

Shareholders' Rights in Private Companies: Overview (China)

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Status: **Law stated as at 01-Sep-2024** | Jurisdiction: **China**

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A Practice Note providing an overview of the statutory rights of shareholders of a private company in the Peoples' Republic of China (PRC), including financial rights, administrative rights, and rights in insolvency situations.

The statutory rights of shareholders of a private company may considerably vary from jurisdiction to jurisdiction and depending on the type of trading vehicle. Therefore, foreign investors need to have a clear understanding of what these rights are if they intend to purchase shares in a company in China (PRC) or set up a company in China.

This Note sets out the main statutory rights of shareholders of limited liability companies (LLCs) and companies limited by shares (CLSs) in China.

Type of Companies

This Note addresses the statutory rights of shareholders holding ordinary shares in the following type of private companies which are commonly used in China:

- An LLC.
- A CLS.

An LLC's total registered capital does not need to be divided into equal shares, and therefore each shareholder's equity is represented by the amount or ratio of subscribed capital. By contrast, a CLS's total registered capital must be divided into equal shares, so that each shareholder's equity is represented by the subscribed number of shares. In addition, unlike an LLC, a CLS is subject to fewer restrictions on equity (shares are generally freely transferable), although it is subject to more stringent requirements concerning its incorporation procedure, governance structure, and regulatory compliance.

Generally, small and medium-sized companies usually take the legal form of an LLC while larger companies usually take the legal form of a CLS. If a company intends to be publicly listed, it must first take the legal form of a CLS.

The rights and obligations of companies are set out in:

- The Company Law of the PRC 2023 (2023 Company Law).
- Ancillary judicial interpretations issued by the Supreme People's Court.
- Ancillary administrative regulations promulgated and implemented by the State Council and its departments.

The State Administration for Market Regulation (SAMR) and its local counterparts are the competent authorities to register the incorporation of companies. For foreign-invested enterprises (FIEs), the competent registration and management authority is the relevant local counterpart authorised by SAMR. The list of competent registration authorities throughout China can be found in [SAMR Announcement No. 37 of 2020](#).

For an overview of the main characteristics of an LLC and a CLS, see [Practice Note, Trading Vehicles: Overview \(China\)](#).

This Note describes the statutory rights of the holders of ordinary shares in a CLS and equity interests in an LLC. For the purposes of this Note, unless otherwise specifically stated in the context of an CLS, references to "shares" include "shares" in an CLS and "equity interests" in an LLC and references to "shareholders" include "shareholders" in an CLS and "holders of equity interests" in an LLC.

Type of Shares in a CLS

The corporate capital of an LLC is divided into equity interests and that of a CLS is divided into shares.

Only CLSs can issue shares (Article 142, 2023 Company Law). There are two types of shares: ordinary shares and preferred shares. All CLSs can issue ordinary shares but only listed companies and unlisted public companies (unlisted CLSs with more than 200 shareholders) can issue preferred shares.

For the main rights of holders of ordinary shares, see Ordinary Shares' Rights. For the additional rights attributed for holders of preferred shares, see Preferred Shares' Rights.

The holders of preferred shares rank above holders of ordinary shares for the payment of dividend and liquidation proceeds, but are subject to restrictions regarding other rights such as participation in the management of the company.

Equity Interests in an LLC

The corporate capital of an LLC is divided into equity interests.

Differences Between Equity Interests in an LLC and Shares in a CLS

Key differences between equity interests and shares include the following:

- The capital of an LLC is divided into equity interests of the same value. Shareholders must receive dividends in proportion to their equity interest ownership (unless otherwise agreed by all the shareholders of an LLC). By contrast, a CLS can issue shares that grant rights to preferential dividends to the relevant shareholders. See also Right to Dividends.
- In an LLC, shareholders who own the same amount of equity interests have equal voting rights (unless otherwise specified in the LLC's articles of association). A CLS can issue shares with weighted voting rights, which grant a shareholder greater say on matters decided at shareholders' meetings. See also Right to Vote in a Shareholders' Meetings.
- Equity interests in an LLC are generally transferrable but cannot be listed on the stock market. A CLS can issue shares to the public and register them for listing (Article 134, 2023 Company Law) if they meet the thresholds of the Securities Law of the PRC 2019 (with effect from 1 March 2020) and specific requirements of the relevant stock exchange.

Shareholders' Rights

Ordinary Shares' Rights

The rights of shareholders of LLCs and CLSs in China can be divided into two main categories:

- **Financial rights.** These are rights of a financial nature connected to the investment in the share capital. They include the right to receive dividends or a share in

any surplus of the company's remaining assets on its liquidation or voluntary winding up.

- **Administrative rights.** These are rights linked to the shareholder's role as partner with voting rights. Administrative rights mainly refer to the right to vote in a general meeting, information rights, and the right to defend the shareholders' or the company's interests.

Depending on the type of shareholder's right, statutory rights may be granted to:

- Shareholders individually (that is, irrespective of the percentage of shares they own).
- Shareholders provided that they, individually or jointly with other shareholders, hold a specific percentage of shares they own.

The general rights of all shareholders are:

- To call, attend, address, make enquiries, and vote at shareholders' meetings (see Shareholders' Rights Relating to Shareholders' Meetings).
- To receive dividend payments (Article 210, 2023 Company Law) (see Financial Rights).
- To review and take copies of:
 - the company's articles of association;
 - the register of members;
 - minutes of shareholders' meetings;
 - resolutions of the board of directors;
 - resolutions of the supervisory board; and
 - the financial accounting report.

(Article 57, 2023 Company Law.)

(See Information That Must Be Disclosed to Shareholders by Directors.)

- To check the company's accounting books and accounting vouchers for legitimate purposes, on request (Article 57, 2023 Company Law) (see Right to Request Information from Directors).
- To receive a share of the liquidation proceeds (Article 236, 2023 Company Law) (see Right to Share in the Remaining Assets of the Company on a Winding Up).
- Pre-emptive rights on a capital increase (for LLCs) (Article 227, 2023 Company Law) (see Pre-Emption on Issue or Allotment of Shares).
- To sue directors and executives for wrongful acts (Article 189, 2023 Company Law) (see Shareholders' Rights Against Directors).
- To transfer ownership of equity interests or shares (Articles 84 and 157, 2023 Company Law) (see Rights to Acquire and Dispose of the Shares).

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- Rights in connection with material transactions (see Material Transactions).
- Rights in connection with insolvency situations (see Insolvency).

Generally, shareholders of unlisted companies can limit, modify, exclude, or waive their rights by express agreement set out in the company's articles of association or a shareholders' agreement, provided these variations do not violate mandatory provisions of Chinese law and are acceptable to the local competent authorities.

For summary information on the shareholders' rights specifically in the context of an LLC, see [Practice Note, Corporate Governance and Liabilities of Senior Management in China: Overview: Rights of Shareholders](#).

For information on the impact of the changes introduced by the 2023 Company Law to shareholders' rights, [Practice Note, Chinese Company Law Amendment: Impact on Shareholders' Rights](#).

Preferred Shares' Rights

A CLS can issue preferred shares (also known as class shares) (Article 144, 2023 Company Law). While the 2023 Company Law does not specify whether an LLC can issue preferred shares, it is accepted that they can in practice achieve that purpose through contractual arrangements agreed by all the shareholders in the LLC's articles of association and shareholders' agreement (see also [Practice Note, Corporate Governance and Liabilities of Senior Management in China: Overview: Varying Statutory Corporate Governance Rules](#)).

Rights and restrictions attached to preferred shares are typically as follows:

- Holders of preferred shares are first entitled to payment of dividends at the agreed rate, prior to any dividend payment to the holders of ordinary shares, and then entitled to participate in the dividend distribution together with the holders of ordinary shares.
- Before any distribution of liquidation proceeds can be made to holders of ordinary shares, the holders of preferred shares are entitled to receive the per share liquidation value of their preferred shares and all unpaid accumulated dividends.
- Holders of preferred shares do not typically have the same voting rights as ordinary shareholders. However, holders of preferred shares can attend the shareholders' general meeting and exercise voting rights on matters that may be directly connected with, or have a material influence on, their interests, including the following:

- revision of the articles of association related to preferred shares;
- reduction of the company's registered capital by more than 10% at one time or cumulatively;
- merger, division, and dissolution of the company or change of corporate form;
- issuance of preferred shares; and
- other circumstances specified by the articles of association.

- Holders of preferred shares have the right to inspect the articles of association, register of shareholders, company bond stubs, minutes of shareholders' meetings, resolutions passed at meetings of the board of directors, resolutions passed at meetings the board of supervisors, financial accounting reports, and so on.

For more information on these special shareholders' rights that are allowed in a CLS, see [Practice Note, Chinese Company Law Amendment: Impact on Shareholders' Rights: Special Shareholders' Rights in CLSs](#).

PRC law is silent on whether an individual or corporation can hold both ordinary and preferred shares. However, in practice, some shareholders hold both types of shares.

Source of Shareholders' Rights

The main source of shareholders' rights is the 2023 Company Law and corresponding judicial interpretations and administrative regulations.

A company's articles of association can augment and tailor statutory shareholders' rights to address the specific needs and preferences of the company and its shareholders. However, certain shareholders' rights are protected and cannot be waived or varied, such as:

- The right to vote on major corporate decisions, such as amending the company's articles of association, increasing or reducing the company's registered capital, merger, split-up, dissolution, or change of corporate form (Article 116, 2023 Company Law). However, the voting thresholds within the company organs can be adjusted to require a higher percentage of votes for decision-making and cannot be reduced below the percentage mandated by law.
- Information rights (see [Shareholders' Rights to Information](#)).
- The right of shareholders to invalidate shareholders' or board resolutions (see [Right to Challenge a Resolution Passed at a Shareholders' Meeting](#) and [Right to Challenge a Resolution of the Board of Directors](#)).

For information on the statutory corporate governance rules that may or may not be varied by shareholders' agreement, see [Practice Note, Corporate Governance and Liabilities of Senior Management in China: Overview: Varying Statutory Corporate Governance Rules](#).

Shareholders' Rights Relating to Shareholders' Meetings

Right to Require a Shareholders' Meeting be Called

CLS

Generally, shareholders are not allowed to convene shareholders' meetings directly. In a CLS, the board of directors or board of supervisors must convene an annual shareholders' meeting (Articles 113 and 114, 2023 Company Law). The articles of association specify the timeframe in which the annual shareholders' meeting must be held.

The annual shareholders' meeting is responsible for:

- Reviewing and approving the company's profit distribution plans, and loss recovery plans.
- Appointing and re-appointing directors and supervisors.
- Other major matters. This may include discussion of major company policies, approval of budgets, and other matters stipulated in the company's articles of association.

An interim shareholders' meeting, also known as a special shareholders' meeting, can be convened to address specific issues that arise between annual meetings. An interim meeting can be held for various reasons, including:

- Urgent corporate actions, such as approvals of mergers, acquisitions, significant asset purchases or sales, and other major transactions.
- Financial issues that require immediate shareholders' input.
- Any other urgent issues that require shareholder approval outside the scope of regular annual meeting agendas.

An interim shareholders' meeting must be held within two months from the occurrence of any of the following:

- The number of directors is less than two thirds of the number required by the 2023 Company Law or the company's articles of association.
- The company's unrecovered losses reach one-third of the total share capital.

- Request by shareholders who individually or collectively hold more than 10% of the company's shares.
- The board of directors deems it necessary.
- Proposal by the board of supervisors.
- Other circumstances as provided in the company's articles of association.

(Article 113, 2023 Company Law.)

In a CLS, shareholders who have individually or in aggregate held more than 10% of the company's shares for more than 90 consecutive days can, either:

- Convene and chair the shareholders' annual meeting if the board of directors or board of supervisors fail to meet their obligations to convene the annual meeting.
- Request the board of directors or board of supervisors to convene an interim shareholders' meeting. The board of directors and the board of supervisors must, within ten days following receipt of a request, decide whether to hold an interim shareholders' meeting and reply to the requesting shareholders in writing.

(Article 114, 2023 Company Law.)

LLC

In an LLC, the board of directors or board of supervisors usually convene a shareholders' meeting at least once a year, and in any event must comply with the schedules set out in the company's articles of association (Articles 62 and 63, 2023 Company Law).

In an LLC, shareholders' meetings are classified as regular/annual meetings and interim meetings (see above, CLS). Regular meetings must be held in accordance with the articles of association. Shareholders representing 10% or more of the voting rights can request that an interim meeting be held. (Article 62, 2023 Company Law.)

Right to Include Items on the Meeting's Agenda or Submit a Draft Resolution

CLS

In a CLS, any shareholder (or shareholders) who holds 1% or more of the company's shares can submit to the board of directors an interim written proposal of resolution to be discussed at a meeting, at least ten days in advance of a general meeting. CLS shareholders can require information from the board about the meeting's agenda. Shareholders in a CLS must be notified at least 20 days in advance of a general meeting of the time and place of the meeting and the matters to be considered at the meeting. (Article 115, 2023 Company Law.)

For related information, see [Practice Note, Chinese Company Law Amendment: Impact on Shareholders' Rights: Extraordinary Shareholders' Meetings and Temporary Proposals in CLSs](#).

LLC

The 2023 Company Law is silent on an LLC's shareholders' rights to include agenda items or submit draft resolutions to shareholders' meetings, or to require information about the meeting's agenda. However, in general practice, any shareholder can generally submit a written proposal to the board of directors for inclusion on the agenda of a shareholders' meeting and require information from the board about the meeting's agenda.

Right to Attend a Shareholders' Meeting

In a CLS and an LLC, shareholders registered in the register of members can attend and vote at shareholders' meetings. Companies must register their shareholders with the local registration authority, the Administration of Market Regulation, and maintain an internal register of members. In the event of any changes to capital contributions, share transfers, and other information regarding shareholders, the company must register the change accordingly with the local authority and in the company's register of members. (Articles 32, 34, and 86, 2023 Company Law.)

However, failure to register or amend a registered item is not enforceable against bona fide third parties (Article 34, 2023 Company Law). In practice, this means that shareholders who have not registered in advance of a meeting can also attend and vote at a shareholders' meeting.

Proxy Attendance in a CLS

In a CLS, a shareholder can appoint a proxy to attend a shareholders' meeting under a power of attorney, which must detail the proxy's powers and term of appointment. The proxy must present the power of attorney to the company and exercise the shareholder's voting rights in accordance with the granted authority. (Article 118, 2023 Company Law.)

Proxy Attendance in an LLC

The 2023 Company Law is silent on whether shareholders of an LLC can appoint proxies but does not expressly prohibit proxies. The general market practice is that attendance by proxy is possible unless expressly forbidden by the articles of association.

Right to Postpone a Shareholders' Meeting

There are no specific rules on the postponement of a shareholders' meeting of unlisted companies. In practice, a shareholder can typically request the

postponement of a shareholders' meeting based on reasonable and objective factors (for example, incomplete external approval procedures or additional interim proposals that require consideration).

The shareholder must usually submit a written proposal to the board of directors. The proposal should clearly outline the reasons for the requested postponement and the proposed new date for the meeting. On receiving the postponement request, the board of directors is responsible for notifying all other shareholders of the request. This notification should include the reasons for the postponement and the proposed new date for the meeting. The postponement proposal is then submitted to the shareholders for deliberation. This deliberation can occur in various ways depending on the company's articles of association and usual practices, for example:

- A vote at the originally scheduled meeting.
- A written vote via correspondence or electronic means.
- A separate interim meeting specifically convened to discuss the postponement.

There are no express rules on the possibility of extending the duration of a shareholders' meeting. However, such rules may be included in the company's articles of association or internal governance documents.

Right to Resolve on Matters Not on the Shareholders' Meeting Agenda

CLS

In a CLS, the shareholders' meeting cannot vote on a resolution relating to a matter that is not specified in the notice for the meeting (Article 115, 2023 Company Law).

LLC

In an LLC, the notice of a shareholders' meeting does not need to include the matters to be considered and the shareholders' meeting can vote on resolutions regarding matters that are not set out in the notice (Article 64, 2023 Company Law). In practice, shareholders usually put forward new matters to be discussed before or during the shareholders' meeting and then vote on these in accordance with the normal voting procedures. However, the company's articles of association can require the notice of a shareholders' meeting to include the matters to be considered at the meeting and prohibit shareholders to vote on matters that are not included in the notice.

Right to Vote in a Shareholders' Meetings

Shareholders registered in the register of members can attend and vote at shareholders' meetings. However,

failure to register or amend a registered item is not enforceable against bona fide third parties (Article 34, 2023 Company Law). In practice, this means that shareholders who have not registered in advance of a meeting can also attend and vote at a shareholders' meeting.

The law is silent on the method of voting. The company's articles of association can provide that voting can take place on a poll or on a show of hands.

For information regarding proxies, see [Right to Attend a Shareholders' Meeting](#).

LLC

In an LLC, the shareholders exercise voting rights in proportion to their capital contributions unless otherwise specified in the company's articles of association (Article 65, 2023 Company Law).

CLS

In a CLS, shareholders attending a shareholders' general meeting have one vote for each share they hold (Article 116, 2023 Company Law).

Veto Right

Shareholders do not have a statutory veto right. However, the company's articles of association or the shareholders agreement can grant specific veto rights to certain classes of shares or specific shareholders. This is common in companies with different classes of shares, where certain shareholders may have preferential rights (veto right). This veto right usually covers material transactions, such as the amendment of articles of association or increasing or reducing the company's registered share capital.

Changes to Share Capital

Minority shareholders may be able to alter or restrict changes to the company's share capital structure under the following rules:

- Only in an LLC, when any controlling shareholder abuses its shareholder's rights and seriously damages the interests of the company or other shareholders, affected shareholders have the right to require the company to purchase their shares at a reasonable price (Article 89, 2023 Company Law) (see [Buy-Back of Shares](#)).
- In a CLS and an LLC, a change to the company's registered capital, such as an issuance of shares or a reduction of capital, requires approval by shareholders representing a minimum of two-thirds of the voting rights (Articles 66 and 116, 2023 Company Law). Minority shareholders may collectively be able to reach the threshold needed to block a resolution.

- In a CLS and an LLC, minority shareholders can challenge decisions that they believe unfairly prejudice their interests. If a change to the company's capital structure disproportionately affects minority shareholders, they can seek relief through legal channels. (See [Practice Note, Corporate Governance and Liabilities of Senior Management in China: Overview: Right to Invalidate Shareholders' Meeting or Board Resolutions](#).)

Right to Challenge a Resolution Passed at a Shareholders' Meeting

A resolution of the shareholders' meeting is invalid if the resolution violates the law or administrative regulations (Article 25, 2023 Company Law). In a CLS and an LLC, any shareholder can request a court to confirm that a shareholders' resolution is invalid when any of the following apply:

- The resolution was adopted without convening a shareholders' meeting.
- The resolution was adopted without a vote.
- The number of persons attending the meeting, or the voting rights held by the shareholders represented at the meeting, did not comply with the requirements of the 2023 Company Law or the company's articles of association.
- The resolution was not adopted by the required majority either under the 2023 Company Law or the company's articles of association.

(Article 27, 2023 Company Law.)

There is no limitation period to make the above request.

Any shareholder can also challenge a resolution passed at a shareholders' meeting before the court if:

- The procedures for convening or voting at the meeting violated any law, administrative regulations, or the company's articles of association.
- The resolution violates the company's articles of association.

(Article 26, 2023 Company Law.)

The time limit to challenge is 60 days from the date on which the resolution is passed.

Shareholders' Rights Against Directors

Right to Challenge a Resolution of the Board of Directors

A resolution of the board is invalid if the resolution violates the law or administrative regulations (Article

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25, 2023 Company Law). In a CLS and an LLC, any shareholder can request a court to confirm that a board resolution is invalid when any of the following apply:

- The resolution was adopted without convening a board meeting.
- The resolution was adopted without a vote.
- The number of persons attending the meeting, or the voting rights held by directors represented at the meeting, did not comply with the requirements of the 2023 Company Law or the company's articles of association.
- The resolution was not adopted by the required majority either under the 2023 Company Law or the company's articles of association.

(Article 27, 2023, Company Law.)

There is no limitation period to make the above request.

As an alternative, shareholders can (within 60 days following the date on which the resolution was passed) request a court to revoke a board resolution if either:

- The procedures for convening or voting at the board meeting violated any law, regulation, or the company's articles of association.
- The content of the board resolution violates the company's articles of association.

(Article 26, 2023 Company Law.)

No minimum shareholding is required to bring any of the above challenges against a board resolution.

If the court confirms that a board resolution is either void or revoked, this does not affect any legal relationship between the company and a bona fide third party. However, it is not yet clear whether a bona fide third-party relationship will be affected when a court declares that a resolution was not properly established. In addition, if the court states that a resolution can be revoked because of a procedural irregularity, it is possible to correct that irregularity and pass the resolution again (this is not possible when the court confirms that a resolution was not properly established).

On request of the company, the court can require the shareholders bringing a claim concerning a board resolution to provide a guarantee to the court.

Right to Start a Liability Action Against Directors

Directors' Duties

Generally, directors have a duty of loyalty and diligence to the company and cannot damage shareholders' interests (Article 180, 2023 Company Law). In particular,

directors are not allowed to do any of the following in relation to the company:

- Damage the company's interests by taking advantage of their affiliated relationships (that is, relationships between the director and enterprises directly or indirectly controlled by the director).
- Accept any bribe or illegal income by taking advantage of their power.
- Misappropriate any of the company's property.
- Embezzle the company's funds or assets.
- Deposit the company's funds into an account in their own name or any other person's name.
- Lend the company's fund to a third party or use the company's assets to provide a guarantee to a third party, either:
 - in violation of the company's articles of association; or
 - without the required consent of the shareholders' meeting or board meeting.
- Enter into a contract or conduct a transaction with the company, whether directly or indirectly, unless they have reported all relevant matters related to such contracts or transactions to the board of directors or shareholders' meeting and have obtained approval through resolutions of the board of directors or shareholders' meeting as stipulated in the company's articles of association.
- Seek business opportunities that belong to the company for themselves or any other person, or engage in the same type of business as the company by taking advantage of their position, without reporting to, and obtaining approval of, the board of directors or the shareholders' meeting as set out in the company's articles of association.
- Without the consent of the shareholders or the board as stipulated in the company's articles of association, seek business opportunities that belong to the company for themselves or any other person or engage in the same type of business as the company by taking advantage of their position.
- Personally accept commissions from transactions between the company and a third party.
- Disclose confidential information of the company.
- Conduct other activities that breach their fiduciary duty to the company.

(Articles 15 and 181 to 184, 2023 Company Law.)

For expanded discussions, see [Practice Note, Chinese Company Law Amendment: Liabilities of Directors, Supervisors, and Senior Management: Duty of Loyalty and Duty of Diligence](#).

Directors' Liability

A director who participates in the adoption of a resolution that causes serious losses to the company is liable for the resulting damage.

PRC law is almost silent on whether directors' liability, to the company or shareholders, can be limited or excluded. The only relevant provision is that a director may be exempted from liability relating to a board resolution that violates laws, regulations, the company's articles of association, or shareholders' resolutions, and causes serious loss to the company, if both:

- The director proves that they raised an objection to the resolution.
- The objection is recorded in the minutes.

(Article 125, 2023 Company Law.)

For expanded discussions, see [Practice Note, Chinese Company Law Amendment: Liabilities of Directors, Supervisors, and Senior Management: D & O Liability for Non-Compliance](#).

Shareholders' Actions Against Directors

Any shareholder of an LLC, or a shareholder of a CLS who individually or collectively has held at least 1% of the company's shares for at least 180 consecutive days, can request the company's board of supervisors or supervisor(s), in writing, to initiate proceedings against directors who violate any law, regulation, or the company's articles of association in the course of their duty and cause loss to the company (Article 189(1), 2023 Company Law).

An individual shareholder can bring a lawsuit directly against the board of supervisor or supervisor(s), in their own name, if the board of supervisors or the supervisor(s):

- Refuses to initiate legal proceedings after receiving a request to do so from the shareholder.
- Fails to initiate legal proceedings within 30 days after receiving a request to do so from the shareholder.

(Article 189(2), 2023 Company Law.)

Any shareholder can bring a direct legal action against a director (or directors) if a director(s) violates the laws, administrative regulations, or the company's articles of association and as a result damages the interests of shareholders (Articles 188 and 189, 2023 Company Law.)

Therefore, shareholders can bring the above actions if directors breach their duties (see [Directors' Duties](#)).

In addition, shareholders of a parent company can request the board of supervisors or board of directors of a wholly-owned subsidiary to initiate a lawsuit against directors, or directly file a lawsuit in their own name, where during the performance of their duties, directors of the company's wholly-owned subsidiary violate the laws, administrative regulations, or articles of association, causing losses to the subsidiary company (Article 189(4), 2023 Company Law). (See also [Practice Note, Chinese Company Law Amendment: Impact on Dispute Resolution: Double Derivative Actions](#).)

The general meeting of shareholders can also dismiss a director without cause by passing a valid resolution during the director's tenure (Article 71, 2023 Company Law). (See also [Practice Note, Chinese Company Law Amendment: Impact on Dispute Resolution: Resignation and Removal of Legal Representative and Directors](#).)

Right to Require a Board Meeting be Called

CLS

In a CLS, shareholders representing 10% or more of the voting rights can propose to convene an interim meeting of the board of directors. The chairman of the board of directors must, within ten days of receipt of a proposal, convene and preside over a meeting of the board of directors. (Article 123, 2023 Company Law.) Shareholders can also submit to the board proposals of matters to be discussed at the meeting (Article 115, 2023 Company Law).

LLC

Shareholders of an LLC have no similar right, unless otherwise provided in the company's articles of association.

Right to File a Complaint with the Court or Regulatory Body Against Directors

See [Shareholders' Actions Against Directors](#).

Directors' Remuneration and Service Contracts

In both an LLC and a CLS, the shareholders' meeting has the right to decide on directors' remuneration (Articles 59 and 112, 2023 Company Law).

A CLS must regularly disclose to its shareholders information on remuneration received by directors (Article 129, 2023 Company Law). There is no similar disclosure requirement for LLCs.

Shareholders' Rights Against Company's Auditors

Right to File a Complaint with the Company's Auditors for Acts of Mismanagement or Poor Performance

Shareholders do not have the right to file complaints with the company's auditors against directors for acts of mismanagement or poor performance.

Right to Remove the Auditors

The appointment and removal of auditors is decided by the shareholders' meeting, the board of directors, or the board of supervisors, as provided by the company's articles of association (Article 215, 2023 Company Law). The appointment of auditors is not mandatory under the 2023 Company Law.

In practice, auditors can be removed on various grounds, including:

- Failure to perform duties.
- Conflict of interest.
- Misconduct or fraud.
- Breach of contract.

The procedure depends on the organ voting on the removal and the company's articles of association. There is no minimum shareholding requirement for shareholders to vote on the removal of auditors.

The removal of auditors does not require affirmation by a court.

Right to Start a Liability Action Against Auditors

An accounting firm that issues a false audit report (including any false record, misleading statement, or significant omission) which causes loss to any stakeholder, including shareholders, can be liable in tort. The auditors involved may be jointly and severally liable with the accounting firm for paying compensation.

Any shareholder of an LLC, or a shareholder of a CLS who individually or collectively has held at least 1% of the company's shares for at least 180 consecutive days, can request the company's board of supervisors or supervisor(s), in writing, to initiate court proceedings against third parties who infringe on the company's legitimate rights and interests and cause losses to the company (Article 189(1) and (3), 2023 Company Law). In this context, "third parties" include accounting firms responsible for auditing the company's accounts.

An individual shareholder can bring a lawsuit directly against an accounting firm, in their own name, if the board of supervisors or the supervisor(s):

- Refuses to initiate legal proceedings after receiving a request to do so from the shareholder.
- Fails to initiate legal proceedings within 30 days after receiving a request to do so from the shareholder.
- The situation is urgent and failure to initiate a lawsuit immediately will cause irreparable damage to the company's interests.

(Article 189(2) and (3), 2023 Company Law.)

Alternatively, if a director serves as company auditor and causes direct damage to the shareholders, the shareholders can bring an action directly against the director (Article 190, 2023 Company Law).

The accounting firm is not liable in the following circumstances:

- It failed to find an error in the company's accounting materials but complied with professional rules and maintained professional prudence.
- It failed to find that a certification document provided by a financial institution that it relied on was false, but maintained professional prudence.
- It warned the company of possible fraud and included this in the audit report.
- It carried out the audit in accordance with a capital verification procedure and issued the audit report, but an investor withdrew their capital contribution after registration.
- It issued a false report on a capital contribution, but the investor made up the balance of the capital contribution after registration.

(Article 7, [Several Provisions of the Supreme People's Court on Trial of Cases Involving Compensation for Civil Tort in Audit Business Activities of Accounting Firms 2007](#).)

Shareholders' Rights to Information

Information That Must Be Disclosed to Shareholders by Directors

Shareholders have the right to inspect and receive duplicates of:

- The company's articles of association.
- The register of members.
- Minutes of shareholders' meetings.

- Resolutions of the board of directors.
- Resolutions of the board of supervisors.
- Financial reports.
- Accounting records.

(Articles 57 and 110, 2023 Company Law.)

Therefore, directors must provide the above information to the shareholders. The 2023 Company Law does not prescribe any timeframe or the form in which this information must be provided. The company's articles of association can include specific rules on these matters.

For more information, see [Practice Note, Chinese Company Law Amendment: Impact on Shareholders' Rights: Right of Inspection](#).

Right to Request Information from Directors

In an LLC and a CLS, a shareholder can submit a written request to the board to inspect the company's accounting books and accounting vouchers. If the company has reason to believe that the shareholder's request has an improper purpose and this can damage the legitimate interests of the company, it can deny the shareholder's request in writing, stating the reasons for the refusal within 15 days of receipt of the request. If the company rejects the shareholder's request, the shareholder can request a court to compel the company to provide access to the company's accounts. (Articles 57 and 110, 2023 Company Law.)

For more information, see [Practice Note, Chinese Company Law Amendment: Impact on Shareholders' Rights: Right of Inspection](#).

Financial Rights

Right to Dividends

Dividends are generally distributed to the shareholders in the following forms:

- Cash.
- Stock (through a capital increase).
- Property (mainly securities of other companies owned by the company).
- Debt (mainly the company's notes payable).

In practice, cash is the most common form of dividend distribution in China.

A company must allocate 10% of its after-tax profits to the statutory common reserve every year until the aggregate amount of the reserve exceeds 50% of the company's registered capital. If the aggregate

balance of the company's statutory common reserve is not sufficient to cover the company's losses for the previous year, the current year's profits must first be used for making up these losses before allocation to the statutory common reserve. The remaining after-tax profits must be distributed to shareholders:

- In proportion to their paid-in capital contributions, unless otherwise agreed by all shareholders (LLC).
- In proportion to their shareholding, unless otherwise provided in the company's articles of association (CLS).

(Article 210, 2023 Company Law.)

Profit distribution plans and plans for making up losses of the company are formulated by the board of directors (or the executive director for a company without a board) and submitted to the shareholders' meeting for consideration and approval (Articles 59, 67, and 120, 2023 Company Law).

If a shareholders' meeting adopts a resolution distributing profits, the board of directors must make distributions within six months of adoption of the shareholders' resolution (Article 212, 2023 Company Law).

Different classes of shares may carry preferential rights to dividends (see Type of Shares in a CLS).

The 2023 Company Law is silent on whether unlisted companies can pay interim dividends.

For more information, see [Practice Note, Distributing Dividends from a Private Company \(China\)](#).

Right to Share in the Remaining Assets of the Company on a Winding Up

After paying off the liquidation expenses, wages of employees, social insurance premiums and legal indemnities, and outstanding taxes and debts, the remaining assets of the company must be distributed to shareholders in proportion to:

- Their capital contribution (LLC).
- Their shareholding (CLS).

(Article 236, 2023 Company Law.)

Rights Concerning Shares

Rights to Acquire and Dispose of the Shares

Pledge Over Shares

Shareholders of an LLC and a CLS are generally entitled to pledge or dispose of their shares that can be legally transferred and pledged without restriction (Article 440, Civil Code of the PRC 2020 (2020 Civil Code, with

effect from 1 January 2021)). The dividends arising from the pledged shares must be distributed to the pledgee, unless otherwise agreed (Article 430, 2020 Civil Code). The right to vote belongs to the shareholder registered in the register of member, namely the pledgor, unless otherwise provided.

For a CLS, when the pledged shares are subject to statutory time-based transfer restrictions, the pledgee cannot exercise the pledge right during the restricted period (Article 160, 2023 Company Law).

Transfer of Shares

Chinese law restricts the transfer of shares in the following ways:

- In an LLC, a transfer of shares to a third party is subject to the existing shareholders' right of first refusal (Article 84, 2023 Company Law) (see Pre-Emption on Transfer of Shares).
- In a CLS, shares issued before a company makes a public offering must not be transferred within one year from the day the shares are listed and traded on the stock exchange (Article 160, 2023 Company Law).
- The directors, supervisors, and senior executives of a CLS must:
 - declare to the company the shares they hold in the company and changes to their shareholding;
 - during their term of office, not transfer more than 25% per year of the total shares they hold; and
 - not transfer their shares within six months after they leave office.

(Article 160, 2023 Company Law.)

The company's articles of association can impose further restrictions on the transfer of shares (Articles 84 and 157, 2023 Company Law).

Financial Assistance

A CLS cannot provide gifts, loans, guarantees, or other financial assistance to third parties to purchase the shares of the company or its parent company, except to implement an employee share ownership plan (Article 163, 2023 Company Law).

As an exception, a CLS can provide financial assistance to others for acquiring the shares of the company or its parent company, if both:

- The financial assistance is approved by a resolution of the shareholders' meeting, or a resolution of the board of directors which is authorised by the company's articles of association or the shareholders' meeting (and the board resolution should be approved by at least two-thirds of all directors).

- The cumulative total amount of financial assistance should not exceed 10% of the total issued share capital.

(Article 163, 2023 Company Law.)

Any director, supervisor, or senior executive who causes a loss to the company by violating the provisions on financial assistance must compensate the company for the loss (Article 163, 2023 Company Law).

There are no specific restrictions on financial assistance for LLCs.

Pre-Emption on Issue or Allotment of Shares

LLC

When an LLC increases its registered share capital, shareholders have a pre-emptive right to subscribe to allotted shares in proportion to their paid-in capital contributions, unless all shareholders agree to a different ratio (Article 227, 2023 Company Law).

CLS

Shareholders of a CLS do not have pre-emptive subscription rights on a new issue of shares, unless otherwise provided in the articles of association or a shareholders' resolution.

Pre-Emption on Transfer of Shares

LLC

Shareholders of an LLC have a pre-emptive right on a transfer of shares to third parties, unless otherwise provided by the company's articles of association. A shareholder who intends to transfer its shares to a third party must notify the other shareholders in writing of:

- The number of shares to be transferred.
- The transfer price.
- The payment method.
- The term of the transfer.

(Article 84, 2023 Company Law.)

The other shareholders have a right of first refusal under equivalent conditions. Any shareholder who fails to respond within 30 days after receipt of the written notice is deemed to have waived their right of first refusal. If more than two shareholders exercise their right of first refusal, they must determine their respective purchase percentage through negotiation. If they do not reach an agreement, they must exercise the right of first refusal in proportion to their respective capital contributions at the time of the transfer. (Article 84, 2023 Company Law.)

CLS

Shareholders of a CLS do not have a statutory pre-emptive right on a transfer of shares.

Right to Exit

A shareholder can exit from the company in the following ways:

- Transfer its equity interest to another shareholder or a third party (see Rights to Acquire and Dispose of the Shares).
- Request the company to repurchase its equity interest in certain circumstances specified by law (see Buy-Back of Shares).
- On a decrease of the company's registered capital.
- Shareholders holding a least 10% of all shareholders' voting rights can petition a court to dissolve the company if:
 - the company faces serious difficulties in its operation and management;
 - the company's continued existence would cause a material loss to the interests of the shareholders; and
 - there is no other way to resolve the difficulties.

(Article 231, 2023 Company Law.)

When any shareholder fails to pay their capital contribution on the specified date, a company can issue a written notice for payment to the defaulting shareholder and specify a grace period for payment. If the shareholder fails to pay before expiry of the grace period, the company can, on a resolution of the board of directors, send a notice of forfeiture to the defaulting shareholder. On issuance of the notice, the shareholder must forfeit the shares for which they have not paid capital contributions. (Article 52, 2023 Company Law.) For more information on this mechanism, see [Practice Notes, Chinese Company Law Amendment: Impact on Shareholders' Rights: Forfeiture of Shareholders' Rights for Failure to Contribute Capital](#) and [Chinese Company Law Amendment: Impact on Dispute Resolution: Forfeiture of Shareholders' Rights](#).

While selling shareholders and buyers generally have discretion over the valuation of the shares, withdrawals are commonly subject to government filing or approval requirements in the context of an FIE or a foreign acquisition, which may be difficult to obtain if the valuation is not at fair market value (see also [Practice Note, China Aspects of Global M&A](#)). Further, exchange control laws and regulations may apply to transactions involving payment into or out of China (see also [Practice Note, Foreign Exchange Control in China](#)).

Buy-Back of Shares

LLC

An LLC can repurchase an equity interest from a shareholder at the shareholder's request if the shareholder votes against the relevant resolution at a shareholders' meeting in any of the following events:

- The company has not distributed profits to the shareholder for five consecutive years while being profitable during those five years, and the shareholder is entitled to receive dividends (see Right to Dividends).
- The company is involved in a merger or division or transfers its main assets.
- The term of operation specified in the company's articles of association expires or other grounds for dissolution specified in the articles of association arise, and the shareholders' meeting resolves to amend the articles of association to extend the life of the company.
- The controlling shareholder abuses its rights and seriously damages the interests of the company or other shareholders. In this case, shareholders have the right to require the company to purchase their shares at a reasonable price.

(Article 89, 2023 Company Law.)

CLS

A CLS can repurchase shares from a shareholder at the shareholder's request if the shareholder votes against the relevant resolution at a shareholders' meeting in any of the following events (except for a listed CLS):

- The company has not distributed any profit to the shareholder for five consecutive years while being profitable during these five years and the shareholder is entitled to receive dividends (see Right to Dividends).
- The company transfers its main assets.
- The term of operation of the business specified in the company's articles of association expires or other grounds for dissolution specified in the articles of association arise, and the shareholders' meeting resolves to amend the articles of association to extend the life of the company.

(Article 161, 2023 Company Law.)

A CLS can also purchase its own shares in the following circumstances:

- It is reducing its registered capital.
- It is merging with another company that holds shares of the company.

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- It will grant the shares as an incentive to its staff and workers.
- A shareholder who opposes a shareholders' resolution on the merger or division of the company requests that the company purchase their shares.
- It will convert the shares into corporate bonds issued by a listed company, which could be converted into stocks.

(Article 162, 2023 Company Law.)

Rights in Case of Conversion into Another Type

An LLC can be converted into a CLS, and vice versa, if they meet the requirements applicable to the relevant company form, as set out in the 2023 Company Law (Article 12, 2023 Company Law). A conversion requires the adoption of a shareholders' resolution by shareholders representing at least:

- Two-thirds of the voting rights (LLC) (Article 66, 2023 Company Law).
- Two-thirds of the voting rights held by the shareholders in attendance (CLS) (Article 116, 2023 Company Law).

After the conversion, the rights of shareholders are governed by the company's articles of association and the 2023 Company Law.

Material Transactions

Shareholders of an LLC and a CLS commonly have veto rights over material transactions under the company's articles of association or a shareholders' agreement (see Veto Right). In FIEs, shareholders have statutory veto rights over mergers and other material transactions.

In an LLC or a CLS, a shareholder who objects to a merger or division can require the company to repurchase their shares. A shareholder of an LLC can also require the company to repurchase their shares if they oppose the transfer of the main assets of the company. (See also Buy-Back of Shares.)

Insolvency

Regular shareholders' rights, such as distribution of returns on investment, are significantly restricted if the

company is insolvent. The main rights of shareholders of an insolvent company under Chinese law include:

- **Application for reorganisation.** If creditors apply for the bankruptcy or liquidation of the company and the court accepts the application, shareholders holding more than 10% of the company's registered capital can apply to the court for reorganisation of the company before the company is declared bankrupt. (Article 70, Enterprise Bankruptcy Law of the PRC 2006 (2006 Enterprise Bankruptcy Law, with effect from 1 June 2007).)
 - **Voting on a reorganisation plan.** Where the creditors' draft reorganisation plan involves adjustments to the interests and benefits of investors, an investor group must be set up to vote on these matters. (Article 85, 2006 Enterprise Bankruptcy Law.)
- Shareholders can voluntarily dissolve the company by:
- Passing a resolution at a shareholders' meeting to dissolve the company.
 - Petitioning to the court to dissolve the company in certain circumstances (see Right to Exit).

Rights in Case of Controlling Company

A company's controlling shareholder or de facto controller cannot use their affiliated relationships to harm the interests of the company. The controlling shareholder or de facto controller must compensate the company for any losses caused by a violation of this rule. (Article 22, 2023 Company Law.)

If a controlling shareholder or de facto controller infringes the lawful rights and interests of the company, causing loss to the company, a shareholder(s) of an LLC or a CLS who alone or jointly holds at least 1% of the company's shares for at least 180 consecutive days, can request the supervisory board (or supervisor(s), for an LLC without a supervisory board) to start court proceedings in respect of the infringement. If the supervisory board or supervisor(s) fails to start legal proceedings within 30 days from receipt of the request or, in urgent circumstances where failure to promptly start legal proceedings could cause irreparable harm to the company's interests, the shareholders have the right, in the interests of the company, to directly start court proceedings in their own name. (Article 189, 2023 Company Law.)

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