



## I. Legal News

### 1. Better Protection for Shareholders' Rights in the 5<sup>th</sup> Judicial Interpretation on Company Law.

On April 28, 2019, the Supreme People's Court ("SPC") issued the 5<sup>th</sup> Judicial Interpretation on the Company Law (the "Interpretation") and it came into effect the very next day. To better protect the interests and rights of shareholders and to optimize the business environment, a series of new provisions are issued in this Interpretation. We hereby concluded them into the following three parts:

#### (1) Related-party transactions

Previously, it was hard for a shareholder to protect its rights when the controlling shareholders, actual controller or the senior management conducted related-party transactions which impaired the interests of the company as the shareholder normally bears a heavy burden of proof. To loosen the shareholder's burden, the Interpretation stipulates that controlling shareholders, actual controller or major shareholders or other senior management's liabilities cannot be waived by simply claiming that all necessary procedures for the transactions have been fulfilled (e.g. fulfilling obligation of information disclosure, etc.). In addition, qualified shareholders may also file a litigation if the Company fails to do so in the above-mentioned situation and in cases that the contract on related-party transactions is invalid or revocable, which means that it will be much easier for the shareholders to initiate a legal action to protect their rights.

#### (2) Time limit for profit distribution

On the basis of the 4th Judicial interpretation on the Company Law that the Court shall make a ruling under a shareholder's request if the company fails to distribute profits according to the decided resolution without justification, the Interpretation further protects the shareholders' rights by detailing the time limit for such distribution. In principle, the company shall distribute the profits within the time limit expressly stated in the shareholders' resolution. But if there is no such limit in the resolution, the provisions stipulated in the articles of association shall prevail. And if there is still no such limit in the articles of association, or if the limit lasts for more than one year in the resolution/articles, the company needs to distribute the profits within one year since the date the resolution is passed. This provision may help the shareholders to get their profits in time.

#### (3) Termination of directors

The Interpretation also clarifies that the company can dismiss its director before his/her term is due at its discretion. If the director concerned challenges and claims that the termination has no legal effect, the court will not support him/her.

However, it should be noted that such rule is applied under the perspective of PRC Company Law instead of PRC Employment Contract Law. From the perspective of PRC Company law, it clarifies the company can perform the formalities of change of directors at relevant governmental authorities (e.g. AIC) at its own discretion, regardless if the director concerned is an employee of the company or not; however, for a director who is also an employee of the company, apart from the director's position to be regulated under PRC Company Law, the stringent regulations on terminating employment contract under PRC Employment Contract Law shall also be considered.

(<http://www.court.gov.cn/fabu-xiangqing-155292.html>)

### 2. New Criteria for Jurisdiction of Courts over Civil Cases of First Instance

This week, an internal Circular on Adjusting the Criteria for Jurisdiction of High People's Court and of Intermediate People's Court over Civil Cases of First Instance ("the Circular") was issued (only shared with different levels of courts instead of publishing to public). The Circular has been effective since the first day of May 2019.

Hierarchical jurisdiction in China is based on the object amount (the value of the claim requested in a litigation), and the larger of the object amount, the higher the level of the court that has jurisdiction over the case. The major adjustment in the Circular is to increase the minimum object amount of civil litigation subject to High Courts in the first instance to RMB 5 billion (which is 10 times the previous criterion). This means that many first instance cases originally under the High Courts' jurisdiction will be moved down to the Intermediate Courts, which enables more cases originally under the jurisdiction of the second instance of the Supreme Court to be moved down to the High Courts. Thus, the Supreme Court will be relieved from the heavy workload and be able to shift its focus to the retrial processes, particularly important for large-amount and cross-provincial disputes.

For hierarchical jurisdiction under IP cases, the Circular is also applicable, however, special regulations<sup>1</sup> regarding cases subject to jurisdiction of SPC's IP court shall prevail.

(<https://mp.weixin.qq.com/s/ZpXNTD0XKAD5IIItdtFSu8w>)

### 3. The Come-Into-Being Government Investment Regulation

After two decades' preparation, the State Council has recently released the Government Investment Regulation (the "Regulation") on May 5, 2019, with effect from July 1, 2019. The Regulation aims to increase government's investment efficiency and stimulate vitality from social investors. "Government Investment" refers to those investments on fixed assets by budget within Chinese territory, including newly constructed projects, extended construction and technological renovation.<sup>2</sup>

The Regulation focuses on three aspects: First, clarifying that government investment should mainly be targeting "non-operational projects," which are public sectors where resources cannot be effectively allocated by the market (e.g. state security, environmental protection, public welfare services, etc.). Second, China has been carrying out government investment activities for decades, but judging from the achievements over the years, the low level of management and budget overruns happened commonly. To improve it, the Regulation enhances restraint on government investment, for example procedures such as evaluations by third-party agencies, public participation, expert assessment and risk evaluations must be performed for significant projects. Thirdly, a strengthened supervision mechanism is introduced. It is clearly stipulated in the Regulation that the government investment in charge shall perform online supervision, on-site verification, as well as use project information sharing system, etc. during and after the government investment.

In general, the Regulation clarifies what is government investment, the position of it as a supplement to market investment, and give guidance to where and how the government should invest.

([http://www.gov.cn/zhengce/content/2019-05/05/content\\_5388798.htm](http://www.gov.cn/zhengce/content/2019-05/05/content_5388798.htm))

① <http://www.court.gov.cn/fabu-xiangqing-137481.html>, more information on this newly-established IP Tribunal, please refer to our previous news on January 15, 2019:

< <http://asiallians.com/en/china-legal-update-spc-clarifies-establishment-spcs-ip-court/> >

② See: [http://english.gov.cn/policies/latest\\_releases/2019/05/05/content\\_281476645607562.htm](http://english.gov.cn/policies/latest_releases/2019/05/05/content_281476645607562.htm)

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