WONG PARTNERSHIP

China's Supreme Court Promulgates its New Judicial Interpretation on PRC Company Law

On 28 April 2019, the Supreme Court of the People's Republic of China ("**PRC**") promulgated the "Provisions of the Supreme Court on Several Issues Regarding the Application of PRC Company Law", a judicial interpretation of the PRC Company Law. The judicial interpretation has only six (6) clauses and came into force on **29 April 2019**.

This update sets out a short summary of the salient terms of the judicial interpretation.

Related Party Transactions

During the past years, there were various cases involving majority shareholders, actual controllers, directors or senior management damaging the interest of companies and/or minority shareholders via related party transactions. The judicial interpretation makes clear that if a plaintiff company claims against the majority shareholder(s), actual controller(s), director(s) or senior management of the company for damages, none of the following will constitute a valid defence:

- That the transaction information has been properly disclosed;
- That the consent of the shareholders has been obtained at the general meetings;
- That the procedure required by law and the articles of association have been completed.

As a company is controlled by the majority shareholder(s), actual controller(s), director(s) and/or senior management, it is highly likely that the company may refuse to initiate a litigation against such majority shareholder(s), actual controller(s), director(s) and/or senior management. Under such a scenario, any shareholder holding more than 1% of the shares of a company limited by shares or any minority shareholder of a limited liability company who has been the shareholder of the relevant aforesaid company for a consecutive period of 180 days may request the supervisor or a director of the company to initiate the litigation or in a case of emergency, initiate the litigation in its own name.

Removal of Director

A director may be removed by an effective resolution passed at a valid general meeting of the shareholders before expiry of his term of office. The PRC court will not support a claim by the director that such removal shall have no legal effect but the court may support a claim by the director for compensation on account of loss of office. The court will determine whether the compensation is payable as well as the reasonable amount of such compensation in accordance with applicable laws, regulations and articles of association, and where applicable, the appointment letter and/or engagement contract signed with the director, taking into account the reason for removal, the balance term of the office, and historical remuneration paid.

Dividend Distribution

Where the company passed a shareholders' resolution regarding dividend distribution in a general meeting, the company shall distribute such dividends in line with the timeframe prescribed in the resolution. If no such timeframe is prescribed in the resolution, the timeline in the articles of association will apply, in the absence of which, the company must distribute the dividends within one (1) year from the date of the resolution.

The judicial interpretation further provides that if the dividend distribution date prescribed in the resolution is later than that prescribed in the articles of association, the shareholders may request the court to revoke the resolution regarding the distribution date.

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Mediation First

The judicial interpretation proposes that shareholders of a company shall always attempt to settle disputes via mediation with assistance from the court, in particular, in cases involving any of the following types of disputes:

- Repurchase of shares owned by certain shareholders;
- Reduction of capital;
- Subdivision of the company;
- Transfer of shares to a third party;
- Transfer of shares in between the existing shareholders.

What cases are covered?

The judicial interpretation applies to cases where the final non-appealable judgements have not been delivered before 29 April 2019. It does not apply to cases where a re-trial has been ordered after 29 April 2019.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:

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