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I. The Chinese Government Released the Third Version of the Draft Revisions to the Company Law of the PRC for Public Consultation on 1 September 2023

On 1st September 2023, the Standing Committee of the National People's Congress issued the latest draft revision ("**Third Draft Revision**") of the Company Law of the People's Republic of China ("**Company Law**"), which was last revised in 2018. The Third Draft Revision is currently open for public comments. It is worth mentioning that the Second Draft Revision was released on 30th December 2022, following the First Draft Revision, which was released on 24th December 2021.

Below we would like to present a summary of some of the notable alterations outlined in the Third Draft Revision.

1. Third Draft Revision provides that the registered capital of a limited liability company ("**LLC**") should be paid up in full within five years from the date of its incorporation, unless the company's articles of association provide for an earlier deadline. Under the current rules, shareholders are free to define the duration of their capital contributions, i.e., they can set a long-term contribution period of 30 years, 50 years, etc. at will. The Company Law has made an important amendment to the length of the contribution period, setting the maximum contribution period at 5 years. Directors will be liable to the company for damages if they fail to fulfil their duty to verify the contributions of the shareholders and to pursue the payment of outstanding contributions not paid on time.
2. The Third Draft Revision has placed a strong emphasis on the protection of minority shareholders' rights:
 - a) The rights of shareholders in LLCs to access and reproduce relevant company documents should be enhanced.
 - b) Prohibition for companies to increase the percentage of shares required in order to propose an agenda for resolution at a shareholders' meeting.
 - c) Measures will be introduced to tackle instances where controlling shareholders misuse their rights to the detriment of the company and other shareholders. In such circumstances, minority shareholders are given the opportunity to request that the company buys their shares at a reasonable price.

- d) A company must proportionally decrease the capital contributions or shares of shareholders when it reduces its registered capital, unless stated otherwise by law.
- 3. The fiduciary duties and duties of care of a director to the company should be imposed on controlling shareholders and effective controllers who do not serve as directors but effectively control the operations of the company.
- 4. The Third Draft Revision regarding corporate bonds affirms both public and private issuance, enhances bondholder registration procedures by replacing bond certificates with a bond holder registry, and extends the types of convertible bond issuers from listed companies to all companies limited by shares.
- 5. The Third Draft Revision incorporates measures to enhance legal accountability and penalties for non-compliance. It enforces fines ranging from RMB 10000 to RMB 50000 on individuals who are directly liable for deceitful practices, including the submission of untrue information while registering a company.
- 6. The Third Draft Revision enhances the democratic management of the company by proposing the establishment and improvement of a democratic management system, with the employee congress as the foundational structure. Additionally, it is recommended that all companies include employee representatives in their board of directors. For companies with more than 300 employees mandatory inclusion was already required under the Second Draft Revision.

At this stage, the Third Draft Revision has been reviewed and discussed by the National People's Congress. However, it is unclear whether there will be any further changes and when the final draft will be formally submitted for a voting. We will closely monitor any further developments and provide updates as necessary. However, it is already advisable to review the Third Draft Revision to ensure awareness to follow the developments of future new regulations.

II. The Chinese Government Released the “Comprehensive Anti-Monopoly Compliance Guidelines for Business Operators” on 11 September 2023

On The State Administration for Market Regulation (“**SAMR**”) released the Comprehensive Anti-Monopoly Compliance Guidelines for Business Operators (“**Guidelines**”) on 11th September 2023.

The Guidelines consist of 6 chapters and 35 articles and provide precise instructions and while not compulsory, these Guidelines are still

fundamental for enterprises to oversee their antimonopoly compliance risks concerning the accumulation of market power and potential anti-competitive outcomes. This article aims to outline the key features of the Guidelines:

1. In order to determine whether a transaction constitutes a concentration of operators, it is necessary to ascertain whether, as a result of the transaction, the enterprises concerned obtains control or decisive influence over other market operators. The Guidelines clarify that purchasing a minority stake could also lead to acquiring control rights, which amounts to the concentration of operators.
2. The merger of operators must meet turnover thresholds to warrant notification. The Guidelines reiterate that the buyer or joint venture party's overall turnover should be considered when calculating the threshold. It is noteworthy that the Guidelines propose that the concentration of business operators that must be scrutinised, shall include those with substantial transaction amounts or those that may have a significant market impact and have garnered widespread attention in the industry. This criterion is not dependent on meeting a turnover threshold.
3. Regarding when to submit a declaration for a transaction completed in multiple steps, it was previously understood that the declaration should be made prior to the step that results in a change of control. The Guidelines outline various identification methods. For instance, a step-by-step acquisition transaction between operators may occur for the same economic purpose. If the various transaction stages are interrelated and mutually conditioned, they may constitute a concentration of operators. Therefore, a declaration must be made and declared before the first step is implemented. Otherwise, it will be deemed a concentration of operators, which is illegal according to Art. 3 (2) of the Antimonopoly Law.
4. After the notification of the concentration operators, the operator is not allowed to implement the concentration before obtaining the approval of the SAMR. Failure to comply with this regulation will result in a "jumpstart" and potential legal liability for the unlawful implementation of the concentration. Which actions constitute a "jumpstart" and which ones are necessary interactions and preparations? The Guidelines now restated the basic judgment factors for a "jumpstart" as already specified in the Regulation on the Review of Concentrations between Business Operators¹. Some

¹ Please see our CLB 288: Interpretation of New Rules - 4 newly-released implementation

of these factors include whether the business entity registration or changes in rights registration have been completed, the appointment of senior management personnel, actual participation in business decision-making and management, exchange of sensitive information with other operators, and substantial integration of business.

5. In accordance with regulatory practices globally, China's Antimonopoly Law (**"AML"**) has extraterritorial jurisdictional effects. The occurrence of a transaction outside of China, involving offshore entities and governed by offshore laws, does not automatically exempt it from China's antitrust regulations. The updated Guidelines make it clear that offshore and onshore transactions are subject to equal treatment, regardless of whether a declaration is required or if there is any impact on competition in the Chinese market.
6. The Guidelines present the concept of classification and hierarchical management, aligning with the proposal of the AML to enhance the review system for operators' concentration. The Guidelines reflect the notion of flexible law enforcement and application. In particular, businesses can utilise the Guidelines as a flexible framework in the following areas:
 - a. Operators with an annual turnover exceeding RMB 400 million in China are encouraged to establish a compliance management system. Meanwhile, those with an annual turnover exceeding RMB 10 billion in China are recommended to establish a compliance management system.
 - b. The Guidelines suggest that operators can create or assign suitable departments to take on the responsibility of antimonopoly compliance management for the concentration of operators.

The Guidelines are not mandatory, but the various compliance management recommendations provided are key indicators for commercial entities to improve the prevention and control of compliance risks. Parties involved should be aware of the compliance risks that may arise from this situation. In any case, it is recommended to ensure compliance and remain aware of future regulatory developments.

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