

China Insight



SPC Promulgated Judicial Interpretation on the Temporal Scope of Application of the Revised PRC Company Law

On 29 December 2023, the Standing Committee of the National People's Congress of the People's Republic of China (the "**PRC**") adopted and promulgated a substantive revision of the *PRC Company Law*, which entered into effect on 1 July 2024 (the "**2024 Company Law**").

On 29 June 2024, the Supreme People's Court of the PRC (the "**SPC**") promulgated a related interpretation, i.e. the *Several Provisions of the Supreme People's Court on the Temporal Scope of Application of the Company Law of the People's Republic of China* (the "**Interpretation**"). The Interpretation entered into effect on the same day as the 2024 Company Law, i.e. on 1 July 2024.

Contrary to many expectations, the Interpretation does not deal with important new requirements of the 2024 Company Law, namely the new requirement that, unless a Supervisory Board is set up and includes at least 1/3 employee representative(s), a limited liability company (an "**LLC**") with at least 300 employees must have employee representative(s) in their Board of Directors. Instead, the Interpretation, which comprises 8 articles, only deals with and provides for guidance on how the People's Courts should determine issues related to the temporal scope of application of the 2024 Company Law.

Below we summarize the major contents of the Interpretation. Since nearly all foreign-invested companies in the PRC have the form of a LLC, we only focus on the provisions on LLCs (as compared to companies limited by shares):

1. For cases of civil disputes arising from legal facts after the 2024 Company Law came into effect, i.e. on or after 1 July 2024, the 2024 Company Law shall apply.
2. For cases of civil disputes arising from legal facts which occurred before 1 July 2024, where there are provisions by the then effective laws and judicial interpretations, they shall apply. However, where the application of the 2024 Company Law is more favorable for the achievement of the legislation purposes, the 2024 Company Law shall apply. According to the Interpretation, this applies in the following cases:
 - (1) A meeting of the Shareholders' Meeting was improperly convened before 1 July 2024. If a shareholder who was not informed to attend the meeting requests the People's Court to revoke the resolution within 1 year after its adoption, Article 26, Paragraph 2, of the 2024 Company Law shall apply. I.e., the shareholder may request the People's Court to revoke the resolution within 60 days from the date when it knew or ought to know about the adoption of the

resolution. The right of revocation shall expire, if it is not exercised within 1 year from the date of adopting the resolution.

- (2) A resolution of the Shareholders' Meeting or of the Board of Directors adopted before 1 July 2024 was determined by the People's Court as not established. For any dispute over the validity of the legal relationship between the company and a *bona fide* counterparty which was created on basis of the resolution, Article 26, Paragraph 2, of the 2024 Company Law shall apply. I.e., such civil legal relationship shall not be affected.
 - (3) A shareholder contributed capital with a debt claim before 1 July 2024. For any dispute over the contribution method, Article 48, Paragraph 1, of the 2024 Company Law shall apply. I.e., such contribution with a debt claim is allowed, provided that it can be valued in monetary terms and legally be transferred.
 - (4) A shareholder of an LLC transferred its equity interests in the LLC to a third party transferee (which is not an existing shareholder of the LLC) before 1 July 2024. For any dispute arising from such transfer of equity interests, Article 84, Paragraph 2, of the 2024 Company Law shall apply. I.e., the transferor shall provide written notice to other shareholders on matters including the quantity, price, payment method, and deadline for the equity transfer. The other shareholders shall have the right of first refusal to purchase on the same terms. If a shareholder does not respond within 30 days of receiving the written notice, it is considered a waiver of the right of first refusal.
 - (5) A company distributed profits or decreased its registered capital in violation of the law before 1 July 2024, which caused loss to the company. For any dispute over the liability for damages, Articles 211 and 226 of the 2024 Company Law shall apply. I.e., in case of a profit distribution, the relevant shareholder(s) shall return the distributed profits involved in the violation to the company, and the shareholder(s) as well as director(s), supervisor(s) and senior officer(s) responsible for the violation shall be liable for compensation of the loss caused thereby to the company. In case of a capital decrease, the relevant shareholder(s) shall return the funds received, any decrease in shareholders' contributions shall be reinstated, and the shareholder(s) as well as the director(s), supervisor(s) and senior officer(s) responsible for the violation shall be liable for compensation of the loss caused thereby to the company.
 - (6) A resolution on distribution of profits of a company is adopted before 1 July 2024. For any dispute over the time limit of profit distribution, Article of 212 of the 2024 Company Law shall apply. I.e., when the Shareholders' Meeting adopts a resolution on distribution of profits, the Board of Directors shall distribute the profits within 6 months from the date of adopting the resolution.
 - (7) The registered capital of a company was reduced before 1 July 2024. If any shareholder raises disputes over the corresponding reduction, Article 224, Paragraph 3, of the 2024 Company Law shall apply. I.e., the shareholders' contributions shall be reduced on a pro rata basis, except as otherwise stipulated by law or agreed by all shareholders of the LLC.
3. For any civil juristic act related to companies conducted before 1 July 2024, which shall be considered invalid according to the then effective laws and judicial interpretations, but which shall be considered valid according to the 2024 Company Law, if any dispute arises over its validity, the 2024 Company Law shall apply. According to the Interpretation, this applies in the following cases:
- (1) It was agreed that a company shall be jointly and severally liable for the debts of enterprises invested by the company. For any dispute over the validity of such an agreement, Article 14, Paragraph 2, of the 2024 Company Law shall apply. I.e., where any law provides that a company shall not become a capital contributor bearing joint and several liability for the debts of the enterprises invested by the company, such provisions shall apply, and thus, prevail over the above agreement.

- (2) A resolution was adopted before 1 July 2024 on using the capital reserves to cover the losses of the company. For any dispute over the validity of such a resolution, Article 214 of the 2024 Company Law shall apply. I.e., when using a company's reserves to cover its losses, the discretionary reserve and statutory reserve funds shall be used first; if there is still a shortfall, the capital reserve fund may be used in accordance with laws and regulations.
 - (3) A company merges with a company in which it holds 90% or more of the equity interests (i.e., the "**Subsidiary**"). For any dispute over the validity of the merger agreement, Article 219 of the 2024 Company Law shall apply. I.e., no resolution of the Shareholders' Meeting of the Subsidiary is required, but notice to other shareholders of the Subsidiary shall be made, and the other shareholders shall have the right to request the Subsidiary to repurchase their equity interests at a reasonable price.
4. Where contracts related to a company were concluded before 1 July 2024 and the performance thereof continues until after 1 July 2024, for any dispute arising from their performance before 1 July 2024, the then effective laws and judicial interpretations shall apply. For acts of performance on or after 1 July 2024 under certain circumstances with regard to companies limited by shares as stated in the Interpretation, the 2024 Company Law shall apply.
 5. For cases of disputes arising from legal facts which occurred before 1 July 2024, where the then effective laws and judicial interpretations do not have provisions, and the 2024 Company Law has provisions on the following events, the 2024 Company Law shall apply:
 - (1) A shareholder transferred its equity interests as to which the contribution period has not expired. If the transferee does not make the contribution in time and in full, for liabilities of the transferor and the transferee, Article 88, Paragraph 1, of the 2024 Company Law shall apply. I.e., the transferor shall bear supplementary liability for the shortfall in the contribution.
 - (2) Where the controlling shareholder of a LLC abuses shareholder rights, causing serious harm to the interests of the LLC or other shareholders, if other shareholders request the LLC to repurchase their equity interests at a reasonable price, Article 89, Paragraphs 3 and 4 of the 2024 Company Law shall apply. I.e., the other shareholders shall have the right to request the LLC to repurchase their equity interests at a reasonable price. The LLC shall, within 6 months of the purchase, transfer or deregister the purchased equity interests in accordance with the law.
 - (3) For civil liabilities of controlling shareholders and actual controllers who do not serve as directors but actually execute company affairs, Article 180 of the 2024 Company Law shall apply. I.e., they shall bear a duty of loyalty and duty of diligence to the company. Regarding the duty of loyalty, they shall take measures to avoid conflicts of interest between their personal interests and the interests of the company, and they shall not use their authority to seek improper benefits. Regarding the duty of diligence, they shall, in the performance of their duties, exercise the usual and reasonable care that a manager should have for the maximum benefit of the company.
 - (4) In case where a controlling shareholder or actual controller of the company instructs any director or senior officer to engage in an action harmful to the interests of the company or its shareholders, for the civil liability of such controlling shareholder or actual controller, Article 192 of the 2024 Company Law shall apply. I.e., such controlling shareholder or actual controller bear joint and several liability with the director or senior officer.
 - (5) Other circumstances that do not obviously deviate from the reasonable expectations of the relevant parties.

We understand that item (5) above serves as a catch-all clause. It gives discretion to People's Courts to apply the 2024 Company Law also to other cases which are not expressly set out in the Interpretation, if related disputes arise from legal facts which occurred before 1 July 2024, if the then

effective laws and judicial interpretations do not have respective provisions, if the 2024 Company Law has provisions on the relevant issues, and if the application of the 2024 Company Law does not obviously deviate from the reasonable expectations of the relevant parties.

6. For cases of disputes arising from legal facts which occurred before 1 July 2024, where the then effective laws and judicial interpretations have (general) provisions in principle, and the 2024 Company Law has concrete provisions on the following events, the 2024 Company Law shall apply:
 - (1) For the determination of compensation liabilities of supervisors due to prohibited behaviors, such as misappropriation of company funds, illegal related party transactions, improperly seeking business opportunities of the company, and operating restricted similar businesses, Articles 181, 182, Paragraph 1, 183 and 184 of the 2024 Company Law shall apply.
 - (2) For the determination of compensation liabilities of directors and senior officers due to improperly seeking business opportunities of the company and operating restricted similar businesses, Articles 183 and 184 of the 2024 Company Law shall apply.
 - (3) For the determination of the subject scope of related party relationships and the nature of related party transactions, Articles 182 and 265, Sub-item 4, of the 2024 Company Law shall apply.

For details on the compensation liabilities and provisions under the above circumstances, please refer to our previous newsletter [Substantively Revised PRC Company Law will enter into effect on 1 July 2024](#).

7. Where a company shall be liquidated due to legal facts which occurred before 1 July 2024, for any dispute over liquidation liabilities, the then effective laws and judicial interpretations shall apply. However, where the legal facts causing that the company shall be liquidated occurred before 1 July 2024 but within 15 days before 1 July 2024, i.e. they occurred between 16 June 2024 and 30 June 2024, Article 232 of the 2024 Company Law shall apply. I.e., unless otherwise stipulated in the company's Articles of Association or appointed by a resolution of the Shareholders' Meeting, directors shall act as the liquidators and form a liquidation group within 15 days from the date when the cause for dissolution arises. If the liquidators fail to fulfill their liquidation obligations in a timely manner, resulting in losses to the company or its creditors, they shall be liable for compensation. The deadline for fulfillment of the liquidation obligations shall be recalculated from 1 July 2024.
8. For civil dispute cases which have been concluded with a final judgment prior to 1 July 2024, if a party applies for a retrial or the People's Court decides to conduct a retrial in accordance with the procedure for judicial supervision, the laws and judicial interpretations in effect at that time shall apply.

The Interpretation and its provisions apply to all disputes on the temporal scope of application of the 2024 Company Law and provide detailed guidance in this regard.

However, many other new regulations and aspects of the 2024 Company Law are so far still unclear. It is to be hoped that more judicial interpretations, implementing rules or other guidance on other aspects of the 2024 Company Law will be published in the near future. This especially applies for the new employee representation requirement, according to which LLCs with at least 300 employees must have employee representative(s) in their Board of Directors, unless a Supervisory Board is set up and includes at least 1/3 employee representative(s). Many details and aspects on such employee representation are currently still not clear.

In case you have questions or for further information, please contact the authors of this newsletter:



Dr. Ulrike Glueck
Chief Representative
Managing Partner
CMS, China

T + 86 21 6289 6363
E Ulrike.Glueck@cmslegal.cn



Michael Munzinger
Counsel
CMS, China

T + 86 21 6289 6363
E Michael.Munzinger@cmslegal.cn



Ran Li
Associate
CMS, China

T + 86 21 6289 6363
E Ran.Li@cmslegal.cn

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CMS Hasche Sigle Shanghai
Representative Office (Germany)
3108 Plaza 66, Tower 2
1266 Nanjing Road West
Shanghai 200040, China

CMS Cameron McKenna LLP Beijing
Representative Office (UK)
Room 1909, China Youth Plaza,
No. 19 Dongsanhuan North Road,
Chaoyang District
Beijing 100026, China