti-corruption campaign in the country. The Draft Amendments XII of the *PRC Criminal Law* have been released on 26 July 2023 by the Chinese regulator, which shall become likely effective in the course of 2024. The proposed amendments provide stricter liability risks in certain scenarios of corruption in the public and private sectors. Executives in foreign-invested enterprises in China need to anticipate new personal liability risks following the regulator's objective to close gaps of personal criminal liability exposure. For more information see our newsletter [here](#).

Life Sciences

- **Administrative Regulations on Enterprise Implementation of the Main Responsibility for the Quality and Safety of Medical Devices**

The above regulations aim to urge medical device registrants and record-filing applicants to implement responsibilities for medical device quality and safety, strengthen the implementation of personnel responsibilities for those personnel who take key positions and are responsible for the quality and safety in medical device manufacturing companies and in medical device trading companies. It raises requirements relating to quality safety key positions in manufacturing enterprises, quality safety management mechanism, quality safety key positions safeguarding mechanism etc. For more information on this topic, please refer to our [newsletter](#) published earlier.

- **Provisions on the Supervision and Administration of Drug Market Authorization Holder Implementation of the Main Responsibility of Drug Quality and Safety**

These provisions aim to urge drug market authorization holders ("MAH Holder") to establish and implement the drug quality management system and to ensure drug safety, effectiveness and quality controllability during the whole process of drug development, manufacturing, trading and use. It raises requirements relating to key positions duties, responsibilities and requirements, quality management requirements of an MAH holder, quality management system of the MAH holder etc. For more information on this topic, please refer to our [newsletter](#) published earlier.

- **Implementation of GB 9706.1-2020 and Supporting Concurrent Standards and Special Standards**

The national standard GB 9706.1-2020 (the General Requirements for Medical Electrical Equipment Part 1: Basic Safety and Basic Performance, "GB 9706.1-2020") was published on 9 April 2020, and all of its supporting concurrent standards have been published, while special standards are being released gradually. As of February 2023, 69 standards under the new GB 9706 series have been published, 67 of which are mandatory standards and 2 (usability and closed-loop controllers) are recommended standards. The Circular on the Work Relating to the Implementation of GB 9706.1-2020 specifies the obligations of medical device registrants and filing entities in implementing the GB 9706.1-2020 standard, along with the obligations of technical review, inspection, supervision and administration entities. For more information on this topic, please refer to our [newsletter](#) published earlier.

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