

Shareholders' Rights in Private and Public Companies in China: Overview

Jan Holthuis and Li Jiao, BUREN

global.practicallaw.com/7-612-3807

TYPES OF COMPANIES WITH SHARE OWNERSHIP AND LIMITED LIABILITY

1. What are the main types of companies with limited liability protections and shareholders or members? Which is the most common? Which type do foreign investors most commonly use?

Limited Liability Companies

There are two types of company in the People's Republic of China (PRC) with limited liability under the PRC Company Law:

- Limited liability company (LLC).
- Company limited by shares (CLS).

An LLC's total registered capital does not need to be divided into equal shares, and as a result each shareholder's equity is represented by the amount or ratio of subscribed capital. By comparison, a CLS's total registered capital must be divided into equal shares, and as a result each shareholder's equity is represented by the subscribed number of shares. In addition, unlike an LLC, a CLS has fewer restrictions on the equity (shares are, in general, freely transferable), although it is subject to more stringent requirements concerning its incorporation procedure, governance structure and regulatory compliance.

In general, small and medium sized companies will usually take the legal form of an LLC while larger companies usually take the legal form of a CLS. If a company intends to be publicly listed, it must first take the legal form of a CLS.

Foreign Investment Law

On 15 March 2019, the Second Session of the 13th National People's Congress passed the PRC Foreign Investment Law (FIL), which has now been in effect since 1 January 2020.

Before the FIL, there were three separate pieces of legislation regulating three types of foreign-invested enterprises (FIE), namely:

- Wholly foreign owned enterprises (WFOEs).
- Sino-foreign contractual joint ventures (CJVs).
- Sino-foreign equity joint ventures (EJVs).

Since the FIL came into force, the legislation that previously governed WFOEs, CJVs and EJVs has been superseded and abolished, with the result that these separate types of enterprises no longer exist as legal forms of FIEs (although, for practical purposes, the terminology is still helpful in an economic sense to distinguish between the different foreign shareholding ratio of FIEs).

The FIL unifies the legal forms and governance structure of FIEs with domestically invested enterprises in accordance with the PRC Company Law and the PRC Partnership Enterprise Law, with the result that FIEs and domestically invested enterprises are now

treated equally. The legal forms that can be taken by FIEs set up after 1 January 2020 are now limited to either a corporation or a partnership (FIEs that were set up before 1 January 2020 are required to convert into the appropriate legal and organisational form (corporation or partnership) within a five-year transitional period). Where a FIE takes the legal form of a corporation, it can take the legal form of either an LLC or a CLS, as outlined above.

As a CLS is subject to more stringent requirements concerning its incorporation procedure, governance structure and regulatory compliance, to facilitate the effective, simplified and smooth access into the Chinese market, FIEs will usually take the legal form of an LLC. In addition, an LLC always has the option to convert into a CLS at a later date by fulfilling the relevant conditions and procedures for incorporation.

2. What are the minimum share capital requirements for companies?

As from 1 March 2014, the minimum capital requirements were lifted in the revised PRC Company Law. However, where paid-in registered capital and minimum registered capital for LLCs or CLSs are otherwise provided for in other laws, administrative regulations and decisions of the State Council, the relevant provisions will prevail.

Now that the FIL is in force, FIEs must fully comply with the PRC Company Law and the PRC Partnership Enterprise Law, which clarifies that FIEs that take the legal form of an LLC or a CLS are not subject to minimum capital requirements. The ratios Chinese law previously set between investment by registered capital and foreign loans (jointly, "total investment") are no longer mandatory in practice since the FIL came into force.

The Special Administrative Measures (Negative List) for Foreign Investment Access (Negative List) was introduced back in 2016, and was last further revised in 2020. The Negative List sets out industries and sectors which are prohibited or restricted from foreign investments. Only a business which falls within the restricted industries and sectors in the Negative List is subject to government approval. Foreign investors investing in sectors not included in the Negative List are generally treated the same as domestic investors, although they are subject to an additional formal requirement to provide an information report on their investment.

3. Briefly set out the main types of shares typically issued by a company and the main rights they provide. Set out the other main financial instruments (for example, bonds) and participation instruments that can be issued by a company.

Under Chinese law, only companies organised as a CLS can issue shares. There are two types of shares under the current PRC law: ordinary shares and preferred shares. Listed companies and unlisted

public companies (unlisted CLSs with more than 200 shareholders) are allowed to issue preferred shares.

For the main rights of holders of ordinary shares, see *Question 6*. The holders of preferred shares rank above holders of ordinary shares in payment of dividend and liquidation proceeds, but are restricted in other rights such as participation in the management of the company:

- Holders of preferred shares are first entitled to payment of dividends at the agreed rate, prior to any dividend payment to the holders of ordinary shares, and then entitled to participate in the dividend distribution together with the holders of ordinary shares.
- Before any distribution of liquidation proceeds can be made to holders of ordinary shares, the holders of preferred shares are entitled to receive the per share liquidation value of their preferred shares and all unpaid accumulated dividends.
- Holders of preferred shares can attend the shareholders' general meeting and exercise voting rights on matters which may be directly connected with or have a material influence on their interests, for example:
 - revision of the articles of association related to preferred shares;
 - reduction of the registered capital of the company by more than 10% at one time or cumulatively;
 - merger, division and dissolution of the company or change of corporate form;
 - issuance of preferred shares; or
 - other circumstances specified by the articles of association.

The other main types of financial instruments available in the Chinese stock market and bond market include:

- Targeted placement.
- Corporate bonds.
- Convertible bonds.
- Bonds with a warrant.
- Middle term note (MTN).
- Short-term financing bonds.

4. What is the minimum number of shareholders in a company?

The PRC Company Law allows a natural person or a legal person to form a single shareholder LLC, therefore the minimum number of shareholders is one. An LLC must be funded and established by no more than 50 shareholders.

To prevent abuse of the corporate structure in a single shareholder company, the PRC Company Law provides for a number of restrictions:

- A natural person can only establish one single shareholder LLC. Such a single shareholder LLC cannot invest in the setting up of a new single shareholder LLC.
- Both the company registration and business licence of a single shareholder LLC must clearly indicate whether the company is solely funded by a natural or legal person.
- Where the shareholder of a single shareholder LLC is unable to prove that the property of the company is independent of that shareholder's own property, that shareholder is jointly and severally liable for the debts of the company.

In contrast, a CLS must have no less than two and no more than 200 promoters, of whom more than half must be domiciled in China.

GENERAL SHAREHOLDERS' RIGHTS

5. At the formation of a company, what level of government defines the rights and obligations of the company?

The rights and obligations of a company at its formation are stipulated by the PRC Company Law, enacted by the National People's Congress and its Standing Committee, ancillary judicial interpretations issued by the Supreme People's Court, and ancillary administrative regulations promulgated and implemented by the State Council and its committees.

The State Administration for Market Regulation (SAMR) and its local counterparts act as the competent authorities to register the incorporation of companies. With respect to a FIE, the relevant local counterpart authorised by SAMR is the competent registration authority and is responsible for the registration and management of a FIE within its jurisdiction. The list of competent registration authorities throughout China can be found in SAMR Announcement No. 37 of 2020.

6. What are the general rights of all shareholders? How can shareholders' rights be varied (for example, attaching additional rights or limitations to a class of shares, or waivers of shareholders' rights)? Are such variations generally provided in the company's bye-laws, shareholders' agreements or by statute?

The general rights of all shareholders are as follows:

- To call, attend, address, make enquiries at, and vote at shareholders' meetings.
- To be entitled to dividend payments.
- To review and take copies of the:
 - company's articles of association;
 - minutes of shareholders' meetings;
 - resolutions of the board of directors;
 - resolutions of the supervisory board; and
 - financial accounting report.
- To request to check the company's accounting books for legitimate purposes.
- To receive a share of the liquidation proceeds.
- Pre-emptive rights on a capital increase (in the case of LLCs).

Shareholder rights are provided in the articles of association and sometimes in a shareholders' agreement in which shareholders agree how they will vote on specified matters.

In general, shareholders in unlisted companies can limit, modify, suppress or waive their rights by express agreement set out in the articles of association or the shareholders' agreement, as long as such variations do not violate the mandatory rules of Chinese law and in practice are acceptable to the local competent authorities. However, it is difficult to limit, modify, suppress or waive listed companies' shareholders' rights.

Variations to the rights attached to preferred shares are provided by special law (see *Question 3*).

7. Briefly set out the rights of minority shareholders and the minimum shareholding required to exercise such rights.

Rights of minority shareholders under PRC Company Law include:

- Shareholders' general rights: such as to attend a shareholders' meeting and vote, access to company information and documents, receive dividends and other rights (see *Question 6*). There is no minimum shareholding requirement to exercise these basic rights.
- Rights related to corporate governance:
 - right to call and preside over a (general) meeting of shareholders: in an LLC, any shareholder that individually (or collectively) holds at least 10% of the voting rights of the company can call and preside over a shareholders' meeting, if both the board of directors (or the executive director) and the board of supervisors (or the supervisor) fail to do so; and in a CLS, any shareholder that individually (or collectively) holds at least 10% of a company's shares for at least 90 consecutive days can call and preside over a general meeting of shareholders, if both the board of directors and the supervisors fail to do so;
 - right to propose to convene an interim (general) meeting of shareholders: in an LLC, an interim shareholders' meeting can be called if any shareholder that individually (or collectively) holds at least 10% of the voting rights of the company proposes to do so; and in a CLS, an interim shareholders' meeting can be called within two months upon the request of any shareholder that that individually (or collectively) holds at least 10% of a company's shares;
 - right to raise an interim proposal for a general meeting of shareholders: in a CLS, any shareholder that individually (or collectively) holds at least 3% of a company's shares can raise an interim proposal and submit it to the board of directors in writing, ten days in advance of a general meeting of shareholders.
- Litigation rights: shareholder derivative suit. Any shareholder of an LLC, or any shareholder of a CLS, who individually or collectively holds at least 1% of the company's shares for at least 180 consecutive days prior to the action, can initiate proceedings on behalf of the company:
 - against directors, supervisors and senior executives who violate any law, regulation or the company's bye-laws in the course of their duties and cause loss to the company (see *Question 27*);
 - against controlling shareholders, ultimate actual controllers, directors, supervisors and senior executives who manipulate an affiliated transaction, harming the interests of the company or an affiliated transaction contract (which renders that contract either invalidated or revocable), even though the original affiliated transaction is conducted under due procedures; and
 - against any external parties who damage the interests of the company and thus cause loss to the company.
- These shareholder derivative suits can be triggered under the circumstances that the board of supervisors (supervisor) and board of directors (executive) refuse to file a lawsuit after receiving the shareholder's written request to do so, or fail to file a lawsuit within 30 days from the date of receiving the shareholder's written request, or the situation is so urgent that failure to immediately file a lawsuit will render the company's interests irreparably damaged.
- Limitation rights: shareholder direct suit. Any shareholders of an LLC or a CLS can directly initiate proceedings against

directors and senior executives who violate any law, regulation or the company's bye-laws in the course of their duties and harm the interest of such shareholders.

- Exit rights: any shareholder holding more than 10% of the voting rights of all shareholders can ask a court to dissolve the company, if the operation and management of the company suffers serious difficulties which will lead to significant losses to the shareholder's interests, and there is no other way to solve it.

8. How effective are institutional investors and other shareholder groups in monitoring and influencing a company's actions (for example, corporate governance compliance)? List any such groups with significant influence in this area.

Institutional investors in China mainly include securities investment funds, the National Social Security Fund, Qualified Foreign Institutional Investors (QFII), securities companies, and insurance companies.

Although most institutional investors are not active and prefer to "vote-by-foot" in the current Chinese capital market, an increasing number of institutional investors participate in corporate governance, and are becoming more influential. In general, institutional investors influence the company's actions through the following:

- Exercising voting rights actively, for example vetoing a proposal which may harm the interests of the company.
- Making a shareholder proposal, for example nominating a person to be a director.
- Informal influence through private communication with the board and management team.
- Shareholder litigation.
- Co-operating with other institutional investors.

The actual effects of such measures are decided on a case-by-case basis. Some of them are quite successful, for example Penghua Fund co-operated with Yale Endowment Fund to nominate a director candidate for GREE Electric Appliance Inc in 2012.

MEETINGS OF SHAREHOLDERS

Calling a Meeting

9. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved at a general meeting? Which decisions must be approved by the shareholders in a general meeting?

It is up to the articles of association of an LLC to stipulate the frequency of shareholders' meetings. In practice, most LLCs will hold a shareholders' meeting at least once a year. For a CLS, under the PRC Company Law, a shareholders' general meeting must be convened once every year but the timing is not stipulated by law.

For simplicity, unless otherwise specified, the term shareholders' meeting in this article means both a shareholders' meeting for an LLC and a shareholders' general meeting for a CLS.

The shareholders' meeting must decide on the following matters:

- Decide the company's business strategy and investment plans.
- Elect and remove directors and supervisors who are not representatives of employees.
- Decide the remuneration of directors and supervisors.
- Review and approve the reports of the board of directors.

- Review and approve the reports of the supervisory board or the supervisor.
- Review and approve the annual financial budget plans and financial accounting plans of the company.
- Review and approve the profit distribution plans or loss recovery plans of the company.
- Pass resolutions on any increase or reduction of the registered capital of the company.
- Pass resolutions on the issuance of corporate bonds.
- Pass resolutions on any company merger, division, dissolution, liquidation, or change of the corporate form.
- Any amendment to the articles of association.
- Exercise any other powers given to the shareholders' meeting by the articles of association.

The following additional rights are given to shareholders:

- The provision of security by the company for a shareholder or the *de facto* controller of the company must be approved by a resolution of the shareholders' meeting.
- In an LLC, resolutions passed by a shareholders' meeting on an amendment to the company's articles of association, an increase to, or reduction of, registered capital, and a company merger, division, dissolution or change of company structure must be passed by shareholders holding at least two-thirds of the voting rights.
- In a listed company, if the company, within the course of a business year, purchases or sells major assets, or provides a guarantee (or guarantees) the value of which exceeds 30% of its total assets, the transaction must be approved by at least a two-thirds majority of the voting rights of the shareholders present in the meeting (*PRC Company Law*).

10. Can a company hold extraordinary or special meetings of shareholders? If so, when and how often? What issues can be discussed and approved by the shareholders in an extraordinary or special meeting?

Outside the usual annual (general) meeting of shareholders, a company can hold interim meetings of shareholders. For LLCs, an interim shareholders' meeting will be called if any shareholder that individually (or collectively) holds at least 10% of the voting rights of the company requests such a meeting. For CLSs, an interim general meeting of shareholders will be called within two months upon the occurrence of any of the following events:

- The number of directors falls below the statutory quorum or two-thirds of the number specified in the company's articles of association.
- The company's unrecovered losses reach one-third of the total paid-in capital.
- Upon the request of any shareholder that that individually (or collectively) holds at least 10% of a company's shares.
- The board of directors deems it necessary to call a shareholders' general meeting.
- The board of supervisors proposes to call a shareholders' general meeting.
- Any other events stipulated by the company's articles of association.

The issues that can be discussed in an interim meeting of shareholders are either outlined in the company's articles of association or otherwise agreed by the shareholders. The PRC

Company Law requires that the issues to be discussed in such an interim meeting be notified to all shareholders at least 15 days in advance of the meeting. It is important to note that for a CLS, any shareholder that individually (or collectively) holds at least 3% of a company's shares can raise an interim proposal and submit it to the board of directors in writing ten days in advance of a general meeting of shareholders.

11. Can a general or special meeting be held by telecommunication means or written/electronic approval?

If the company's articles of association permit, the shareholders' meeting can be held by telecommunication means. The PRC Company Law is silent on the general requirements applicable to conducting a shareholders' meeting by telecommunication. It can be safely presumed that holding the shareholders' meeting is legal provided that the statutory requirement relating to running of the meeting and adoption of resolutions are adhered to (see *Question 12*) and relevant rules specified in the articles of association are followed.

Under the PRC Company Law, an LLC is allowed to hold a shareholders' meeting in writing, if the resolution(s) to be passed at the meeting is approved by the unanimous written consent of all the shareholders. These rules apply to both general meetings and interim meetings.

12. What are the notice, information, and quorum requirements for holding general and special meetings and passing resolutions?

For a CLS, the shareholders must be informed of the time and place of a general meeting and the matters to be considered at it at least 20 days in advance, and for an interim general meeting at least 15 days in advance. Holders of bearer shares are notified by a public announcement including the above-mentioned items at least 30 days in advance.

For an LLC, unless the articles of association require otherwise, the shareholders must be informed of the time and place of the meeting 15 days in advance.

There is no statutory quorum for holding general meetings in a CLS and a shareholders' meeting in an LLC.

In a CLS, resolutions must be adopted by an affirmative vote of shareholders representing a majority of the voting rights of shareholders present. If a resolution proposes any of the following, it must be adopted by shareholders representing two-thirds or more of the voting rights of shareholders present:

- A modification of the articles of association.
- An increase or decrease of the registered capital.
- A proposed combination, division, dissolution or transformation of the company.

In an LLC, any resolution made regarding a vital interest of the company must be passed by shareholders representing at least two-thirds of all the company's voting rights (not just two-thirds of the voting rights of shareholders present), for example:

- Any revision to the company's articles of association.
- An increase or reduction of its registered capital.
- Any combination, division, dissolution, or transformation of the company.

There are no specific provisions concerning any notice or information requirements for passing resolutions, as the PRC Company Law is silent on this matter.

Voting

13. What are the voting requirements for passing resolutions at general and special meetings?

Voting can be conducted as follows:

- Poll vote: in an LLC, the shareholders will exercise voting rights in proportion to their capital contribution unless otherwise specified in the company's articles of association. In a CLS, shareholders attending a shareholders' general meeting will have one vote for each share that they hold. Therefore, in reality, voting by a "show of hands" can be arranged in the articles of association of an LLC.
- By classes of shares: the voting rights attached to ordinary shares and preferred shares differ (see *Question 3* and *Question 7*).
- Proxy voting: the PRC Company Law allows a shareholder to appoint a proxy to attend a general meeting. The proxy will exercise the voting rights within the scope of his authorisation.
- Weighted voting: the concept of weighted voting rights is not regulated in Chinese law. In an LLC, the voting rights can be decided in the articles of association. In a CLS, each share will have one vote at a general meeting.
- Written consent: in an LLC, it is possible to pass resolutions by unanimous written consent of all of the shareholders.
- Aggregate voting right: in practice, aggregating voting rights by means of a trust or shareholders' agreement is allowed.

14. Are specific shareholder approvals/resolutions required by statute or an applicable stock exchange for certain corporate actions? What voting requirements and majorities apply?

There are no other specific shareholder approvals/resolutions required for certain corporate actions in the PRC Company Law other than those already outlined. For the voting requirements for shareholders' resolutions in an LLC and a CLS, see *Question 12*.

Shareholder Rights Relating to Meetings

15. Can a shareholder require a general or special meeting to be called? What level of shareholding is required to do this? Can a shareholder ask a court or government body to call or intervene in a general meeting?

In a CLS, a shareholder (or shareholders) who holds 10% or more of the company's shares for 90 consecutive days or more can convene and preside over an interim general meeting on their own initiative, if the board of directors and the board of supervisors has failed to fulfil its obligations to convene an interim general meeting.

In an LLC, if the shareholder meeting is not called, shareholders who represent 10% or more of the voting rights can convene and preside over an interim meeting on their own initiative.

Shareholders are not allowed to convene shareholders' meetings or shareholders' general meetings on their own. In a CLS, the annual meeting of the shareholders' general meeting must be convened once a year. In an LLC, the shareholders' meeting is usually convened at least once a year, and in any event must be convened

under the schedules provided for in the company's articles of association (see *Question 9*).

A shareholder in a CLS or an LLC can ask a court to order a general or special meeting to be called. A shareholder can also petition a court to revoke any resolution passed at a meeting where either the convening procedure used to call that meeting, or the content of the meeting, was in violation of the law, an administrative regulation or the company's articles of association.

16. Can a shareholder require an issue to be included and voted on at a general meeting? What level of shareholding is required to do this? Can a shareholder require information from the board about the meeting's agenda?

The PRC Company Law is silent on a shareholder's rights to submit a written proposal at a general meeting of an LLC. However, in practice in China any shareholder can in fact submit a written proposal to the board of directors.

In a CLS, any shareholder (or shareholders) who holds 3% or more of the shares of the company can submit a written proposal to the board of directors at least ten days in advance of a general meeting. A shareholder in a CLS can require information from the board. Under the PRC Company Law, shareholders in a CLS must be notified at least 20 days in advance of a general meeting of the time and place of the meeting and the matters to be considered at it.

17. Do shareholders have a right to resolve in a general or special meeting on matters which are not on the agenda?

A general or special meeting cannot vote on a resolution relating to a matter not listed in the notice for the meeting.

18. Can a shareholder challenge a resolution passed at a general meeting? Is a certain shareholding level required to do this? What is the time limit and procedure to challenge a general meeting resolution?

Any shareholder can challenge a resolution before the court if the procedures for calling or voting at the meeting violate any law, administrative regulation or the company's articles of association, or if any resolution violates the company's articles of association. The time limit for a challenge is within 60 days of the date on which the resolution is passed.

SHAREHOLDERS' RIGHTS AGAINST DIRECTORS

19. What is the procedure to appoint and remove a director?

Normally, a shareholder resolution is required to appoint or remove a director. Where a director is removed or appointed, the company must also file and submit an application to the SAMR to change the company's registered details to reflect the change made to the company's directorships. Employee representatives who serve as a director on the board of directors of an LLC established by two or more state-owned enterprises or other LLCs are elected by the employees by voting.

20. Can shareholders challenge a resolution of the board of directors? Is there a minimum shareholding required to do this?

If the content of a resolution of the board of directors violates any law or regulation, shareholders can request a court to confirm that the resolution is void or that the resolution has not been properly established. Shareholders can request a court to confirm that a board resolution is void or not properly established where any of the following apply:

- The resolution was made without convening a meeting (unless either the Company Law or the company's articles of association provide for this possibility).
- The resolution was adopted at a meeting without voting on it.
- The number of persons attending the meeting, or the voting rights held by the shareholders represented at the meeting, were not in conformity with either the requirements of the Company Law or the company's articles of association.
- The voting result of the meeting did not reach the requisite amount required to legally adopt the resolution either under the Company Law or the company's articles of association.
- Where there is any other legal circumstance that results in the untenability of the resolution.

As an alternative to the above remedy, shareholders can (within 60 days following the date on which the resolution was passed) request a court to revoke a board resolution if either:

- The convening procedure or the voting method of the board meeting violates any law, regulation or the company's articles of association, or the procedure by which the resolution was passed was legally flawed.
- The content of the resolution violates the company's articles of association.

No minimum shareholding is required to conduct any of the above challenges to a board resolution. However, whilst no statute of limitations applies to request a court to confirm that a board resolution is either void or has not been properly established (and such a lawsuit can be brought at any time after passing the board resolution), a statute of limitations applies to requests to revoke a board resolution, which must be brought within 60 days following the date on which the resolution was passed.

If a resolution is confirmed by the court to be either void or revoked, the legal relationship between the company and a bona fide third party will not be affected. However, it has not yet been clearly confirmed whether or not such a bona fide third-party relationship will be affected where a resolution is declared by the court to have not been properly established. In addition, where the court establishes that a resolution can be revoked because of a procedural irregularity, it is possible to correct any such procedural irregularity and pass the resolution: this correction is not possible where it is confirmed by the court that a resolution was not properly established.

Upon the request of the company, the court can require the shareholders bringing a claim concerning a board resolution to provide a guarantee to the court for their claim.

21. Briefly set out the main directors' duties to the company and its shareholders. What is the potential liability of directors to the shareholders? Can their liability be limited

or excluded? On what grounds can shareholders bring legal action against the directors?

Directors' Duties

Generally, directors are subject to a duty of loyalty and diligence to the company and cannot damage shareholders' interests. In particular, directors are not allowed to do any of the following in relation to the company:

- Damage the company's interests by taking advantage of their associated relationships.
- Take any bribe or illegal income by taking advantage of their power.
- Take illegal possession of any of the company's property.
- Embezzle the company's funds or assets.
- Deposit the company's funds into an account in their own name or any other person's name.
- Provide a loan to another person, or use the company's property to provide a guarantee to another person, which either:
 - violates the stipulations of the company's articles of association; or
 - does not have the consent required from a shareholders' meeting, a general shareholders' meeting or a board meeting.
- Enter into a contract or conduct a transaction with the company which either:
 - violates the stipulations of the company's articles of association; or
 - does not have the consent required from a shareholders' meeting or a general shareholders' meeting.
- Manipulate the company into an affiliated contract or transaction which harms the interest of the company, or renders an affiliated contract either invalid or revocable, even though the original contract or transaction was conducted under due procedures.
- Without the consent of the shareholders or the board, take business opportunities which belong to the company for themselves or any other person by taking advantage of their power, or operate a business that is similar in nature to the company for themselves or any other person.
- Personally take commission from transactions between the company and another person.
- Disclose confidential information of the company.
- Conduct other activities that breach their fiduciary duty to the company.

Directors' Liability

If a director (or directors) participates in the adoption of a resolution that causes serious losses to the company, that director (or directors) will be liable for the damage caused as a result of that resolution.

PRC law is almost silent on whether directors' liability, to the company or to the shareholders, can be limited or excluded. The only relevant provision is that a director may be exempted from liability relating to a board resolution that violates laws, regulations, the company's articles of association or shareholders' resolutions, and causes serious loss to the company, if both:

- The director proves that he raised an objection to the resolution.
- The objection is recorded in the minutes.

Shareholders' Actions Against Directors

Any shareholder of an LLC or a shareholder of a CLS who individually or collectively has held at least 1% of the company's shares for at least 180 consecutive days can request the board of supervisors or the supervisor(s) of the company, in writing, to initiate proceedings against directors who violate any law, or regulation, or company's articles of association in the course of their duty and cause loss to the company.

Moreover, an individual shareholder can bring a lawsuit directly, in their own name, if the board of supervisors or the supervisor(s) of the company:

- Refuses to initiate legal proceedings after receiving a request to do so from the shareholder.
- Fails to initiate legal proceedings within 30 days after receiving the request to do so from the shareholder.

In addition, a shareholder can take the same direct legal action against a director (directors) if there is an emergency situation which may result in irreparable damage to the company.

If a director(s) violates the laws, the administrative regulations or the company's articles of association and a result damages the interests of the shareholders, any shareholder can initiate a legal action against the director(s) directly. As well as initiating legal actions, the general meeting of shareholders can dismiss a director without cause by a valid resolution during the director's tenure.

22. Are directors subject to specific rules when they have a conflict of interest relating to the company? Are there restrictions on particular transactions between a company and its directors? Do shareholders have specific rights to bring an action against directors if they breach these rules?

A director is not allowed to damage the company's interests by taking advantage of an affiliated relationship. If a director does this, that director is liable for such damage and must compensate the company. The "affiliated relationship" here means a relationship between the director and enterprises directly or indirectly controlled by the director, which may cause a transfer of interest in the company.

Where the director of a listed company is affiliated with an enterprise that is involved in a resolution of the board of directors, that director must not exercise their own voting right on such a resolution, or exercise the voting right of any other director on their behalf on such a resolution. This can be seen as an extra instrument to protect the interests of minority shareholders in listed companies.

In addition, a company cannot provide a loan to, or use any of its property as a guarantee for, any of its directors, either directly or through its subsidiaries, unless either:

- This is specifically permitted in the company's articles of association.
- The consent of the shareholders' meeting, the general shareholders' meeting or the board of directors has been obtained for such an action.

A director is not allowed to enter into any contract or conduct any transactions with the company that are in violation of the company's articles of association, or without the requisite consent (where this is required) of the shareholders' meeting or the shareholders' general meeting.

Directors cannot take advantage of their position to seek commercial opportunities which belong to the company, either for themselves or for another person. Directors also cannot operate, for themselves or for another person, the same kind of business as that of the company where they hold the position of director, unless they

have obtained the requisite consent to do so from the shareholders' meeting or the shareholders' general meeting.

Shareholders have a right to bring an action against directors if they breach these rules (see *Question 21*).

23. Does the board have to include a certain number of non-executive, supervisory or independent directors?

For a listed company, at least one-third of the members of the board must be independent directors. There is no requirement for independent directors in an LLC or an unlisted CLS. However, there are requirements for supervisory director(s) in both LLCs and CLSs.

An LLC with a relatively small number of shareholders, or of a relatively small scale, may appoint one or two supervisory directors instead of establishing a supervisory board. If a supervisory board is to be established, it must comprise not less than three members.

A CLS must establish a supervisory board of not less than three members. Among other things, the ratio of employees' representatives on the supervisory board must not be less than one-third, and this ratio must be stipulated in the company's articles of association. The supervisory board must appoint a chairman and may appoint a vice-chairman.

24. Do directors' remuneration and service contracts have to be disclosed? Is shareholder approval of directors' remuneration required?

The remuneration of directors in a CLS is required to be regularly disclosed to shareholders under the PRC Company Law, however the means of disclosure is not specified. In a listed CLS, the remuneration of directors must be included in the company's annual report (see *Question 28*). In practice, the remuneration of directors may also be disclosed by notice in a meeting of the board of directors.

Shareholder approval in the general meeting is required for directors' remuneration, either in an LLC or CLS.

SHAREHOLDERS' RIGHTS AGAINST A COMPANY'S AUDITORS

25. What is the procedure to appoint and remove the company's auditors? What restrictions and requirements apply to who can be the company's auditors?

To appoint or remove the company's auditors, either a shareholders' resolution or a board of directors' resolution is required. For a listed company, an audit committee must be set up under the board of directors. The function of the audit committee is to supervise and evaluate the company's external auditors and guide the company's internal auditors. The audit commission can suggest that the board of directors appoint or remove the company's external auditors.

The company's auditor must have relevant professional competence, comply with professional norms, and be independent, objective, impartial and confidential in their work.

26. What is the potential liability of auditors to the company and its shareholders if the audited accounts are inaccurate? Can their liability be limited or excluded?

An accounting firm that issues a false audit report (with any false record, misleading statement or significant omission) which causes loss to any stakeholder including shareholders can be subject to tort

liability. The auditors involved may bear joint and several liability with the accounting firm for paying compensation.

The liability of the accounting firm can be excluded if it does any of the following:

- Fails to find an error in the accounting materials, but complies with professional rules and maintains professional prudence.
- Fails to find that a certification document provided by a financial institute that it relies on is false, but maintains professional prudence.
- Has warned the company of its indication of fraud and pointed this out in the audit report.
- Has carried out the audit in accordance with a capital verification procedure and issued the audit report, but the investor withdrew the capital contribution after registration.
- Issues a false report on a capital contribution, but the investor makes up the balance of the capital contribution after registration.

DISCLOSURE OF INFORMATION TO SHAREHOLDERS

27. What financial or other information about the company do the directors have to provide and disclose to its shareholders? What information and documents are shareholders entitled to receive?

Shareholders are entitled to inspect and receive duplicates of:

- The company's articles of association.
- Minutes of shareholders' meetings.
- Resolutions of the board of directors.
- Resolutions of the board of supervisors.
- Financial reports.
- Accounting records.

Therefore, the directors must provide the above information to the shareholders.

Unless otherwise provided in the articles of association, a general meeting agenda must be delivered to all shareholders at least 15 days in advance of the shareholders' meeting for an LLC, or 20 days in advance of the general meeting of shareholders for a CLS.

28. What information about the company do the directors have to disclose under securities laws (where applicable)?

Periodic Reports

Under PRC securities laws, the directors of a listed company must disclose information which has a material effect on investors' investment decisions through periodic reports, either annually, semi-annually or quarterly. The annual report must include the following information:

- Basic information about the company.
- Major accounting data and financial indices.
- Information about the issuance of, and changes to, the company's shares and bonds; the total amount of the shares and bonds; the total number of shareholders; and information on the shares held by the ten largest shareholders.

- Information about shareholders who hold more than 5% of the shares, the controlling shareholders, and the de facto controlling party.
- The employment status, shareholding changes and remuneration of directors, supervisors, and senior management personnel.
- Reports of the board of directors.
- Discussions and analysis of the management team.
- Significant events that occur within the reporting period, and their effect on the company.
- The financial and accounting report and the audit report.
- Other information required by the China Securities Regulatory Commission (CSRC).

Compared with the annual report, the content of the semi-annual report and quarterly report is relatively brief.

Temporary Report

With regard to the following events that can have a material effect on the trading price of a listed company's securities, a temporary report (which includes information stating the cause, the present situation and the possible consequence of the event) is required, which must be filed with the CSRC:

- A material change to the company's business policy and/or business scope.
- A company decision concerning either a significant investment or the purchase of a major asset.
- The company concluding an important contract which may have a material effect on the company's assets, liabilities, rights and interests, or business achievements.
- A significant debt occurs and the company fails to repay that significant due debt, or incurs liability to pay a large amount of compensation.
- The company suffers significant loss or damage.
- A significant change to the external conditions affecting the business operation of the company.
- A change of director(s), one third or more of the supervisors or the manager(s) of the company, or the chairman of the board of directors or the manager failing to perform their duties.
- A considerable change of shares held by shareholders or the controlling party of the company, each of whom holds or controls at least 5% of the company's shares.
- A company decision on a registered capital reduction, merger, split-up, dissolution, or application for bankruptcy, or the company entering into a bankruptcy procedure or being ordered to close down in accordance with the law.
- Significant litigation or arbitration in which the company is involved, or where a resolution of the general meeting of shareholders or the board of directors is revoked or otherwise invalidated/declared invalid in accordance with the law.
- The company is suspected of violating laws and regulations and is investigated by the competent authority or is subject to criminal punishment or significant administrative punishment, or the director, supervisor or senior manager of the company is suspected of violating laws and regulations and is investigated by the competent authority or subject to coercive measures.
- Newly published laws, regulations and industry policies that may have a material effect on the company.

- Resolution of the board of directors on the issuance of new shares or any other refinancing plans and equity incentive plans.
- A court prohibits the controlling shareholders from transferring their shares, or shares held by shareholders holding more than 5% of the shares of the company are subject to a pledge, freezing, judicial auction, custody, a trust, or a voting rights restriction.
- The main assets are sealed up, distained, frozen, mortgaged or pledged.
- The main or whole business comes to a halt.
- The company provides a significant guarantee for external parties.
- Additional income is obtained which may have a material effect on the company's assets, liabilities, rights and interests and operation results, such as a large governmental subsidy.
- Change of accounting policies and accounting estimates.
- An error in information disclosed previously or the information is not disclosed in accordance with the relevant provisions, or a false record, and an order by the relevant authority to rectify or the board of directors decides to rectify.
- Any other event that CSRC requires to be disclosed.

29. Is there a corporate governance code in your jurisdiction? Do directors have to explain to shareholders in the company's annual report if they have not complied with it (comply or explain approach)?

The Corporate Governance Code for Listed Companies (Code) was issued by CSRC on 7 January 2002 and only applies to listed companies. On 30 September 2018, the CSRC issued the revised Guidelines on Governance of Listed Companies, which was the first ever revision made to the Guidelines since its enactment in 2002.

The Code states:

- The basic principles of corporate governance of a listed company.
- Measures to protect investors.
- The behaviour standard for directors, supervisors, general managers and other senior management.

The Code must be fully implemented by listed PRC companies, which means the directors cannot choose alternative means to achieve good governance with an explanation to shareholders. According to the Code, a listed company is required to disclose information on corporate governance, including the actual corporate governance situation, any gap between the company's corporate governance and the Code, and the reasons for the gap. However, this is not related to, or the same as, the "comply or explain approach" that applies in other jurisdictions.

30. What information can shareholders request from the board about the company? On what grounds can disclosure of company information be refused? Are shareholders entitled to inspect the company's books and similar company documents?

Certain information must be provided to the shareholders automatically without a request (see *Question 27*). In an LLC, a shareholder is entitled to inspect the accounting records of the company by submitting a written request to the board stating the purposes of the request. If the company has reason to believe that

the shareholder has an improper purpose and this can damage the legitimate interests of the company, it can refuse the shareholder's request in writing stating the reasons for the refusal within 15 days of receipt. If the company refuses the shareholder's request, the shareholder can submit it to a court. This rule does not apply to a CLS.

SHAREHOLDERS' AGREEMENTS

31. Briefly set out the main provisions of a typical shareholders' agreement.

The following provisions are commonly included in a shareholders' agreement:

- Capital funding: definition of, and the form, amount and time of, capital contribution made by shareholders.
- Shareholders' meeting: the voting power of the shareholders, the convening procedure and the voting rules.
- Board of directors: the number of directors, removal and replacement of directors, and legal representation.
- Management organisation: positions and duties of the management team.
- Profit sharing.
- Share transfer: share transfer restrictions, rights of first refusal/pre-emptive rights, tag-along and drag-along rights.
- Accounting and financial report.
- Terms of the shareholders' agreement and termination of the shareholders' agreement.

32. Are there circumstances where shareholders' agreements can be enforceable against third parties?

The shareholders' agreement is only binding on the shareholders. In general, a shareholders' agreement is not binding and enforceable against third parties. However, according to the PRC Company Law, if the shareholder is a natural person, a successor can inherit the shareholder's position after the shareholder's death, unless otherwise provided by the company's bye-laws.

33. Do shareholders' agreements have to be publicly disclosed or registered?

Generally, shareholders' agreements are not required to be publicly disclosed. However, certain information related to the company (such as the parties' names and their subscribed capital) is obtainable through public company registration records.

DIVIDENDS AND DISTRIBUTIONS

34. What are the most common forms of distributions?

Dividends are generally distributed to the shareholders in the following forms:

- Cash.
- Stock (through capital increase).
- Property (mainly securities of other companies owned by the company).
- Debt (mainly the company notes payable).

Cash is the most common form of dividend distribution in China in practice.

35. How can dividends be paid to shareholders and what procedures and restrictions apply? Is it possible to exclude or limit the right of certain shareholders to dividends? Is the payment of interim or special dividends allowed?

A company's after-tax profit remaining after it has made up its losses and made allocations to its common reserve can be distributed to the shareholders. A company must allocate 10% of its after-tax profits to the statutory common reserve every year until the aggregate amount of the reserve exceeds 50% of the registered capital.

Profit distribution plans and plans for making up losses of the company are formulated by the board of directors (or the executive director of a relatively small company without a board) and submitted to the shareholders' meeting for consideration and approval.

After the shareholders' meeting approves the profit distribution plan via a resolution, the profit distribution will be executed within the period specified in the resolution. If no period is specified, the provisions in the articles of association will apply. Where no period is specified in either the resolution or the articles of association, or the period specified therein exceeds one year, the company will, within one year from the date when the resolution was made, complete the profit distribution subject to the resolution.

Shareholders are entitled to dividends in proportion to their paid-in capital contributions, unless all of the shareholders agree otherwise in the articles of association. The concept of preferred shares has relatively recently been officially introduced into Chinese law, and the holders of preferred shares rank above holders of ordinary shares when distributing dividends (see *Question 3*). The right to a dividend can also be varied in the company's articles of association or shareholders' agreement (see *Question 6*).

The issue of interim dividends is not dealt with explicitly under Chinese law. In practice, listed companies are allowed to make payment of interim dividends according to the listing rules and the articles of association.

FINANCING AND SHARE INTERESTS

36. Can shareholders pledge or grant security interests over their shares? If so, what effect does it have on the shareholders' right to vote or receive dividends?

In a CLS shareholders are generally entitled to pledge their shares that can be legally transferred and pledged without restriction. However, in 2018, with the approval of the China Securities Regulatory Commission, the Shanghai Stock Exchange and the China Securities Depository and Clearing Co Ltd jointly issued the "Measures for Stock Pledged Repurchase Trading and Registration and Settlement Business (Revised 2018)" which set a limitation on the stock pledge rate for a listed company. In order to improve the corporate governance of listed companies, this measure requires that the ceiling of the stock pledge rate of listed companies must not exceed 60%, and the pledge ratio of a single A-share stock accepted by a single securities company and a single asset management product must not exceed 30% and 15% respectively. The overall pledge ratio of a single A-share stock market cannot exceed 50%.

In an LLC, if a shareholder pledges its equity of the company, the rules on the equity transfer applicable to an LLC set out in the PRC Company Law should be followed. This means that if the pledgee is an external third party, consent of more than half of shareholders must be obtained.

The grant of security interests over shares will not generally affect shareholders' rights to vote or receive dividends in the company. However, the PRC Property Law and judicial interpretation of the PRC Guarantee Law both stipulate that if shares that can be transferred according to law are pledged, the effect of the pledge right will extend to the civil fruits (*fructus civiles*) of the pledged shares, unless this is explicitly excluded in the pledge contract. Therefore, the pledgee has the right to collect the *fructus civiles* (including, but not limited to, dividends) generated by the pledged shares (although the pledgee can exercise the pledge right only when the debtor fails to perform the debt).

37. Are there restrictions on loans or other financial assistance for the purchase of a company's shares?

Chinese law does not explicitly restrict a company from providing a loan or other financial assistance for the purchase of its shares. However, the provision of financial assistance by a Chinese company for a third party may in practice be limited due to laws and regulations which restrict the company from providing a loan or security to support debt, such as foreign exchange rules and banking regulations.

For instance, cross-border security (provision of security by a Chinese entity to an offshore entity) should be filed for record with the State Administration of Foreign Exchange (SAFE), the Chinese foreign exchange regulatory agency. The debt proceeds under such cross-border security must be used within the ordinary scope of business of the debtor. Without SAFE approval, the debt proceeds must not be remitted into China, whether directly or indirectly and whether by way of debt, equity investment, or other means.

SHARE TRANSFERS, ISSUES OF NEW SHARES AND EXIT

38. Are there any restrictions on the transfer of shares by law? Can the transfer of shares be restricted? What are the rights of shareholders in the case of an issue of new shares (pre-emption rights)?

Chinese law restricts the transfer of shares in the following ways:

- The transfer of shares to a third party outside the company is subject to a right of first refusal by the other existing shareholders.
- Governmental approval: the transfer of an equity interest in a FIE or equity interest belonging to a state-owned asset is subject to the approval of the competent authorities.
- Statutory lock-up: the shares of a CLS held by a promoter cannot be transferred for a period of one year from the date of establishment of the company. A director, supervisor or senior officer of a CLS is not allowed to transfer more than 25% of their total holding of the company's shares per year while they are in the service of the company. Further, for a period of one year from the date on which the company's shares are listed for trading, these persons cannot transfer their shares. When any of these persons leaves the company, they cannot transfer their shares for a period of six months.

Other restrictions on the transfer of the company's shares can be specified in the company's articles of association.

In an LLC, shareholders are entitled to subscribe for capital contributions on a priority basis in proportion to their paid-in capital contributions.

In a CLS, when new shares are issued, resolutions in respect of the class and amount of new shares issued to existing shareholders are adopted by the shareholders' general meeting.

39. Can minority shareholders alter or restrict changes to the company's share capital structure?

Although Chinese laws do not provide such statutory veto rights to the minority shareholders of a domestically-funded LLC or CLS, it is not uncommon that a resolution on the increase or decrease of registered capital requires the unanimous approval of all the shareholders as provided for in the articles of association.

40. When are shareholders required to notify changes to their shareholding to a regulatory authority?

A company must register the names of its shareholders with the company registry. If the registered particulars change, the procedures for amending the registration must be carried out. Particulars that have not been registered or for which registration amendment procedures have not been carried out are not enforceable against a third party.

41. Can companies buy back their shares? Which limitations apply?

An LLC can repurchase an equity interest from a shareholder at the shareholder's request if the shareholder votes against a relevant resolution at a meeting of the shareholders in any of the following events:

- The company has not distributed profits to the shareholder for five consecutive years and the company has been profitable during those five years, and the shareholder satisfies the conditions for distribution of profits in accordance with the PRC Company Law.
- The company merges, is divided, or transfers its main assets.
- The term of operation specified in the company's articles of association expires or other grounds for dissolution as specified in the articles of association arise, and the shareholders' meeting resolves to amend the articles of association to extend the life of the company.

A CLS can only purchase its own shares in the following circumstances:

- It is reducing its registered capital.
- It is merging with another company that holds shares of the company.
- It will grant the shares as an incentive to its staff and workers.
- A shareholder who opposes a resolution on the merger or division of the company adopted at a shareholders' general meeting requests that the company purchase their shares.
- It will convert the shares into corporate bonds issued by a listed company, which could be converted into stocks.
- It is necessary for a listed company to buy back shares, in order to maintain its company value and protect its shareholders' equity.

42. What are the main ways for a shareholder to exit from the company? Can shareholders require their shares to be repurchased by the company? Can shareholders be

required to exit the company in certain circumstances? How are the shares valued in this case?

A shareholder can exit from the company through one of the following procedures:

- Transfer of its equity interest to another shareholder or a third party outside the company.
- Request the company to repurchase its equity interest under certain circumstances specified by law (see *Question 41*).
- Decrease of registered capital.
- Shareholders holding a least 10% of all shareholder voting rights can petition a court to dissolve the company if serious difficulties arise in the operation and management of a company and its continued existence would cause a material loss to the interests of the shareholders, and the difficulties cannot be resolved through other means.

Shareholders can require their shares to be purchased back by the company (see *Question 41*).

The shareholders' meeting of a company has the right to strip the defaulting shareholder of all its shareholder rights if it fails to make any capital contribution or withdraws its entire capital contribution. However, the defaulting shareholder may be able to block the passing of a shareholders' resolution limiting or stripping its rights.

Although in general the selling shareholders and the buyer have discretion over the valuation of the shares, such withdrawals commonly require record-filing with, or approval from, government in the context of an FIE or foreign acquisition, which may be difficult if the valuation is not at fair market value. Further, if payment for the shares involves payment into or out of China, it may be subject to foreign exchange control laws and regulations.

SHARE CAPITAL

43. Can shares be cancelled after issue?

For the rules for an LLC, see *Question 41*. In a CLS, shares may be cancelled after issue due to a share buyback or a capital reduction. Under the PRC Company Law, a share buyback is only permitted in the following limited statutory circumstances:

- Where there is a merger with other companies that hold shares of the company.
- Where the shares are used for employee stock ownership plans or stock incentives.
- Where the shareholders request the company to purchase their shares because they disagree with the company's merger or division resolutions made in a shareholders' meeting.
- Where the shares are used for the conversion of corporate bonds issued by listed companies that can be converted into shares.
- Where it is necessary to maintain the value and shareholders' equity of a listed company.

A capital reduction can be realised by passing a shareholders' resolution on a reduction of the registered capital with the approval of shareholders holding two-thirds or more of the voting rights of the company.

MATERIAL TRANSACTIONS

44. What rights do shareholders have in the case of material transactions, such as a sale of all or substantially all of

the company's assets, and a company reorganisation such as a merger or demerger?

In FIEs, shareholders have veto rights over mergers and other material transactions. Such veto rights are commonly provided to shareholders of an LLC or CLS, based on the shareholders' agreement or articles of association.

In an LLC or CLS, a shareholder who objects to a merger or split can demand that the company repurchase its shares. A shareholder of an LLC can also require the company to repurchase his/her shares if he/she opposes the transfer of the main assets of the company.

45. What rights do shareholders have if the company is converted into another type of company (consider if applicable, a European Company (SE))?

An LLC can be converted into a CLS and vice versa. A shareholder resolution adopted by shareholders representing at least two-thirds of the voting rights in the LLC, or in a CLS at least two-thirds of the voting rights held by the shareholders in attendance, is required for such a conversion. After the conversion process, the rights of shareholders will be subject to the rules contained in the articles of association and the PRC Company Law.

INSOLVENCY

46. What rights do shareholders have if the company is insolvent?

Regular shareholders' rights, such as distribution of a return on investment, are significantly restricted if the company is insolvent. The main rights of a shareholder in an insolvent company under Chinese law include:

- Application for reorganisation. If creditors apply for the bankruptcy or liquidation of the company and the court accepts the application, before the debtor is declared bankrupt shareholders holding more than one-tenth of the debtor's registered capital can apply to the court for a reorganisation of the company.
- Voting on a reorganisation plan. The interests and benefits of the shareholders can be adjusted in a reorganisation plan. Where the draft reorganisation plan involves adjusting the interests and benefits of investors, an investor group must be set up to vote on such matters.

47. Can shareholders put the company into liquidation? What is the procedure to do this?

Under the PRC Company Law, the liquidation procedure will commence for a company if the company is dissolved in certain circumstances. The shareholders can cause the dissolution of the company through the following means:

- The shareholders' meeting or shareholders' general meeting resolves to dissolve the company.

- The company has serious difficulties in its operation and management, and the shareholders' interests will be seriously damaged if the company continues to exist.
- Petition to the court to dissolve the company (see *Question 42*).

CORPORATE GROUPS

48. Is the concept of a corporate group recognised under specific legislation?

The term companies group under PRC law is defined as all of the following:

- An association of enterprise artificial persons, which is lawfully registered in the territory of the PRC.
- Composed of parent companies, subsidiaries, share-participating companies and other member enterprises or businesses which are bound by means of capital, with the parent and subsidiary companies as the principal part.
- With the articles of association of the group as the common behaviour criteria.

A "companies group" is not recognised as an independent company or other legal entity.

49. Does a controlling company have any duties and liability to the shareholders of the company it controls? What are the rights of company shareholders if the controlling company carries out actions that are prejudicial to the shareholders?

Under Chinese law, a company's controlling shareholder or de facto controller cannot use their affiliated relationship to harm the interests of the company. Any losses caused by a violation of this rule must be compensated by the controlling shareholder or de facto controller.

If the controlling shareholder or de facto controller infringes the lawful rights and interests of the company, causing the company to incur a loss, a shareholder(s) of an LLC or CLS who alone or jointly holds at least 1% of the company's shares for at least 180 days in succession has the right to request the supervisory board (or the supervisor(s), for an LLC without a supervisory board) to start legal proceedings in court in respect of the infringement.

If the supervisory board or the supervisor(s) fail to start legal proceedings within 30 days of the date of receipt of the request or, in urgent circumstances where failure to promptly start legal proceedings could cause irreparable harm to the company's interests, the shareholders have the right, in the interests of the company, to directly start proceedings in a court in their own name.

50. What are the limitations on owning reciprocal share interests in companies?

Chinese law does not provide clear rules on the ownership of reciprocal stock interests by affiliated companies.

Practical Law Contributor Profiles

Jan Holthuis, Partner

BUREN

T +31 (0) 20 3338 390; +86 (21) 6 1730 388

F +31(0) 20 3338 399; +86 (21) 6 1730 386

E J.Holthuis@burenlegal.com

W www.burenlegal.com

Li Jiao, Partner

BUREN

T +31 (0) 20 3338 390; +86 (21) 6 1730 388

F +31(0) 20 3338 399; +86 (21) 6 1730 386

E l.jiao@burenlegal.com

W www.burenlegal.com

Profile on Firm Website: <https://www.burenlegal.com/en/people/jan-holthuis>

Professional Qualifications

- Dutch qualified lawyer registered at the Amsterdam Bar.
- Non-practicing solicitor registered with the London Law Society of England and Wales.
- Registered as arbitrator at the China International Economic Trade Arbitration Commission (CIETAC).
- Registered as arbitrator at the Shanghai International Economic and Trade Arbitration Commission (SHIAC).

Areas of Practice. Chinese and Dutch agriculture investment law; biotechnology; Chinese and Dutch foreign direct investment; M&A; trade secret protection; technology transfer.

Professional Associations

- Dutch Bar Association (NOVA).
- International Bar Association (IBA).
- Chair of the Agricultural Law Section of the IBA.
- European Union Chamber of Commerce in China.
- American Chamber of Commerce in China (AmCham).
- Benelux Chamber of Commerce in China (BenCham).
- Member of the Beijing Capital Club.
- Member of the Economist Corporate Network.

Publications

- *Agricultural Law in China and The Netherlands, Global Guide, General Editor, Thomson Reuters, London, 2020.*
- *Shareholders' Rights in Private and Public Companies in China and Shareholder Activism in China, Global Guide, Thomson Reuters, London, 2022.*
- *Plant Variety Rights Versus Plant Patents: Legal Developments and Frictions in a Regional Perspective, General Editor, (IBA) Business Law International, Mat 2019, Vol 20 No. 2, pp 95-136.*
- *China chapter on Commercial Contracts, Lexology/Getting the Deal Through, 2021.*
- *China chapter on Digital Business, Lexology/Getting the Deal Through, 2021.*
- *China chapter on Dispute Resolution, Lexology/Getting the Deal Through, 2021.*

Languages. Dutch, English, French, Chinese (basic).

Profile on Firm Website: <https://www.burenlegal.com/en/people/li-jiao>

Professional Qualifications

- Chinese qualified lawyer admitted to the Chinese Bar.
- LLM Degree in International Business Law from VU University, Amsterdam.
- Bachelors' Degree, Shandong University, China.

Areas of Practice. Chinese agriculture investment law; commercial contracting; dispute resolution; IP and IT; trade secret protection; technology transfer; FDI China.

Professional Associations

- Chinese Bar Association.
- Guest Lecturer at Wageningen University on Chinese Agricultural Law.

Publications

- *Agricultural Law in China, Global Practice Guide, General Editor, Thomson Reuters, London, 2020.*
- *Shareholders' Rights in Private and Public Companies in China and Shareholder Activism in China, Global Guide, Thomson Reuters, London, 2022.*
- *China chapter on Commercial Contracts, Lexology/Getting The Deal Through, 2021.*
- *China chapter on Digital Business. Lexology/Getting The Deal Through, 2021**China chapter Product Liability, Lexology/Getting the Deal Through, 2021.*
- *China chapter on Dispute Resolution, Lexology/Getting the Deal Through, July 2021.*

- **Languages.** Chinese, English, Dutch.

