

# Legal Commentary

January 31, 2024

## The Revised Company Law — A Foreign Investment Perspective

Authors: Jun LI | Dana WU | Robin ZHANG

### Introduction

#### I. Background and highlights

On December 29, 2023, the Standing Committee of the National People's Congress (the "NPC") formally adopted revisions to *the Company Law of the People's Republic of China* (the "**Revised Company Law**"), which will come into effect on July 1, 2024. China's Company Law was first adopted in 1993 and has since undergone several rounds of revisions over the last 30 years. The Revised Company Law features a comprehensive overhaul of the current Company Law, as it substantively revises around 40% of the provisions of the current Company Law. There are various reasons for revising the current Company Law, which include: (i) the need to address certain practical issues and challenges; (ii) the demand for keeping up with the ever-evolving society and economy; and (iii) the aim to foster a more adaptive corporate legal regime to develop a better and healthier business environment.

Below is a glimpse of the highlights and significant changes under the Revised Company Law.

- Improvements are made to the capitalization regime for the two basic corporate forms: the limited liability company and the joint stock limited company. These include establishing a statutory deadline of five years for capital contributions in limited liability companies, requiring promoters of joint stock limited companies to fully pay for subscribed shares before the date of establishment, taking a series of measures to enforce timely contributions, and allowing joint stock limited companies to issue classified shares and shares with or without par value.
- Corporate organizational forms are optimized. This includes relaxing certain existing restrictions to broaden companies' autonomy with respect to corporate governance structures (especially for joint stock limited companies), stressing the role of the employees' representative congress, etc.
- Responsibilities of directors, supervisors and senior officers are strengthened. The Revised Company Law outlines the scope of the fiduciary duties which directors, supervisors, and senior officers are subject to, and establishes certain restrictive rules along these lines.
- Other notable changes such as enhancing the protection of shareholders' rights, strengthening the

responsibilities of the actual controlling person, and streamlining the process for incorporation and shareholder exits.

## II. Importance for foreign investors

### 1. The Old FIE Laws

At the beginning of China's opening to the West in 1978, there was no corporate law, commercial law, or contract law. *The Law on Chinese-foreign Equity Joint Ventures* (the “**EJV Law**”) was adopted in 1979 and was the first PRC corporate law. The EJV Law was a cornerstone in China's opening up and its adoption marked the beginning of a legal regime which allowed foreign investors to conduct business in China. In 1986, the NPC adopted *the Law on Wholly Foreign-owned Enterprises* (the “**WFOE Law**”), which permitted foreign investors to establish and operate 100% foreign-owned subsidiaries in China. In 1988, the NPC adopted *the Law on Sino-foreign Contractual Joint Ventures* (the “**CJV Law**”, together with *the EJV Law and the WFOE Law*, the “**Old FIE Laws**”) under which foreign investors could invest in so-called “contractual joint ventures”.

The Old FIE Laws have played an institutional role for decades and oversaw a surge of foreign investment into China. However, with their immaturity, vagueness and lack of transparency and consistency in implementation, the old regime failed to provide foreign investors with an effective and fair mechanism for investing into China.

### 2. The Foreign Investment Law

In response, the NPC adopted on March 15, 2019, *the Foreign Investment Law of the People's Republic of China* (the “**Foreign Investment Law**”), which became effective on January 1, 2020. On December 26, 2019, the State Council promulgated *the Regulations for the Implementation of the Foreign Investment Law of the People's Republic of China*, which took effect concurrently with the Foreign Investment Law. The Foreign Investment Law is essentially an investment promotion law applicable to all direct and indirect foreign investment activities in China unlike the Old FIE Laws, which are corporate laws. The Foreign Investment Law mandates a broad structural reform of the foreign investment regulatory system.

Throughout the Foreign Investment Law, China has pledged a “national treatment” regime whereby foreign investors and domestic investors shall be treated equally, subject only to exceptions as provided in special administrative measures, i.e. the negative list. Further, the Old FIE Laws were repealed by the Foreign Investment Law. There is no longer a separate category of foreign-invested enterprises (the “**FIEs**”) and all FIEs are now equally subject to the provisions of the Company Law and *the Partnership Enterprise Law of the People's Republic of China* (if the entity takes the form of a partnership, rather than a corporation).

### 3. Transitional period under the Foreign Investment Law (i.e., before January 1, 2025)

The Foreign Investment Law requires that existing corporate-structured FIEs conform to the provisions of the Company Law, subject to a transitional period which expires on January 1, 2025. Given that FIEs are now equally subject to the Company Law and the five-year transitional period initially provided

under the Foreign Investment Law is about to expire in less than one year, it is advisable for foreign investors to closely examine the provisions of the Revised Company Law, not only to ensure compliance, but also to gain insights into how it may affect their investments in China.

## Implications for Foreign Investors Doing Business in China

### I. Selection of investment vehicle — “LLC” or “JSLC”

There are two basic corporate forms under the Company Law: the limited liability company (“**LLC**”) and the joint stock limited company (“**JSLC**”). The LLC in some respects resembles the limited liability company form under U.S. laws (other than taxation), while the JSLC is akin to a corporation under U.S. state laws. The major distinctions between an LLC and a JSLC under the Revised Company Law are summarized below:

#	LLC	JSLC
<b>Number of Shareholders</b>	1 – 50 shareholders	1 – 200 promoters (i.e., founding shareholders), of which no fewer than half must be domiciled in China  <i>*Note: under the current Company Law, there must be between 2 – 200 promoters</i>
<b>Capital contribution Requirement</b>	Pursuant to the articles of association, but no later than five (5) years from the date of establishment.	Fully paid for the subscribed shares by promoters before the date of establishment.
<b>Transparency of shareholding structure to the public</b>	<u>Compulsory filing</u> : An LLC must file the name(s) of its shareholder(s) with the State Administration for Market Regulation and its local counterparts (the “ <b>SAMR</b> ”), which will be available to the public via the National Enterprise Credit Information Publicity System (which is an online platform run by the SAMR to publicize the information of Chinese enterprises).  <u>Compulsory disclosure</u> : An LLC is required to disclose: (i) the amount of capital contributions subscribed for and actually paid by the shareholders; (ii) the method and date of capital contributions; (iii) the information on equity changes to the public via the National Enterprise Credit Information Publicity System.	Essentially the same as the LLCs, except that:  <ul style="list-style-type: none"> <li>■ A JSLC is only required to file the name(s) of its promoters with the SAMR and is not required to file the name(s) of subsequent shareholder(s) with the SAMR; the company needs to maintain a complete and updated register of shareholders internally, which is not required to be disclosed to the public.</li> <li>■ A JSLC is required to disclose (i) the number of shares subscribed for by the promoters; and (ii) the information on changes in shares held by the founding shareholders via the National Enterprise Credit Information Publicity System.</li> </ul>
<b>Issuance of Shares</b>	N.A., but in practice, an LLC may utilize a shareholder agreement to assign preferential rights to certain	A JSLC may:  <ul style="list-style-type: none"> <li>■ issue shares with or without par value;</li> <li>■ issue classified shares (i.e., shares</li> </ul>

#	LLC	JSLC
	<p>shareholders such as veto rights on certain reserved matters, dividend/liquidation preference, etc.</p>	<p>with weighted voting rights, preference over distribution etc.);</p> <ul style="list-style-type: none"> <li>■ authorize the board of directors to, within three years, issue not more than 50% of the issued shares. However, if the capital contributions are to be made using non-cash property, they shall be subject to a resolution made by the shareholders' meeting.</li> </ul>
<p><b>Equity/Share Transfer</b></p>	<p>Unless otherwise provided in the company's articles of association:</p> <ul style="list-style-type: none"> <li>■ A shareholder may freely transfer its equity interests to other shareholder(s);</li> <li>■ A shareholder may transfer its equity interests to third parties, while the other shareholders are entitled to the right of first refusal.</li> </ul>	<p>By default, a shareholder may freely transfer its shares to other parties unless otherwise provided in the company's articles of association.</p>
<p><b>Corporate Governance</b></p>	<ul style="list-style-type: none"> <li>■ Board of Directors: shall have no less than three members, but an LLC of small scale or with a small number of shareholders may have only one director (who may serve concurrently as the manager of the company).</li> <li>■ Board of Supervisors: shall have no less than three members, but an LLC of small scale or with a small number of shareholders may have only one supervisor or opt to forgo any supervisory position with unanimous shareholder consent.</li> <li>■ An LLC may set up an audit committee composed of directors in the board of directors, which exercises the functions and powers of the board of supervisors as prescribed by this Revised Company Law, with no board of supervisors or supervisors established.</li> </ul>	<ul style="list-style-type: none"> <li>■ Essentially the same as LLCs under the Revised Company Law, except that a JSLC of small scale or with a small number of shareholders cannot forgo establishing a supervisory position, even with unanimous shareholder consent (but, same as an LLC, a JSLC may have only one supervisor or an audit committee in lieu of the board of supervisors or supervisors(s)).</li> </ul> <p><i>*Note: Under the current Company Law, a JSLC of small scale or with a small number of shareholders does not have the flexibility of rationalizing the board of directors and the board of supervisors. The board of directors has to be of at least five members and the board of supervisors has to be of at least three members.</i></p> <ul style="list-style-type: none"> <li>■ However, a JSLC still has relatively little flexibility in formulating its own rules on meetings and voting proceedings, which are subject to the provisions of the Revised Company</li> </ul>

#	LLC	JSLC
		Law, e.g., mandatory annual meetings of the board of shareholders, and the board of directors to convene at least two meetings annually.
<b>Public Financing</b>	N.A., but as a practical matter, an LLC may receive various forms of non-public financings.	<ul style="list-style-type: none"> <li>■ A JSLC may issue convertible bonds.</li> <li>■ A company must be in the form of a JSLC to seek a listing on the Chinese stock exchanges or to be quoted through the National Equities Exchange and Quotations.</li> </ul>

In practice, very few FIEs have been formed as JSLCs or converted into JSLCs under the current Company Law, partly because: (i) a sole shareholder may not form a JSLC due to the limit on the minimum number of shareholders; (ii) there is little flexibility in organizing a streamlined corporate governance structure; and (iii) JSLCs are generally considered to be structured for large-scale companies or companies with a substantial number of shareholders, which are positioned to publicly issue shares in Chinese capital markets.

Now, the Revised Company Law has evened up these odds. It is likely that the JSLC form will become a more popular investment vehicle in the future due to a number of advantages, such as the flexibility of issuing classified shares and convertible bonds, and the possibility of issuing shares to the public to provide a realistic exit strategy for foreign investors.

Notably, the Revised Company Law allows a JSLC to be formed by a sole shareholder but requires that no fewer than half of its shareholders be domiciled in China. Based on this, a wholly foreign-owned enterprise (WFOE) will be eligible to establish a wholly-owned JSLC as a PRC domiciliary. No guidance has been published as to how the requirement may apply to foreign companies. If foreign investors cannot directly establish a wholly-owned JSLC, then they may instead have to set up a joint venture with a Chinese partner or establish the JSLC through an existing or intermediate FIE.

## II. Establishment and operation

The Revised Company Law adopts a number of significant changes to accommodate the practical requirements of the ever-evolving society and economy. Below are certain highlights that are relevant to the establishment and operation of FIEs.

### 1. Demand for improving registration efficiency

SAMR is the official registry for PRC-registered entities and enterprise information such as shareholders, registered capital, and the names of directors. Following SAMR’s verification of the FIE’s proposed name and registration application documents, SAMR will mark the formal establishment of an FIE by issuing a business license, unless industry regulatory pre-approval is required, such as permits for education, hazardous chemicals, banking permits, etc. For negative-listed FIEs which require no regulatory pre-approval or post-registration permits, SAMR will, before

issuance of the business license, verify compliance with the special administrative measures in terms of shareholding limitations, etc.

Local SAMR counterparts provide detailed registration application checklists on their websites. However, in practice, the local SAMR counterparts have the discretion to require additional application documents and raise substantive comments on the content of the documents such as the articles of association, which lowers the predictability and efficiency of the registration process. Per Article 41 of the Revised Company Law (excerpted below), it appears that lawmakers realize that this has become an issue and have urged the administrative authority to make improvements.

*“Article 41 The company registration authority shall optimize the procedures for company registration, enhance the company registration efficiency, strengthen information technology development and promote online handling and other convenient methods so as to raise the level of facilitation in company registration.”*

*The market regulatory department under the State Council shall, according to this law and the provisions of relevant laws and administrative regulations, formulate specific measures for company registration.”*

It is anticipated that the State Council and SAMR will subsequently formulate supporting regulations or detailed rules in response to this demand, so that the establishment of an FIE will be much more straightforward and simpler than before.

## **2. Enhancing the creditability of “registered capital”**

“Registered capital” is the equity capital subscribed for by the shareholder(s) of a company and represents the company’s initial funds until it is able to fund itself through operations. The shareholders of an LLC have the flexibility in making capital contributions either in a lump sum or in instalments pursuant to the timeline as prescribed in the LLC’s articles of association. The permitted forms of capital contribution include cash, in-kind, equity interests in an existing company, creditor’s rights, intellectual property rights, land use rights, and other forms of assignable non-cash assets.

The current Company Law allows the shareholders of an LLC to contribute the registered capital they subscribe for at any time during the term of the company. While this grants shareholders great flexibility to determine the timing of capital contributions, it has resulted in many companies with abnormally high amounts of registered capital and/or abnormally long capital contribution periods (e.g., 99 years), which severely undermines the creditability of the registered capital concept. Lawmakers intend to resolve this issue by adopting a series of measures, especially including imposing a statutory deadline of five years for capital contributions, which has been highlighted and heatedly debated.

### **A. Statutory deadline for LLC capital contributions**

Under the Revised Company Law, the shareholders of an LLC are generally subject to a statutory deadline of five years as of the date of establishment or a subsequent capital increase, unless it is otherwise provided for by other specific regulations or rules (e.g., the registered capital of foreign-invested banks is required to be fully paid up before establishment). As such, following the effective

date of the Revised Company Law, the shareholders of a newly established LLC will be subject to the statutory deadline for capital contribution.

As for existing LLCs established prior to the effective date of the Revised Company Law but having a contribution period that exceeds the statutory deadline, the Revised Company Law requires these companies to revise the period to conform to the statutory deadline “gradually” or, in the case of the period and/or amount of capital contribution is “obviously abnormal,” SAMR can request adjustment of the capital amount/contribution schedule “in a timely manner”. The State Council is tasked with promulgating implementing rules in this area, which are expected to be issued soon.

#### **B. Acceleration of shareholder’s capital contributions**

Per the Revised Company Law, notwithstanding the capital contribution schedule, where an LLC is unable to pay off its due debts, the company or the eligible creditors may request shareholders who have subscribed for the capital contributions but whose time limit for capital contributions has not expired to make capital contributions in advance.

#### **C. Potential liability of co-founders**

Where any shareholder fails to make actual capital contributions in accordance with the articles of association, or the actual value of non-monetary property for actual capital contributions is obviously lower than the amount of capital contributions subscribed for at the time of establishment of a LLC, the Revised Company Law now requires other shareholders at the time of establishment bear joint and several liabilities with such shareholder to the extent of the insufficient capital contributions.

#### **D. Forfeiture of equity interests or shares with flawed contributions**

The Revised Company Law requires the board of directors to verify the capital contributions of shareholders and urges shareholders who fail to fully or timely pay their capital contributions to make such contributions within a grace period of no shorter than 60 days. In case of failure to fulfil the capital contribution obligations within the grace period, the shareholders will be deemed to forfeit their equity interests or shares to the extent of such flawed contributions.

### **3. More flexibility with respect to corporate governance structures**

FIEs are legally required to have corporate governance structures under the current Company Law, which include the following elements:

- Shareholders’ meeting or sole shareholder;
- Board of directors or executive director;
- Board of supervisors or supervisor(s); and
- Legal representative.

The Revised Company Law adopts revisions to relax certain restrictions under the current Company Law, so that companies would have more autonomy with respect to corporate governance structures.

- It is optional to establish a board of supervisors or supervisor(s). In the alternative, the Company Law, for the first time, permits (i) an LLC and JSLC to set up an audit committee composed of directors in the board of directors to exercise the functions and powers of the board of supervisors in lieu of the board of supervisors or supervisors, and (ii) in the case of an LLC, forgo any supervisory position with unanimous shareholder consent.
- As illustrated in Section 1 above, a JSLC of small- scale JSLC or with a small number of shareholders now has the flexibility in organizing a streamlined corporate governance structure in the same manner as an LLC, which may potentially make the form of JSLC a more popular vehicle.
- Under the current Company Law, the legal representative must be either the chairman of the board of directors, the executive director (if no board of directors), or the manager of an FIE. In contrast, the Revised Company Law permits a director or manager who represents a company to manage corporate affairs to be the legal representative, which, similar to the companies in the common law system, essentially expands the scope of nominees for legal representative to include all directors.

Given the potential personal liabilities attached to the role of legal representative, the Revised Company Law also provides for a mechanism to resolve a potential deadlock that the legal representative may be permanently fixed to the position if no successor is available. If a director or the general manager who serves as a legal representative quits his or her position as a director or manager, he or she shall be deemed to have resigned as the legal representative simultaneously and the company shall appoint a new legal representative within 30 days from the date of quit.

#### **4. Measures to foster a democratic decision-making mechanism with the participation of the employees' representative congress**

To better protect the rights and interests of the employees, the Revised Company Law generally requires a company to foster a democratic management regime with the participation of employees' representative congress and specifically mandates the following.

- A company must solicit the opinions of its trade union and listen to the opinions and proposals of the employees through the employees' representative congress or by any other means when making a decision on any important matters, such as restructuring, dissolution, applying for bankruptcy, formulating any important regulation, or any other matters that are material to the business operation.
- If the board of directors has three or more members, it may include an employees' representative. As for medium-large size companies with 300 or more employees, they will be subject to a mandatory requirement of including employees' representative(s) either into the board of supervisors or the board of directors. The employees' representatives on the board of directors will be democratically elected by the employees through the employees' representative congress, employees' congress, or by other means.

#### **5. Strengthened responsibilities for senior managers and controllers**

The current Company Law generally subjects the directors, supervisors and senior officers (collectively,

“Senior Managers”) to the fiduciary duties, i.e., the duty of loyalty and the duty of diligence. The Revised Company Law further outlines the scope of the fiduciary duties and establishes certain restrictive rules along these lines:

#### **A. Fiduciary duties**

Duty of loyalty: Senior Managers must take measures to avoid conflicts of interest and may not seek improper interests by taking advantage of their powers.

Duty of diligence: When performing their duties, the Senior Managers must act with reasonable care and in the best interests of the company.

#### **B. Rules on related-party transactions**

In the case of a proposed related-party transaction (i) directly between the company and any Senior Managers or (ii) indirectly between the company and the Senior Managers’ close relatives, the enterprises directly or indirectly controlled by the Senior Managers or their close relatives, or affiliates who have other affiliate relationships with the Senior Managers, the concerned Senior Managers are obligated to report this to the relevant decision-making body (the shareholders’ meeting or the board of directors, per the articles of association) of the company to seek an approval.

#### **C. Rules on conflicts of interest**

The Senior Managers may not take advantage of their positions to usurp any business opportunity that belongs to the company, unless it has been reported to and approved by the relevant decision-making body of the company or the company cannot make use of such business opportunity pursuant to the laws and regulations or the articles of association.

The Senior Managers may not engage in for themselves or others any business that is similar to that of the company, unless it has been reported to and approved by the relevant decision-making body of the company.

#### **D. Rules on recusal from voting for a related director**

To the extent that the board of directors is the decision-making body of the matters discussed above, the related director(s) must not participate in the voting and their voting rights shall not be calculated into the total voting rights. If the number of unrelated directors present at the meeting of the board of directors is fewer than three, then such matter shall be escalated to the shareholders’ meeting.

Notably, other than the Senior Managers, the Revised Company Law also subjects the controlling shareholder and/or the actual controller (“**Controller**”) to fiduciary duties when the Controller acts as a “de facto director”, i.e., the Controller actually manages the affairs of the company though he/she does not serve as a director. Further, where the Controller instructs any director or senior officer to carry out any act damaging the interests of the company or other shareholders, i.e., being a “shadow Senior Manager”, the Controller will bear joint and several liabilities with such director or senior officer.

### **III. Exit**

Foreign investors may exit the Chinese market through equity transfer (if the company is in the form of an LLC) / share transfer (if the company is in the form of a JSLC), or through reduction of registered capital, dissolution and liquidation, or bankruptcy. The Revised Company Law adopts certain notable changes with respect to the equity transfer and the dissolution and liquidation of a company.

## **1. Equity transfers**

### **A. Simplified process for equity transfers**

The easiest way to exit is to transfer the equity/shares in an FIE to its existing shareholders or to a third party. Under the current Company Law, equity transfers between shareholders do not inherently require approval unless otherwise provided in the company's articles of association, and transfers to third parties still require the approval of 50% of the other shareholders. Where a shareholder votes against the transfer, such shareholder must exercise its right of first refusal to purchase such equity interests; otherwise it shall be deemed to have consented to the sale. The Revised Company Law removes the statutory approval requirement for equity transfers to third parties, but the transfer is still subject to the right of first refusal of other shareholders unless otherwise provided in the articles of association.

### **B. Liability regime for the transfer of “shell equity” and equity with flawed contributions**

The Revised Company Law establishes a liability regime for the transfer of “shell equity” (i.e., the equity of which capital contributions have been subscribed for but the time limit for capital contribution has not expired), and equity with flawed contributions (i.e., the shareholder underpays or fails to pay in time the capital contribution):

- As for “shell equity”, the transferee bears the obligation of making such capital contributions. If the transferee fails to make a capital contribution on time and in full, the transferor will bear supplementary liability for the transferee's overdue capital contribution.
- As for equity with flawed contributions, the transferor and transferee bear joint and several liability to the extent of the capital contribution shortfall. If the transferee is not aware and ought not to know about the existence of such flawed contribution, the transferor will be liable for the contribution shortfall.

### **C. What marks the completion of an equity transfer**

Under the Revised Company Law, an equity transfer is deemed completed after the updating of the register of shareholders. The transferring shareholder is obligated to request the company to update the register of shareholders and to file the shareholder change with the SAMR. If the company refuses to do so or fails to reply within a reasonable time limit, the transferee and the transferor may file a lawsuit against the company.

## **2. Liquidation and deregistration**

### **A. Enhanced responsibilities for directors in liquidation**

An FIE may be dissolved upon the expiry of its operating term or if it suffers serious losses, experiences

serious difficulties in its business, or is ordered to cease operations. Per the Revised Company Law, upon the occurrence of a cause of dissolution, the directors are the liquidation obligors of the company and are required to establish a liquidation committee which, by default, is composed of the directors unless it is otherwise provided for in the company's articles of association or it is otherwise elected by the shareholders. The liquidation obligors are liable for compensation if they fail to fulfill their liquidation obligations in a timely manner which causes any loss to the company or the creditors.

The liquidation committee will take over the day-to-day management of the FIE and notify known creditors through notices and unknown creditors publicly in newspapers or via the National Enterprise Credit Information Publicity System so that the creditors can declare their claims and the liquidation committee can register and verify such claims. The Revised Company Law subjects the liquidation committee to the fiduciary duties: (i) any member who neglects to fulfill his/her liquidation duties, thus causing any loss to the company shall be liable for compensation; and (ii) any member who causes any loss to any creditor due to their intention or gross negligence shall be liable for compensation.

## **B. Summary deregistration and compulsory deregistration**

Typically, the liquidation committee will apply for deregistration of the company upon the completion of liquidation. The Revised Company Law permits two types of deregistration without liquidation.

- **Summary deregistration:** If a company has not incurred any debts or has paid off all the debts, then the company may announce deregistration through the National Enterprise Credit Information Publicity System for a period of no less than 20 days; if there is no objection, the company may apply for deregistration of the company within 20 days after the expiry of the announcement period. However, the shareholders are required to guarantee the authenticity with respect to non-existence or settlement of the debts. If such commitment is untrue, the shareholders are jointly and severally liable for the outstanding debts.
- **Compulsory deregistration:** Where, after three years since the business license of a company was revoked, or the company was ordered to close down or was revoked, the company fails to apply for deregistration, the SAMR may announce the deregistration through the National Enterprise Credit Information Publicity System for a period of no less than 60 days; if there is no objection, SAMR may deregister the company after the expiry of the announcement period. However, the deregistration of the company will not impact the liability of the shareholders or liquidation obligors.

## **Next steps**

As discussed above, the Revised Company Law presents significant amendments to the current Company Law that will impact the interests of foreign investors and affect their way of doing business in China. Below is a list of to-do items that foreign investors should be aware of as we move toward the implementation of the Revised Company Law.

- Monitor regulatory developments for implementing rules, which are expected to be promulgated before the Revised Company Law comes into effect on July 1, 2024. The implementing rules will likely clarify the following issues, among others:

- whether a sole foreign investor can form a JSLC;
  - the mechanism for requiring legacy LLCs, established prior to the effective date of the Revised Company Law, must conform to the revised provisions of the law; and
  - whether FIEs need to reconcile other matters that do not conform to the Revised Company Law (e.g., the mandatory requirement of including employees' representative in the corporate governance structure for medium-large size companies with 300 or more employees) within the five-year transitional period ending on January 1, 2025, as prescribed by the Foreign Investment Law.
- Conduct a gap analysis of the FIE's currently effective articles of association against the Revised Company Law (including the forthcoming implementing rules) to identify non-conforming items against the mandatory requirements, as well as the potential optimization of corporate structures.

For FIEs which are joint ventures, additionally:

- Remind the board of directors to verify the existence of any flawed contributions by shareholders, and/or, to the extent practicable, secure an indemnification letter from co-founders, so as to mitigate the risk of assuming supplementary liability; and
  - To the extent necessary and practicable, require the company to procure liability insurance for the Senior Managers, as the Revised Company Law strengthens responsibilities for senior management.
- Accordingly, FIEs should consider amending or restating their articles of association before the end of the five-year transitional period on January 1, 2025. In addition, FIEs that face a potential capital contribution issue should pursue a capital reduction or equity transfer to remedy any capital structures that do not conform to the Revised Company Law.

## ***Important Announcement***

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:

### **Jun Li**

Tel: +86 21 6080 0981

Email: [jun.li@hankunlaw.com](mailto:jun.li@hankunlaw.com)

### **Dana WU**

Tel: +86 21 6080 0566

Email: [dana.wu@hankunlaw.com](mailto:dana.wu@hankunlaw.com)

### **Robin ZHANG**

Tel: +86 21 6080 0922

Email: [robin.zhang@hankunlaw.com](mailto:robin.zhang@hankunlaw.com)