Analysis of Key Amendments under the New Company Law 2024

SPARKS PARTNERS

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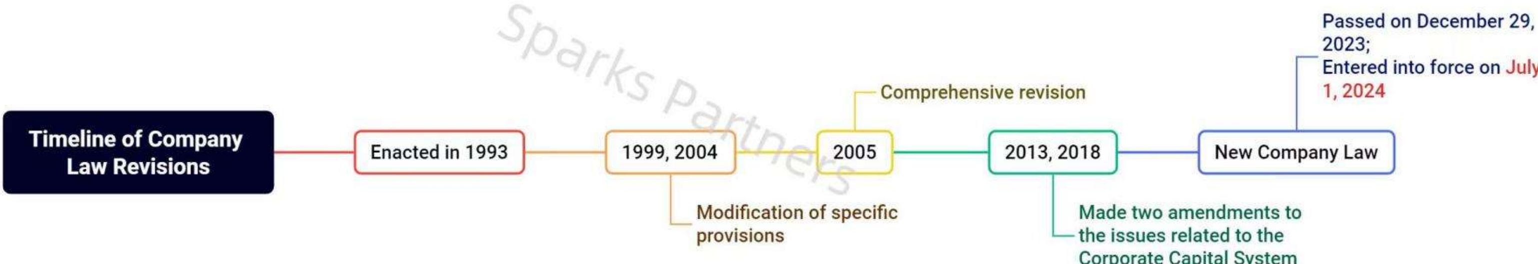
Overview of Amendments to the New Company Law

Introduction

On December 29, 2023, the 7th session of the Standing Committee of the 14th National People's Congress approved the amendment of the Company Law. The new Company Law will come into effect on July 1, 2024. This amendment is the sixth revision since the enactment of the "Company Law" in 1993 and is considered the most substantial revision thus far (the following picture is the timeline of the Company Law revisions).



Revision Background：

In relation to the existing Company Law (referred to as the "Current Company Law") in China, due to its long period of enactment, many provisions and regulations can no longer adapt to the development and reforms of the present era, where some sections and clauses are relatively outdated and insufficient. Therefore, it is necessary to revise the Current Company Law to create a more favorable business environment, address the loopholes in the previous legislation, strengthen corporate governance, and provide more suitable legal frameworks and protections for businesses.

Overview of Amendments to the New Company Law:

This amendment specifies the following key changes (list is not exhaustive)

1. the maximum period for the subscribed capital to be paid in, being five years;
2. clarifies the system for maintaining capital by accelerating contribution deadlines,

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3. urging prompt payment of capital by the board of directors, and forfeiting shareholder rights;
4. strengthens the responsibilities and obligations of directors, supervisors, and senior management personnel;
5. optimizes company structure and corporate governance...

This article will provide explanations and discussions on some key amendments under the New Company Law.

Reference:

Answers from the spokesperson of the Legislative Affairs Commission of the Standing Committee of the National People's Congress to questions from journalists.

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Five Year Capital Contribution Rule under the New Company Law

1.Key Points Regarding the Change in the Maximum Five-Year Period for Capital Contributions in the New Company Law

(1) The new Company Law explicitly mandates that limited liability companies have a maximum capital contribution period of **five** years.

(2) For companies that **have already been established**, if the contribution period **exceeds the new statutory period**, it should **be gradually adjusted to a five-year capital contribution period**.

(3) In cases where the contribution period or amount is significantly **abnormal**, the registration authority **may require timely adjustments in accordance with the law**.

Sparks Tip： Maximum capital contribution period is five years. Existing companies are required to gradually adjust their contribution period to five years (with a transition period of three years as provided in the "Draft Opinions"). Please closely monitor the release of the final implementation rules.

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2.Revision Background

Revision Background

After undergoing revision in 2013, the implementation of the registered capital subscription registration system was officially carried out in 2014

The number of enterprise registrations surged significantly; effectively addressed issues such as excessively high market capital access thresholds, false capital contributions, and idle registered capital brought about by the paid-in registration system; stimulated market activity and brought about a scene of prosperity in the market

However, in practice, the lack of restrictions on the capital contribution amount and period has led to a series of issues such as "registered capital not reflecting the true company situation, blind setting of registered capital, and excessively long payment deadlines" caused by the subscribed capital registration system

To address this series of issues, the new Company Law has introduced a provision specifying a maximum capital subscription period of five years

This provision can to some extent serve as a constraint on the aforementioned issues, incentivising shareholders to make more rational determinations regarding their capital contribution obligations. It can also enhance the reference value of registered capital in assessing the company's qualifications and scale, increase transaction security, and protect the interests of creditors

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3.Different resolutions that enterprises may currently face under the new Capital Contributions rule

Classification of Situations

- **Companies established after July 1, 2024**
  - According to the new regulations, the subscribed capital must be fully paid within five years from the date of company establishment
  - During the establishment of a company, shareholders should have a certain level of planning or financial reserve and set the amount of capital contribution rationally under the assessment of operational requirements and investment risks.
- **Existing companies (previously established) before the implementation of the new law**
  - They will gradually adjust to the capital contribution period specified in the new law (transition period)
  - For existing companies, they can make subsequent choices based on specific circumstances
    - Companies that have sufficient capacity — Companies can choose to fully pay in the registered capital
    - "Shelf Companies" that have been inactive for an extended period — Companies can choose to be deregistered according to the statutory procedures
    - Companies that face pressure to fully contribute capital in the short term, and whose relevant business operations do not have a mandatory requirement for registered capital. — Companies should consider capital reduction upon obtaining proper legal and accounting advices to avoid illegal reduction of capital.
- **Companies with significantly abnormal capital contribution periods and amounts**
  - Adjustments need to be made under the legal requirements of the registration authority

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Note: Currently, there are various predictions and suggestions regarding the transitional period for existing companies to adjust to the newly prescribed capital contribution period. The document "Improving the Subscribed Capital Registration System and Creating a Credible and Orderly Business Environment" issued by the State Administration for Market Regulation mentions that it will "fully consider the complexity of the types of business entities, industry sectors, and other circumstances and study the establishment of a certain duration and relatively ample transitional period for existing companies." Additionally, the related "Draft for Soliciting Opinions" has been released. **However, the specific adjustment methods and timeframe for the transitional period for existing companies will only be known after the relevant implementation measures and final documents are issued. Enterprises should closely monitor the promulgation of relevant detailed rules and make preparations in advance.**

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Relevant Terms – Comparison Table on Registered Capital:

Current Company Law	New Company Law
Article 26: The registered capital of a limited liability company shall be the total amount of capital subscribed by all shareholders as registered with the company registration authority. If laws, administrative regulations, or decisions of the State Council have separate provisions regarding the actual paid-in registered capital and the minimum limit of registered capital for limited liability companies, those provisions shall apply.	Article 47: The registered capital of a limited liability company shall be the total amount of capital subscribed by all shareholders as registered with the company registration authority. The subscribed capital by all shareholders shall be fully paid within five years from the date of company establishment, as stipulated in the company's articles of association. If laws, administrative regulations, or decisions of the State Council have separate provisions regarding the actual paid-in registered capital and the minimum limit of registered capital, and the capital contribution period for limited liability companies, those provisions shall apply.
Article 218: This Law shall come into effect on January 1, 2006.	Article 266: This Law shall come into effect on July 1, 2024. For companies that were established before the implementation of this Law and whose capital contribution period exceeds the period prescribed in this Law, unless otherwise provided by laws, administrative regulations, or the State Council, they shall gradually adjust their capital contribution period within the period prescribed in this Law. In cases where the capital contribution period or amount is significantly abnormal, the company registration authority may request timely adjustments in accordance with the law. The specific implementation measures shall be prescribed by the State Council.

Reference:

"*Reversion of Registered Capital to Actual Capital Contribution System: Why the New Company Law is Adjusted Accordingly?*" - Beijing Business Daily
"*Comparative Analysis of the 2018 Company Law and the 2023 Company Law*" - Li Jianwei
"*Existing Companies Can Achieve Smooth Transition under the New Company Law*" - China Economic Net
"*Amendment of the New Company Law: Hundreds of Companies Announce Capital Reduction, with Registered Capital Reduced from 300 million Yuan to 35 million Yuan*" - Red Star Capital Bureau

Actual Capital Contribution, Capital Reduction and Deregistration

1.Actual Capital Contribution

In addition to the traditional forms of capital contribution such as currency, assets, and intellectual property rights, the new Company Law incorporates provisions from the "Detailed Rules for the Implementation of the Regulations on the Administration of Market Entities", explicitly stating that shareholders of limited liability companies can contribute capital in the form of **equity and debenture**. This point is worth noting for those interested in establishing new companies or existing companies that require actual capital contribution.

2. Capital Reduction

1) Requirements for pro rata capital reduction:

(1) In principle, a company shall reduce its registered capital proportionally according to the contributions made by shareholders or the proportion of their shareholdings.

(2) This requirement does not apply if there are other provisions in the law, an agreement among all shareholders of a limited liability company, or provisions in the articles of association.

2) The simplified capital reduction (formal capital reduction) system is clarified, which allows for the offsetting of losses through capital reduction when a company still has losses after using its accumulation fund to cover them. This type of capital reduction does not require individual notification to creditors, nor does it require the repayment of debts or the provision of guarantees upon creditors' request (because the formal reduction does not result in a decrease in the company's assets). However, there are certain **limitations** to this capital reduction:

(1) It shall not be distributed to shareholders, nor shall it exempt shareholders from their obligations to contribute capital or pay for shares.

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(2) Profits shall not be distributed until the cumulative amount of the legal accumulation fund and optional accumulation fund reaches fifty percent of the company's registered capital.

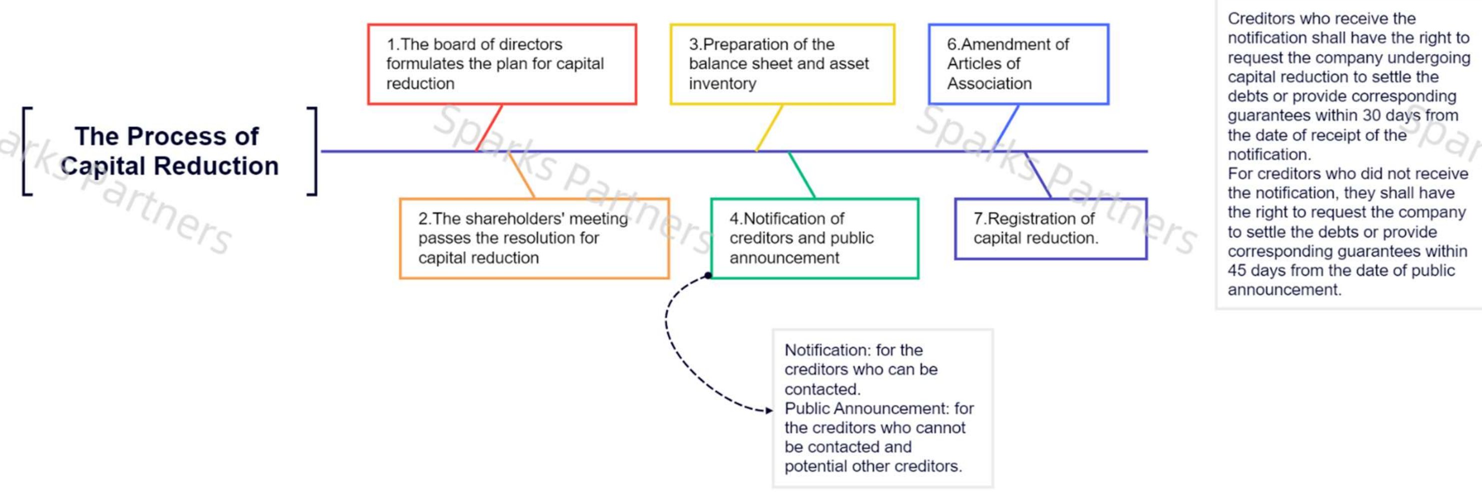
Note: According to the current provisions of the new Company Law, this capital reduction provision only applies to **enterprises that still have losses after using accumulation funds to cover them**.

3) Civil Liability for Illegal Capital Reduction is Clearly Specified:

(1) Shareholders shall **refund the funds** they have received, and the reduction or exemption of shareholders' contributions **shall be restored to their original state**.

(2) **Shareholders, as well as directors, supervisors, and senior management personnel** who bear responsibility for causing losses to the company, **shall be held liable for compensation**.

If a company needs to reduce its capital due to excessive registered capital and is unable to make the actual payment within a short period of time, it would still be considered a substantial capital reduction and would not be eligible for the simplified capital reduction provisions introduced in the new Company Law mentioned above. Currently, the following procedures are required for substantial capital reduction:



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Note: As shareholders of existing companies, it is necessary to plan ahead for a lawful capital reduction scheme if the registered capital is excessive and there is significant pressure to make actual payments. Especially considering the significant increase in the number of companies undergoing capital reduction after the formal implementation of the new Company Law, as well as the uncertainty surrounding the specific implementation rules that have yet to be issued, companies in need of capital reduction should start preparing as soon as possible. However, **it is important to consider their own circumstances and business operations in order to carry out a compliant and lawful capital reduction. Blindly following the trend should be avoided**.

Sparks Tip:

Companies should consider their own circumstances. If a company faces financial pressure, it may choose to reduce capital. If a company is no longer operational, it may choose to deregister. However, it is important to ensure legality and compliance in these actions.

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3. Deregistration

1) In conjunction with other relevant legal provisions, provisions for simplified deregistration have been added.

Simplified Deregistration	
Premise	The company has not incurred any debts during its existence, or all debts have been fully settled (subject to a commitment from all shareholders).
Procedure	By publishing a notice on the National Enterprise Credit Information Publicity System for a minimum of 20 days, if there are no objections, the company can apply for deregistration with the company registration authority within 20 days.
Shareholders' Liability	After the company is deregistered through the simplified procedure, if shareholders fail to fulfill their commitments regarding the absence of debts incurred during the existence of the company or the full settlement of all debts, they shall bear joint liability for the debts prior to the deregistration.

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2)The introduction of the compulsory deregistration system has been added, which helps eliminate a large number of "Shelf Companies" that exist in name only but are non-operational in the market.

Compulsory Deregistration	
Target Audience	Companies whose business licenses have been revoked, ordered to cease operations, or have been cancelled, and have failed to apply for deregistration with the company registration authority for three years
The Authority responsible for Compulsory Deregistration	The company registration authority
Procedure	After publishing a notice on the National Enterprise Credit Information Publicity System for a minimum of 60 days, if there are no objections, compulsory deregistration can be carried out

The compulsory deregistration does not affect the liability of the original company shareholders or liquidation obligors.

Note: For some existing companies that are no longer operational or cannot sustain their operations, they may choose to deregister. However, it is important to still adhere to the statutory conditions and procedures for deregistration, as failure to do so may result in serious consequences.

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Relevant Terms:

Actual Capital Contribution – Comparison Table

Current Company Law	**New Company Law**
Article 48: Shareholders may make capital contributions in the form of monetary assets, as well as non-monetary assets such as tangible assets, intellectual property rights, and land-use rights, which can be evaluated in monetary terms and legally transferable. However, assets that are prohibited by laws and administrative regulations from being used as capital contributions shall be excluded. Non-monetary assets used as capital contributions shall be evaluated for their value and verified for their existence, and the valuation shall not be overestimated or underestimated. If there are provisions regarding the evaluation of the value in laws and administrative regulations, those provisions shall prevail.	Article 48: Shareholders may make capital contributions in the form of monetary assets, as well as non-monetary assets such as tangible assets, intellectual property rights, land-use rights, equity, and debt rights, which can be evaluated in monetary terms and legally transferable. However, assets that are prohibited by laws and administrative regulations from being used as capital contributions shall be excluded. Non-monetary assets used as capital contributions shall be evaluated for their value and verified for their existence, and the valuation shall not be overestimated or underestimated. If there are provisions regarding the evaluation of the value in laws and administrative regulations, those provisions shall prevail.

Capital Reduction – Comparison Table

Current Company Law	**New Company Law**
Article 177: When a company ~~needs~~ to reduce its registered capital, it ~~must~~ prepare a balance sheet and a list of assets and liabilities. The company shall notify creditors within ten days from the date of the resolution to reduce the registered capital, and shall publish a notice in a newspaper within thirty days. Creditors who receive the notification shall have the right to request the company to settle the debts or provide corresponding guarantees within thirty days from the date of receipt of the notification. For creditors who did not receive the notification, they shall have the right to request the company to settle the debts or provide corresponding	Article 224: When a company reduces its registered capital, it shall prepare a balance sheet and a list of assets and liabilities. The company shall notify creditors within ten days from the date of the resolution to reduce the registered capital at the shareholders' meeting, and shall publish a notice in a newspaper or on the National Enterprise Credit Information Publicity System within thirty days. Creditors who receive the notification shall have the right to request the company to settle the debts or provide corresponding guarantees within thirty days from the date of receipt of the notification. For creditors who did not receive the notification, they shall have the right to request the company to settle the debts or provide corresponding guarantees within forty-five days from the date of the public announcement. When a company reduces its registered capital, it shall reduce

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guarantees within forty-five days from the date of the public announcement.	the capital contribution or shares proportionately according to the shareholders' contributions or shareholding ratios, except as otherwise provided by law, agreed upon by all shareholders of a limited liability company, or specified in the articles of association of a stock corporation.
	Article 225: If a company still incurs losses after making up for the losses in accordance with the provisions of Paragraph 2 of Article 214, it may reduce its registered capital to make up for the losses. When reducing the registered capital to make up for the losses, the company shall not distribute profits to shareholders, nor exempt shareholders from their obligation to contribute capital or pay for shares. When reducing the registered capital in accordance with the preceding paragraph, the provisions of the second paragraph of the preceding article shall not apply. However, the company shall publish a notice in a newspaper or on the National Enterprise Credit Information Publicity System within thirty days from the date of the resolution to reduce the registered capital at the shareholders' meeting. After reducing the registered capital in accordance with the preceding two paragraphs, the company shall not distribute profits until the cumulative amount of legal accumulation fund and optional accumulation fund reaches fifty percent of the company's registered capital. *(Note: Article 214, Paragraph 2: When using accumulation fund to make up for the company's losses, optional accumulation fund and legal accumulation fund shall be used first; if the losses cannot be fully offset, capital accumulation fund may be used as prescribed.)*
	Article 226: In the event of a violation of the provisions of this law regarding the registered capital reduction, shareholders shall be required to return any funds received, and any reduction in shareholders' contributions shall be restored to its original state. Shareholders, as well as directors, supervisors, and senior management personnels who bear responsibilities and have caused losses to the company, shall be held liable for compensation.

Deregistration – Comparison Table

Current Company Law	New Company Law
	Article 240:

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	If a company has not incurred any debts during its existence, or has fully settled all debts, and with the commitment of all shareholders, it may apply for deregistration through a simplified procedure as prescribed. When applying for deregistration through a simplified procedure, the company shall publish a notice through the National Enterprise Credit Information Publicity System, with a notice period of not less than twenty days. After the expiration of the notice period and in the absence of any objections, the company may apply for deregistration with the company registration authority within twenty days. If shareholders provide false commitments regarding the content stipulated in the first paragraph of this article during the deregistration process through a simplified procedure, they shall bear joint liability for the debts incurred prior to the deregistration.
	Article 241: If a company has its business license revoked, is ordered to close, or is cancelled, and fails to apply for deregistration with the company registration authority for a period of three years, the company registration authority may publish a notice through the National Enterprise Credit Information Publicity System, with a notice period of not less than sixty days. After the expiration of the notice period and in the absence of any objections, the company registration authority may proceed with the deregistration of the company. When deregistering a company in accordance with the preceding paragraph, the liabilities of the original shareholders and the persons responsible for liquidation shall not be affected.

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The Obligation of the Board of Directors to Demand Payment and the System of Disqualification of Shareholders

I. Duty of Enforcement

Currently, Article 13, Clause 4 of the Company Law only stipulates that directors who fail to fulfill their duty of enforcing capital contributions during the capital increase stage shall bear corresponding responsibilities. The recent amendment formally expands the duty of enforcement by directors from the "capital increase stage" to the entire process after the establishment of the company.

1.1 How to enforce capital contributions?

(1) Entity: Board of Directors (If there is no board of directors, the duty shall be fulfilled by the directors themselves; there is no "executive director" anymore under the new Company Law).

(2) Process: The board of directors/director shall issues a written notice of enforcement to the respective shareholders on behalf of the company. Therefore, the issuing entity of the notice is still the company itself rather than the board of directors/director.

> **Sparks Tip：** If the shareholder fails to pay the registered capital on time, the director shall have the obligation to enforce capital contribution.

1.2 Under what circumstances does director bear responsibility for failure to enforce?

(1) Legal Liability: According to Article 51, Clause 2 of the new Company Law, directors who fail to fulfill the obligations (i.e., the duty of enforcing capital contributions) in a timely manner and thereby cause losses to the company shall be liable for compensation.

(2) Practical Elements: Based on relevant precedents, directors are required to bear

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legal responsibilities when the following elements are met：

a) Directors' failure to fulfill the duty of enforcing capital contributions;

b) Directors' fault;

c) Company's actual losses; and

d) Causal relationship between the losses and the failure to fulfill the duty.

1.3 What kind of liability is imposed?

The recent amendment does not explicitly specify the nature and scope of the liability that directors need to bear. It is possible that further clarification may be provided through judicial interpretations.

II. Disqualification System

The disqualification system originates from the "forfeiture of shares" system in the Anglo-American corporate law system, which refers to the confiscation of shares by the company's directors when shareholders fail to make the required capital contributions within the specified period. The disqualification system can result in the deprivation of shareholders' equity and have a significant impact on their interests. Therefore, according to the provisions of the new Company Law, the application of the disqualification system must meet the following requirements:

Sparks Tip： If the shareholder fails to contribute the registered capital within the prescribed period, they may face the risk of losing their shareholder rights after being notified and urged.

- It can only be applied to shareholders who fail to make contributions in full and on time.
- Before issuing a disqualification notice, the board of directors must demand payment from the shareholder and provide a grace period of not less than 60 days. Only when the grace period expires and the shareholder still fails to fulfill the

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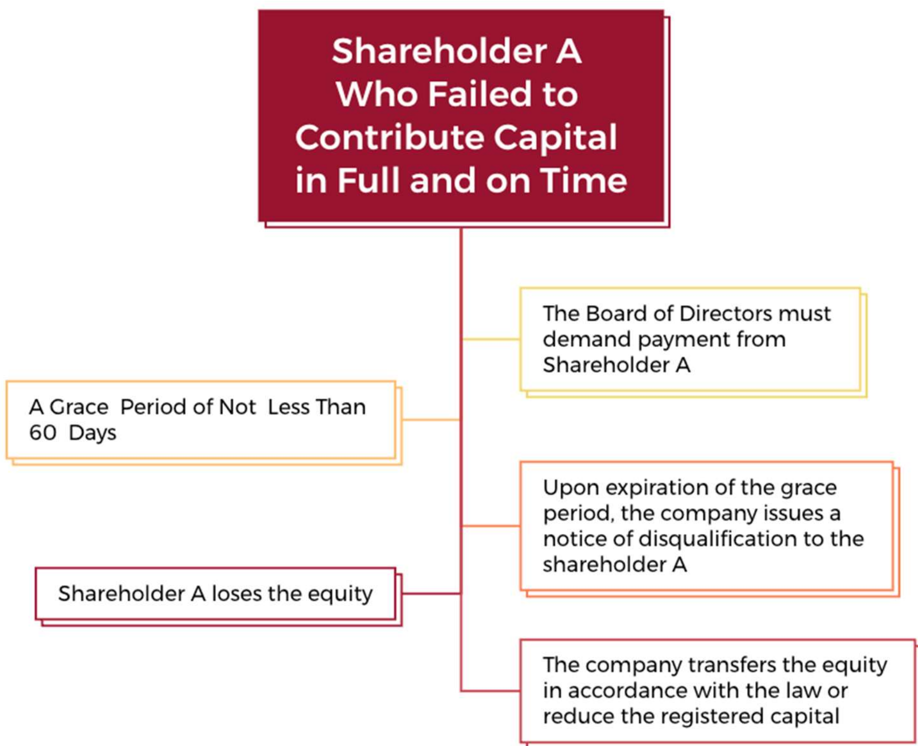
contribution obligation can the company issue a disqualification notice.

- Consequences of disqualification: After the shareholder loses their equity, they should transfer the shares in accordance with the law or reduce the registered capital accordingly. If the shares are not transferred or the reduction of registered capital is not completed within six months, other shareholders of the company should make the corresponding contributions in proportion to their capital contributions.
- Remedies for disqualification: The new Company Law stipulates that if a shareholder has objections to the disqualification, they should file a lawsuit with the people's court within (30) thirty days from the date of receiving the disqualification notice.



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III. Recommendations

3.1 Recommendations for Shareholders

(1) Carefully determine the registered capital and fulfill the contribution obligations promptly

- On the one hand, it is recommended that shareholders carefully determine the registered capital of the company to avoid the risks of defective contributions due to insufficient assets.
- On the other hand, it is advisable for shareholders to reasonably stipulate the contribution deadline in the company's articles of association (not exceeding five years from the establishment of the company), in order to alleviate the pressure of contributions. Once the contribution obligations are determined, shareholders are advised to strictly comply with the provisions of the new Company Law, other relevant laws and regulations, and the company's articles of association to fulfill their contribution obligations in a timely and full manner.

(2) Dispose of disqualified shares promptly

According to the requirements of the new Company Law, if the company fails to transfer or reduce the disqualified shares within a six-month period, the shareholder has an obligation to make the corresponding contributions in proportion to their capital contributions. To avoid triggering this provision, it is recommended that shareholders promptly dispose of disqualified shares.

(3) Initiate legal proceedings for recourse after disqualification:

As mentioned in the first part of this article, shareholders who have been disqualified can seek legal remedies through litigation, but there are time limitations. Therefore, for disqualified shareholders who have objections to the disqualification, it is recommended that they initiate legal proceedings in a timely manner to seek recourse and avoid losing their rights due to the expiration of the time limit.

3.2 Recommendations for Directors

(1) Fulfill verification and demand obligations in a timely manner and retain relevant evidence.

As mentioned above, the new Company Law assigns the obligation of verifying and demanding the shareholder's contributions to the directors of the company and stipulates the liability for compensation if the directors fail to fulfill their obligations in a timely manner. Therefore, it is recommended that directors of companies fulfill their obligations of verification and demand in a timely manner and retain relevant evidence, such as delivery records and text message records.

(2) Convene board meetings in accordance with the Company Law and the articles of association, and issue disqualification notices based on board resolutions

According to the procedure for shareholder disqualification stipulated in the new Company Law, it is important for directors to follow the proper procedure when issuing disqualification notices. Directors should convene board meetings in accordance with the Company Law and the company's articles of association to discuss and pass resolutions related to shareholder disqualification. It is advisable to document the board resolutions and keep records of the discussions and decisions made during the board meetings.

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Relevant Terms-Comparison Table on Directors Right to Enforce:

Current Company Law	**New Company Law**
Article 147(Obligation to enforce payment): Directors, supervisors, and senior executives shall comply with laws, administrative regulations, and the company's articles of association, and shall bear the fiduciary duty and diligence duty to the company. "Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (III)" Article 13, Paragraph 4: If a shareholder fails to fulfill or fully fulfill the capital contribution obligation when increasing capital of the company, the plaintiff who files a lawsuit in accordance with the provisions of the first or second paragraph of this article and requests the directors or senior executives responsible for the insufficient capital contribution to fulfill their obligations as stipulated in Article 147, Paragraph 1 of the Company Law shall be supported by the people's court. After the directors or senior executives assume liability, they may seek compensation from the defendant shareholder.	Article 51**(Obligation to enforce payment)**: After the establishment of a limited liability company, the board of directors should verify the capital contributions of the shareholders. If it is discovered that a shareholder has not made the required contribution as stipulated in the company's articles of association, the company should issue a written demand notice to the shareholder to urge the contribution. If the obligation specified in the preceding paragraph is not fulfilled in a timely manner and causes losses to the company, the responsible director shall bear liability for compensation.
Article 17 of the "Provisions of the Supreme People's Court on Several Issues concerning the Application of the Company Law of the People's Republic of China (III) （Disqualification System）": If a shareholder of a limited liability company fails to fulfill their capital contribution obligation or withdraws the entire contribution, and after being urged by the company to make payment or return the contribution, they still fail to do so within a reasonable period, the company may, through a shareholder meeting resolution, terminate the shareholder's qualification. If the shareholder requests the invalidation of the termination action, the people's court will not support it.	Article 52 **（Disqualification System）**: If a shareholder fails to make the contribution on the date specified in the company's articles of association, the company, in accordance with the provisions of the preceding paragraph, may include a grace period for the contribution in the written demand notice, which shall not be less than 60 days from the date of issuing the demand notice. If the shareholder still fails to fulfill the contribution obligation after the grace period, the company, through a board of directors resolution, can issue a notice of disqualification to the shareholder in written form. From the date of issuing the notice, the shareholder loses their rights to the unpaid contribution. The forfeited shares should be transferred in accordance with the law or the registered capital should be correspondingly reduced and the shares cancelled. If the shares are not transferred or cancelled within six months, other shareholders of the company shall make the corresponding contributions in proportion to their capital contributions. If a shareholder disagrees with the disqualification, they should file a lawsuit with the people's court within 30 days from the date of receiving the notice of disqualification.

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The Accelerated Crystalisation of Shareholder Liability

1.Background of the Revision:

After the third revision of the "Company Law" in December 2013, there was no longer a limit on the initial amount and duration of shareholder contributions. The system of fully paid-in capital was established, granting benefits to shareholders with contribution deadlines. However, in practice, there were many cases where the company's assets were insufficient to repay debts before the expiration of the shareholder contribution period. Therefore, in 2019, the "Minutes of the Ninth National Court Civil and Commercial Trial Work Conference" explicitly stated two situations: "(1) in cases where the company is the executed party and the people's court has exhausted the enforcement measures but there is no property available for execution and bankruptcy reasons exist, but bankruptcy is not applied for; (2) after the company's debt is incurred, the company's shareholders' (general) meeting resolves or extends the deadline for shareholder contributions through other means." These two situations satisfy the requirements for accelerated crystalisation of shareholder liability. However, the above system of accelerating the crystalisation of shareholder liability is still based on the principle of fully paid-in capital and treats accelerated expiration as an exception to protect the interests of shareholders.

2. Highlights of the Revision:

In this revision of the "Company Law," a new Article 54 is added, which states: "*If a company is unable to repay its due debts, the company or the creditor whose debt has already matured has the right to demand that shareholders who have made subscribed contributions but have not reached the contribution deadline to make early payment of their contributions*." Based on the establishment of the maximum period for subscribed contributions, the system of accelerated crystalisation of shareholder

liability is formally established. As long as the condition of "the company is unable to repay its due debts" is met, both the company and the creditors have the right to demand the accelerated crystalisation of shareholder liability . Therefore, there is no longer a need to prove that the company clearly lacks the ability to repay, and the scope of application of the "accelerated expiration of contributions" is expanded. The court also does not need to examine the company's balance sheet and make a substantive judgment on the company's ability to repay. As long as the company is unable to repay its mature debts, the creditor has the right to claim that the shareholder assumes joint liability for the unpaid debts of the company within the subscribed contribution range. This greatly reduces the difficulty for creditors to realize their rights.

Sparks Tip: If a company is unable to repay its due debts, the company or the creditor whose debt has already matured has the right to demand that shareholders who have made subscribed contributions but have not reached the contribution deadline to make early payment of their contributions.

3. Practical Guidelines:

After July 1, 2024, in the event that a company is unable to repay its due debts, the creditors with established claims against the company can directly demand that shareholders who have not reached the contribution deadline to meet their contributions obligation earlier in accordance with Article 54. This provision provides a new legal recourse for creditors to assert their claims by accelerating the expiration of the contribution deadline. Creditors can formulate different litigation strategies depending on the circumstances and stages of the main debt litigation. Conversely, shareholders of the company should fulfill their contribution obligations in a timely manner while retaining remittance vouchers, delivery certificates, capital verification reports, and other contribution evidence to respond to the company's and creditors' claims for liability.

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Relevant Terms-Comparison Table (Accelerated Crystalisation):

Enterprise Bankruptcy Law" (2006)	Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (II)" (2008)	Summary of the National Court Civil and Commercial Trial Work Conference" (2019)	**Company Law" (Revised in 2023)**
Article 35: After the people's court accepts a bankruptcy application, if the contributors of the debtor have not fully fulfilled their contribution obligations, the administrator shall request the contributors to pay the subscribed contributions without being limited by the contribution deadline.	Article 22: When a company is dissolved, the unpaid contributions of shareholders shall be treated as liquidation assets. Unpaid contributions of shareholders include overdue contributions and contributions that have not reached the payment deadline in accordance with the provisions of Article 26 and Article 81 of the Company Law. When the company's assets are insufficient to repay its debts, if a creditor claims against the shareholders who have not paid their contributions and the other shareholders or initiators of the company within the scope of unpaid contributions for joint and several liability for the company's debts, the people's court shall support it according to law.	6.[Acceleration of Shareholders' Contributions] Under the system of registered capital contribution, shareholders are entitled to enjoy the benefits of the contribution period. If a creditor requests shareholders whose contribution period has not yet arrived to assume additional compensation liability for the company's inability to repay the due debts, the people's court shall not support it. However, the following situations are exceptions: (1) In cases where the company is the executed party, the people's court has exhausted execution measures and there is no property available for execution, and the conditions for bankruptcy are met, but bankruptcy is not applied for; (2) After the company's debts are incurred, the shareholders' (general) meeting of the company resolves or extends the shareholders' contribution period in other ways.	Article 54: If a company is unable to repay its due debts, the company or the creditors of the due debts have the right to request shareholders who have subscribed but not yet reached the contribution period to make early contributions.

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Supervisor/Supervisory Board under the New Company Law

1. The new Company Law stipulates situations where a limited liability company may be exempt from appointing supervisors:

(1) By establishing an **audit committee**[1] **within the board of directors composed of directors**, which exercises the functions of the supervisory board, a supervisor/supervisory board may be omitted.

(2) **Small-scale** or limited liability companies **with a small number of shareholders** may, with unanimous consent from all shareholders, choose not to establish a supervisor/supervisory board.

Sparks Tip:

Supervisors are no longer mandatory for limited liability companies.

Since the establishment of the supervisory system in corporate governance under the Current Company Law, the majority of supervisors have been unable to effectively fulfill the supervisory role as intended by the legislation. This is primarily due to their lack of independence due to constraints imposed by controlling shareholders and their limited involvement in the management and operation of the company, making it difficult for them to exercise effective supervision and ongoing monitoring. As a result, their intended role as a supervisory body is practically non-existent and amounts to a mere formality.

The change regarding the necessity of establishing supervisors/supervisory boards grants companies the autonomy to choose their governance structure, allowing them to opt for a single-tier structure (with only a board of directors and no supervisory

[1] The new Company Law currently does not impose requirements or regulations on the number of members, procedures, and voting methods of the audit committee in a limited liability company. Specific details can be stipulated in the company's articles of association.

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board) based on their respective circumstances, rather than the previously fixed dual-tier structure (with both a board of directors and a supervisory board). This streamlines the governance framework and enhances the flexibility of corporate governance systems.

(**Note:** For joint stock limited company, there have also been changes regarding the establishment of supervisory board, allowing small-scale or companies with a small number of shareholders to establish a single supervisor instead of a compulsory supervisory board.)

2.The supervisor/supervisory board has the authority to require the board of directors and senior management personnel to submit reports on the performance of their duties under the New Company Law.

This change to some extent expands the powers of the supervisors. It also enhances the "presence" of supervisors and brings about some changes to the current situation where supervisors are often considered ineffective.

3.The Company Law clarifies that the voting mechanism of the supervisory board requires a majority of "all supervisors" and explicitly states that each supervisor has one vote.

Under the current Company Law, it is only stipulated that supervisory board resolutions should be passed by a majority of the supervisors, without specifying whether it refers to “all supervisors” or only “those present at the meeting”. The new Company Law provides clarity on this issue to avoid ambiguity.

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Relevant Terms – Comparison Table on Supervisor:

Current Company Law	**New Company Law**
	Article 69 A limited liability company may establish an audit committee composed of directors of the board of directors in accordance with the company's bylaw which exercises the functions of the board of supervisors specified in this Law, and is not required to have a board of supervisors or supervisors. Employee representatives who are members of the company's board of directors may serve as members of the audit committee.
Article 51 A limited liability company may set up a board of supervisors, ~~which shall be composed of at least 3 persons. For a limited liability company in which there is a relatively small number of shareholders or which is relatively small in scale, it may have 1 or 2 supervisors and does not have to establish a board of supervisors.~~ The board of supervisors shall include shareholders' representatives and representatives of the employees' of the company at an appropriate ratio to be specifically prescribed in the bylaw. The employees' representatives who are to serve as members of the board of supervisors shall be democratically elected by the employees of the company through the assembly of the employees' representatives, or employees' assembly or by any other means. The board of supervisors shall have one chairman, who shall be elected by half or more of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meetings of the board of supervisors. If the chairman of supervisors is unable or fails to perform his duties, the supervisor recommended by half or more of the supervisors shall convene and preside over the meetings of the board of supervisors. No director or senior manager may concurrently serve as a supervisor.	Article 76 A limited liability company shall have a board of supervisors, except as otherwise provided for in Articles 69 and 83 of this Law. The board of supervisors shall consist of three or more members. The members of the board of supervisors shall include representatives of shareholders and an appropriate percentage of representatives of the company's employees. The percentage of the representatives of employees shall account for no less than 1/3 of all the supervisors, but the concrete percentage shall be specified in the bylaw. The representatives of employees who serve as members of the board of supervisors shall be democratically elected through the assembly of representatives of the company's employees, the shareholders' assembly or by other means. The board of supervisors shall have one chairman, who shall be elected by a majority of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meetings of the board of supervisors. If the chairman of supervisors is unable or fails to perform his duties, the supervisor elected by a majority of the supervisors shall convene and preside over the meetings of the board of supervisors. No director or senior manager may concurrently act as a supervisor.
Article 150 Paragraph 2 The directors and senior managers shall faithfully offer relevant information and materials to the board of	Article 80 The board of supervisors may require directors and senior managers to submit reports on the performance

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supervisors ~~or the supervisor of a limited liability company that does not have a board of supervisors~~, none of them may impede the board of supervisors or supervisor from exercising their powers.	of their duties. Directors and senior managers shall truthfully provide relevant information and materials to the board of supervisors, and shall not obstruct the board of supervisors or supervisors in exercising their functions.
Article 55 The board of supervisors shall hold meetings at least once a year. Any supervisors may propose to hold interim meetings of the board of supervisors. The discussion methods and voting procedures of the board of supervisors shall be specified in the bylaw unless it is otherwise provided by this Law. A resolution of the board of supervisors shall be approved by more than half of the supervisors. The board of supervisors shall scribe the minutes for the resolutions about the agenda and have the minutes signed by the supervisors in presence.	Article 81 The board of supervisors shall hold meetings at least once a year. Any supervisors may propose to hold interim meetings of the board of supervisors. The discussion methods and voting procedures of the board of supervisors shall be specified in the bylaw unless it is otherwise provided for by this Law. The resolution of the board of supervisors requires the approval of more than half of the members of board of supervisors. For the voting on a resolution of the board of supervisors, each supervisor shall have one vote only. The board of supervisors shall prepare minutes for the decisions about the matters discussed at the meeting, which shall be signed by the supervisors in presence.
Article 51 Paragraph 2 A limited liability company may set up a board of supervisors, which shall be composed of at least 3 persons. For a limited liability company in which there is a relatively small number of shareholders or which is relatively small in scale, it may have ~~1 or 2 supervisors~~ and does not have to establish a board of supervisors.	Article 83 A limited liability company that is small or has a small number of shareholders is not required to establish a board of supervisors, and may either have one supervisor who exercises the functions of the board of supervisors specified in this Law or have no supervisor with the unanimous consent of all shareholders.

Reference: *"Da Cheng Gong Lun" Thoughts on the Revision of the Supervisor System in Company Law*—Li Jianwei

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The Legal Representative under the New Company Law

I. Legal Representative under the Current "Company Law"

1.Basic Concept

(1) According to Article 61(1) of the Civil Code of the People's Republic of China, the legal representative of the company is the person who represents the company in engaging in civil activities in accordance with the law or the articles of association of the incorporation.

(2) According to Article 13 of the current "Company Law," The legal representative of a company shall also take the dual role as the chairman of the board of directors, executive director or manager according to the company's bylaw and shall be registered according to the law. Under the new "Company Law," The legal representative shall be the **director or manager** who represents the company in attending to company affairs in accordance with the company's bylaw. (details will be discussed below). Managers are classified as senior executives, indicating that the legal representative of a company also holds the position of a director or senior executive. Therefore, the regulations and articles of association that apply to directors and senior executives also apply to the legal representative.

2.Legal Obligations of the Legal Representative

(1)The legal consequences of civil activities performed by a legal representative in the name of the company shall be borne by the company.

This provision was previously only found in the Civil Code and is now clarified in the new "Company Law" (details will be discussed below).

(2) Obligation of Loyalty and Diligence

According to Article 147 of the current "Company Law," the legal representative, as a director or senior executive, must be loyal and diligent towards the company.

(3) Anti-Corruption and Bribery

According to Article 147 of the current "Company Law," the legal representative, as a

director or senior executive, is prohibited from accepting bribes or other illegal income and from embezzling company properties.

(4) Avoidance of Concurrent Positions

According to Article 51(4) of the current "Company Law," the legal representative, as a director or senior executive, is not allowed to concurrently serve as a supervisor.

(5) Non-damage to Company Interests

According to Article 21 of the current "Company Law," as a director or senior executive of the company, the legal representative is not allowed to injure the interests of the company by taking advantage of its business associations.

II. Changes of the Legal Representative under the New "Company Law"

1.Appointment, Resignation, and Changes of the Legal Representative

(1) Appointment of the Legal Representative

The new "Company Law" introduces a provision stating that the legal representative should "execute the affairs of the company on behalf of the company." Additionally, the qualification of the legal representative is amended from limiting the role to "chairman, executive director or manager" to "director or manager." This change serves two purposes. Firstly, it aligns with the provision in the new "Company Law" that allows companies without a board of directors to appoint a director to exercise the powers and functions of the board, eliminating the requirement for an executive director in such cases. Secondly, it expands the selection of legal representatives to any member of the board of directors who executes the affairs of the company on behalf of the company, rather than restricting it to the chairman of the board. This emphasizes the active involvement of legal representatives in the company's governance, discouraging a mere "titular" participation in corporate decision-making.

(2) Resignation of the Legal Representative

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The new "Company Law" explicitly states that the resignation of a director or manager is considered a simultaneous resignation of the legal representative. Recent cases involving the removal of the legal representative have shown that judges generally approach this issue with caution. Some judges consider it a matter of internal corporate governance and reject claims on the grounds that excessive interference should be avoided, while others reject claims on the grounds that there is still a connection between the legal representative and the company. This revision addresses the situations where companies refuse to process registration changes, thereby forcing resigned directors or managers to continue serving as legal representatives. Such situations expose the legal representative to potential litigation and liabilities. It also clarifies the responsibility of the company to determine a new legal representative within thirty days from the date of the legal representative's resignation.

Sparks Tip:

- The legal representative shall concurrently hold the position of director or manager.
- If the legal representative resigns from the position of director or manager, it shall be deemed as a simultaneous resignation from the position of legal representative.
- The application for registration of change of legal representative shall be signed by the new legal representative.

(3) Change of Legal Representative

The new Company Law clearly stipulates that the application for registration of change of legal representative shall be signed by the new legal representative. This provision aims to eliminate the issue where the outgoing legal representative fails to sign, causing a delay in the progress of the change. By requiring the new legal representative's signature on the registration materials, the new law provides clear guidance and avoids ambiguity in the process.

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2. Liability of the legal representative

Article 11 of the new "Company Law" absorbs Article 61 and Article 62 of the Civil Code, and draws additional provisions on the consequences of the legal representative's behavior, specifying the allocation of liabilities, the legal consequences of overstepping the authority, and corresponding internal recourses.

(1) **Allocation of liabilities:** The new "company law" clearly stipulates that if the legal representative engages in civil activities on behalf of the company, the legal consequences are borne by the company;

(2) **Legal consequences of exceeding authority:** The company restricts the authority of the legal representative through the articles of association and the resolution of the shareholders' meeting. If the legal representative acts beyond the scope of authority, whether the legal consequences of his civil activities on behalf of the company shall be borne by the company shall be judged according to the subjective state of the bona fide third party. If the third party is in good faith, i.e., the third party does not know or should not know that the legal representative has exceeded the authority, the commercial appearance based on the identity of the legal representative constitutes an apparent representation, and the legal consequences shall be borne by the company.

(3) **Internal recourse:** It is explicitly stipulated that if the legal representative's actions in the performance of their duties cause harm to others, the primary responsibility lies with the company. In the event of the legal representative's fault, the company may seek compensation in accordance with the provisions of the law or the company's articles of association. These provisions promote the supervision of the legal representative's standardised performance of their duties and provide a means for the company to seek recourse in cases of legal representative misconduct.

3.Verification of Shareholder Contributions by the Legal Representative

(1) The requirement is added that the shareholder contribution certificate should indicate the method of contribution, as well as the subscribed and paid-up amounts.

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This reflects the emphasis of the new “Company Law” on the company's capital.

(2) The provision is added that the shareholder contribution certificate must be signed by the legal representative. This requirement ensures that the legal representative takes responsibility for verifying and acknowledging the shareholder contributions, further enhancing the credibility and reliability of the contribution records.

Relevant Terms-Comparison Table on Legal Representative:

Current Company Law	New Company law
Article 13 The legal representative of a company shall, be assumed by the chairman of the board of directors, executive director or manager according to the company's bylaw and shall be registered according to law. If the legal representative of the company is changed, the company shall go through the formalities for modifying the registration.	Article 10 The legal representative of a company shall be the director or manager who represents the company in attending to company affairs in accordance with the company's bylaw. If a director serving as the legal representative or manager resigns, he shall be deemed to have resigned as the legal representative concurrently. If the legal representative resigns, the company shall determine a new legal representative within 30 days of resignation of the legal representative.
/	Article 11 The legal consequences of civil activities performed by a legal representative in the name of the company shall be borne by the company. Any restriction on the power of the legal representative imposed by the company's bylaw or shareholders' meeting shall not be set up against bona fide opposite parties. Where the legal representative causes damage to any other person in the performance of duties, the company shall assume civil liability for such damage. The company may, after assuming such civil liability, claim reimbursement from the legal representative at fault in accordance with the law or its bylaws.
Article 31 After the establishment of a limited liability company, each shareholder shall be issued a capital contribution certificate, which shall specify the following: (1) The name of the company; (2) The date of establishment of the company;	Article 55 After the formation of a limited liability company, each shareholder shall be issued a capital contribution certificate, specifying the following: (1) the company's name; (2) The date of formation of the company; (3) The company's registered capital;

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(3) The company's registered capital; (4) The name of the shareholder, the amount of his capital contribution, and the day when the capital contribution is made; and (5) The serial number and date of issuance of the capital contribution certificate. The capital contribution certificate shall bear the seal of the company.	(4) The name of the shareholder, the subscribed and paid-in capital contribution, the method of capital contribution, and the date of capital contribution; (5) The serial number and date of issuance of the capital contribution certificate. The capital contribution certificate shall be signed by the legal representative and sealed by the company.

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Changes in the Responsibilities and Obligations of Directors, Supervisors and Senior Management (Part 1)

1. The Obligation of Loyalty and Diligence of "Directors, Supervisors and Senior Management "

1)The core essence of the obligation of Loyalty and Diligence under the new Company Law.

2)In comparison to the current Company Law, which only provides general principles regarding the obligations of loyalty and diligence for directors, supervisors, and senior management without further detailed definition, the new Company Law has specified more details. It explicitly clarifies the core essence and defining standards of duties of loyalty and diligence, providing a stronger basis for judicial practices and enabling courts to make judgments based on better guidance. This also allows directors, supervisors, and senior management to have a more concrete understanding of the obligations of loyalty and diligence.

3) The new Company Law also specifies that the **controlling shareholder** and **the actual decision maker of a company**, even if they do not hold positions as directors of the company, are also required to abide by these obligations when they effectively carry out the company's affairs.

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In practice, many controlling shareholders or actual decision makers, despite not holding director positions, can intervene in the company's affairs due to their advantageous position within the company. This provision in the new Company Law strengthens the regulation and constraints on controlling shareholders and actual decision makers, serving to protect the interests of the company and minority shareholders.

Note:

Controlling shareholder refers to:

(1) A shareholder whose capital contribution accounts for more than 50% of the total registered capital of a limited liability company or who holds shares that represent more than 50% of the total share capital of a company limited by shares.

(2) A shareholder whose capital contribution or shareholding ratio is lower than 50%, but whose voting rights, based on the capital contribution or shares held, are sufficient to significantly influence the resolutions of the shareholders' meeting.

Actual controller（Actual decision maker） refers to a person who, through investment relations, agreements, or other arrangements, **has the practical ability to control the company's actions**.

Therefore, the key factor in determining whether someone is an actual controller is their ability to exercise practical control over the company's actions. The Company Law does not provide a clear definition or criteria for "the ability to exercise practical control over the company's actions". Specific definitions of the actual controller can only be found in regulations related to listed companies, such as the "Measures for the Administration of Listed Companies' Acquisition[2]". In practice, we can refer to these

[2] Article 84 of the Measures for the Administration of Listed Companies' Acquisition states the following:

In any of the following circumstances, a person shall be deemed to have control over a listed company:

(1) The investor holds more than 50% of the shares of the listed company as a controlling shareholder;

(2) The investor has the practical ability to exercise voting rights over more than 30% of the shares of the listed company;

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regulations when considering the specific circumstances, and assess and determine level of control based on whether there is a substantial impact on the resolutions of the shareholders' meeting, the decisions of the board of directors, the company's financial and operational decision-making.

2. The restriction on associated transactions involving "directors, supervisors, and senior management"

Article 182 of the new Company Law:

A director, supervisor, or senior management who directly or indirectly contracts or conducts a transaction with the company shall **report** to the board of directors or to the shareholders' meeting, and **seek approval by resolution of the board of directors or the shareholders' meeting** in accordance with the company's articles of association. If the close relatives of directors, supervisors, and senior management, or enterprises under direct or indirect control of directors, supervisors, senior management, or their close relatives, and affiliates in any other associated relationship with directors, supervisors, and senior management contract or conduct transactions with the company, the provisions of the preceding paragraph shall apply.

1)The scope of the restrictions on the subject of associated party transactions has been expanded.

The current Company Law only stipulates that directors and senior management shall not enter into contracts or engage in transactions with the company in violation of the articles of association or without the consent of the shareholders' meeting. The new Company Law, in addition to directors and senior management personnel, includes the

(3) The investor, through the exercise of voting rights over the shares it practically controls, can determine the appointment of more than half of the members of the board of directors of the listed company;

(4) The investor's exercise of voting rights over the shares it practically controls is sufficient to significantly influence resolutions of the general meeting of shareholders of the company;

(5) Other circumstances recognized by the China Securities Regulatory Commission.

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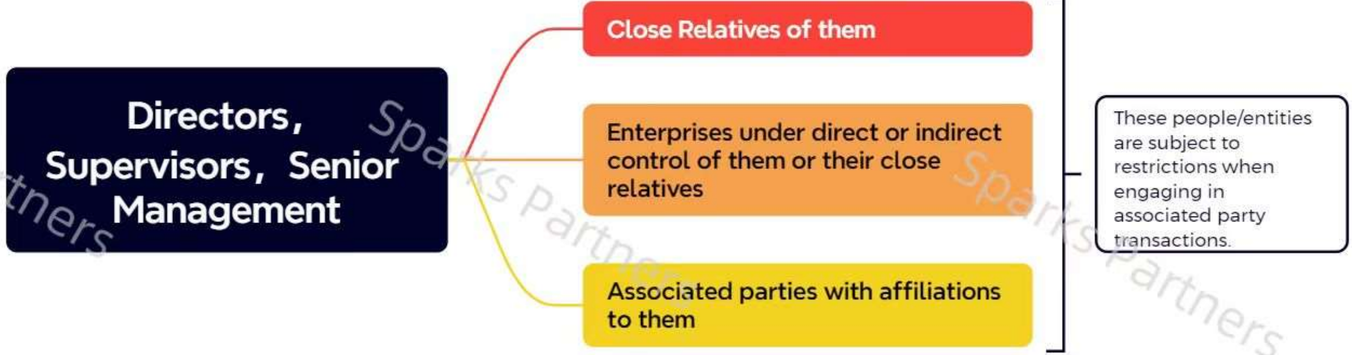
following subjects that are prohibited from conducting associated party transactions without proper authorization:

(1) Supervisors

(2)Close relatives of directors, supervisors, and senior management

(3) Enterprises under direct or indirect control of directors, supervisors, senior management, or their close relatives

(4) Associated parties with affiliations to directors, supervisors, and senior management



2) The reporting obligation of directors, supervisors, and senior management regarding related party transactions has been clarified. If a related party transaction is to be conducted, the relevant details of the transaction or contract should be reported to the shareholders' meeting or the board of directors.

3)The board of directors has been added as an approving authority for related party transactions.

The current Company Law only specifies that related party transactions must not violate the articles of association or be conducted without the consent of the

shareholders' meeting. However, the new Company Law includes the board of directors as an decision making body can approve associated party transactions, namely such transactions need to be approved by a resolution of the board of directors or shareholders' meeting in accordance with the provisions of the company's articles of association.

3.Prohibition on "Directors, Supervisors, and Senior management " seeking company business opportunities

1)The scope of the prohibition on seeking company business opportunities has been expanded.

Under the current Company Law, directors and senior management personnel are prohibited from using their positions for personal gain by seeking business opportunities belonging to the company. The new Company Law **extends this prohibition to include supervisors.**

2)Generally prohibited, but two **exceptions** where exemption from liability is allowed:

(1) Directors, supervisors, and senior management can utilize company business opportunities if they **report to the board of directors or shareholders' meeting** and **obtain approval through a resolution of the board of directors or shareholders' meeting** in accordance with the provisions of the company's articles of association. (Compared to the current Company Law, which only requires consent from the shareholders' meeting, the new Company Law expands the approving authority for utilising company business opportunities to either the shareholders' meeting or the board of directors.)

(2) If the company itself is prohibited from utilizing the business opportunity according to laws, regulations, or the company's articles of association, meaning no conflict of interest could arise, the directors, supervisors, and senior management are then allowed to utilise that business opportunity.

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4.Non-competition obligation of "Directors, Supervisors, and Senior management"

The non-competition obligation of directors, supervisors, and senior management, similar to the aforementioned related party transactions and seeking company business opportunities, also **includes supervisors within its regulatory scope**. This means that supervisors have increased responsibilities in practice. Additionally, if directors, supervisors, and senior management personnel wish to engage in businesses similar to those of the company they serve, they **need to report** to the board of directors or shareholders' meeting and **obtain approval through a resolution of the board of directors or shareholders' meeting**.

Sparks Tip:

The New Company Law includes supervisors within the scope of restrictions pertaining to associated party transactions, seeking company business opportunities, and non-competition obligations.

Relevant Terms – Comparison Table:

Current Company Law	New Company Law
Article 147, Paragraph 1 The directors, supervisors and senior management personnel shall comply with the laws, administrative regulations, and bylaw. They shall bear the obligations of fidelity and diligence to the company.	Article 179 The directors, supervisors and senior management personnel shall comply with the laws, administrative regulations, and bylaw. Article 180 Directors, supervisors, and senior management personnel shall have a duty of loyalty to the company, and take measures to avoid conflicts between their own interests and the interests of the company, and shall not use their powers to seek improper interests. Directors, supervisors, and senior management personnel shall have an obligation of diligence to the company, and exercise reasonable care that managers shall ordinarily exercise, in the best interests of the company in performing their duties. If a controlling shareholder or actual controller of the company does not serve as its director, but attends to

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	the company's affairs, the provisions of the first two paragraphs shall apply.
Article 148, Paragraph 1, Item 4 No director or senior management personnel may commit any of the following acts: (4) Entering a contract or trading with this company by violating the bylaw or without consent of the shareholders' meeting ~~or shareholders' assembly~~;	Article 182 A director, supervisor, or senior management personnel who directly or indirectly contracts or conducts a transaction with the company shall report to the board of directors or the shareholders' meeting on matters related to the contracting or conducting the transaction, and seek approval by resolution of the board of directors or the shareholders' meeting in accordance with the company's bylaw. If the close relatives of directors, supervisors, and senior management personnel, enterprises under direct or indirect control of directors, supervisors, senior management personnel, or their close relatives, and affiliates in any other affiliation relationship with directors, supervisors, and senior management personnel contract or conduct transactions with the company, the provisions of the preceding paragraph shall apply.
Article 148, Paragraph 1, Item 5 No director or senior management personnel may commit any of the following acts: (5) Without consent of the shareholders' meeting ~~or shareholders' assembly~~, seeking business opportunities that belong to the company for himself or any other persons by taking advantages of his powers, or operating similar business of the company for which he works for himself or for any other persons;	Article 183 A director, supervisor, or senior management personnel shall not take advantage of his position to take a business opportunity belonging to the company for himself or another person, except under any of the following circumstances: (1) He has reported to the board of directors or the shareholders' meeting and received approval by resolution of the board of directors or the shareholders' meeting according to the company's bylaw. (2) According to laws, administrative regulations, or the company's bylaw, the company is unable to take the business opportunity.
Article 148, Paragraph 1, Item 5 No director or senior management personnel may commit any of the following acts: (5) Without consent of the shareholders' meeting ~~or shareholders' assembly~~, seeking business opportunities that belong to the company for himself or any other persons by taking advantages of his powers, or operating similar business of the company for which he works for himself or for any other persons;	Article 184 A director, supervisor, or senior management personnel shall not conduct the same kind of business as the company on his own account or on the account of another person, without reporting to the board of directors or the shareholders' meeting, without approval by resolution of the board of directors or the shareholders' meeting according to the company's bylaw.

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Changes in the Responsibilities and Obligations of Directors, Supervisors and Senior Management (Part 2)

1.Avoidance Rules for Affiliated Directors

Under the current Company Law, it is only stipulated that directors of listed companies who have affiliations with matters subject to board resolutions are prohibited from exercising their voting rights. However, there are no corresponding statutory requirements regarding the avoidance of affiliated directors' voting rights in relation to matters subject to board resolutions in limited liability companies. Regarding associated party transactions under the current Company Law, the restriction is narrowly limited to directors and senior management who engage in such transactions without complying with the articles of association or obtaining approval from the shareholders' meeting.

The new Company Law draws on the provisions of the current Company Law from the regulations relating to listed companies and introduces avoidance rules for affiliated directors in limited liability companies. Specifically, **when the board of directors makes resolutions regarding associated party transactions, the utilisation of company business opportunities, or non-competition obligations**:

(1) the Affiliated directors shall not participate in the voting, and their voting rights shall not be counted towards the total voting rights.

(2) If the number of unrelated directors attending the board meeting is less than three, the matter shall be submitted for deliberation by the shareholders' meeting.

Sparks Tip:

Affiliated directors shall not participate in the vote, when the Board of Directors votes on associated party transactions, use of the Company's business opportunities, and non-competition matters.

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Note:

Affiliation (Associated relationship) refers to the relationship between the company's controlling shareholder, actual controller, directors, supervisors, senior management and enterprises controlled directly or indirectly by them, as well as other relationships that may result in a transfer of company interests. However, State-controlled enterprises cannot be considered to be related to each other merely because they are also State-controlled.

Affiliated directors can be understood as directors who have affiliations with the matters subject to the resolutions.

2.Responsibilities of Directors and Senior Management towards Third Parties

The current Company Law only stipulates that directors and senior management are liable to the company for damages caused by their performance of duties, without mentioning their liability for damages caused to third parties. The new Company Law clarifies for the first time the liability of directors and senior management towards third parties.

However, it is important to note that the following conditions must be met for directors and senior management to bear responsibility towards third parties:

(1) The subjects must be **directors or senior management**.

(2) The actions must be **performed in the execution of their duties**.

(3) They must exhibit **intentional or gross negligence** subjectively.

(4) The actions must **result in harm to the third party.**

3.Responsibilities of "Shadow Directors" and "Shadow Senior management （Executives）"

The concept of "shadow directors" originated from the UK Companies Act 1980 and refers to individuals who, although not officially appointed as directors, can still direct

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the actions of the company based on their "position" within the company. If they effectively exercise such control, they should bear the responsibilities.

The newly added Article 192 of the new Company Law has a similar connotation, stating that if controlling shareholders or actual controllers **instruct** directors or executives to engage in actions that harm the company or shareholder interests, they should bear joint liability with the directors and executives. Additionally, Article 192 of the new Company Law is also echoes the logic of Article 1196 of the Civil Code on joint infringement (whoever instigates or aids another person to commit an infringement shall be jointly and severally liable with the perpetrator).

This provision serves to regulate the behavior of controlling shareholders and actual controllers and increases their liability.

4.Director Liability Insurance System

The new Company Law provides that companies can purchase liability insurance to cover the compensation responsibilities of directors during their tenure for the performance of their duties. Further details regarding the implementation methods and coverage scope can be closely monitored through subsequent implementation regulations and provisions by major insurance companies.

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Relevant Terms – Comparison Table:

Current Company Law	New Company Law
	Article 185 When the board of directors resolves as to a matter specified in Articles 182 through 184 of this Law, an affiliated director shall not participate in the vote, and their voting rights shall not be counted in the total number of voting rights. If the number of unrelated directors in presence is less than three persons, the matter shall be submitted for deliberation at the shareholders' meeting.
	Article 191 Where directors and senior management cause damage to others by performing their duties, the company shall be liable for compensation; if directors and senior management are intent or grossly negligent, they shall also be liable for compensation.
	Article 192 Where the controlling shareholder or actual controller of a company instructs a director or senior management to engage in an act against the interests of the company or shareholders, the controlling shareholder or actual controller shall be jointly and severally liable with the director or senior management.
	Article 193 A company may purchase liability insurance for directors against liability for compensation arising from performance of the company's duties during the directors' term of office. After the company purchases liability insurance for directors or renews the insurance, the board of directors shall report to the shareholders' meeting on the insured amount, coverage, and premium rates, among others, of the liability insurance.

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New Changes in the Board of Directors under the New Company Law

1. Removal of maximum number of members on the board of directors

The new Company Law introduces a revision to the current provision concerning the number of members on the board of directors. The current Company Law stipulates that the board should consist of 'three to thirteen members,' whereas the new Company Law now states that the board should have 'three or more members.' Consequently, the new Company Law eliminates the maximum limit on the number of board members.

2. Improvement in the resignation and removal procedures of directors

The new Company Law introduces clear requirements for the resignation procedures of directors, including both voluntary resignation and involuntary removal. The following table highlights the newly amended clauses:

Situation of Departure	*Resignation by Director*	*Dismissal by the Company*
Mode of Departure	The director shall notify the company in writing	Resolution of shareholders dismisses the director
Effective Date of Departure	The date the company receives the notice	The date the shareholders make the resolution
Restrictive Conditions	If no reelection is timely carried out after the expiry of the term of office of the directors, or if the number of the members of the board of directors is less than the quorum due to the resignation of some directors from the board of directors prior to the expiry of their term of office, the original directors shall, before the newly elected directors assume their posts, perform the powers of the directors according to the laws, administrative regulations, as well as the bylaw.	Without justifiable reasons, if a director is dismissed before the expiration of their term, the director may request compensation from the company.

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The above provisions under the new Company Law incorporate the content of Judicial Interpretation V of the current Company Law pertaining to the dismissal of directors by shareholders. At a legislative level, it establishes that shareholders can dismiss directors without a necessary legitimate or reasonable justification. However, the new law also clarifies that directors have the right to request compensation from the company. The determination of the need for compensation and its reasonable amount takes into account various factors, such as the reasons for termination, remaining term, director's remuneration, and is guided by provisions of laws, administrative regulations, the company's articles of association, or contractual agreements.

3. Streamlining and expanding the authority of the board of directors

a. Streamlining of authority

The new Company Law eliminates the provision under the current Company Law that grants the board of directors the authority to formulate the annual financial budget and final accounts of the company. This change is aligned with the removal of the shareholders' authority to review and approve the company's annual financial budget and final accounts.

The objective of this change is to simplify the deliberation process concerning the company's annual financial budget and final accounts, thereby promoting greater autonomy in corporate governance.

b. Expansion of authority

(1) Increase in the resolution power for shareholders' disqualification

(2) Delegation of authority to managers

The new Company Law removes statutory limitations on the authority of managers and grants the board of directors and the company's articles of association the power to delegate authority to managers. This change reflects the legal recognition of corporate autonomy and flexibility in decision-making. However, due to the reduction of explicit legal provisions, it is

Sparks Tip：

The authority of the manager is granted by the directors and the company.

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important for the board of directors to consider practical factors when delegating authority to managers, including whether the authorization should be express or implied. In light of this, it is advisable for companies to further refine the provisions on the authority of managers in their articles of association, ensuring clarity and coherence in the delegation of powers.

(3) Internal restrictions on authority should not contravene bona fide third parties rights.

4. Changes in the rules for the establishment of the board of directors

a. Removal of executive directors

Under Article 75 of the new Company Law, small-scale or limited liability companies with a small number of shareholders are no longer required to establish a board of directors. Instead, they may have only one director who exercises the powers of the board of directors as stipulated under the Company Law. As a result, the term "executive director" is no longer used.

Sparks Tip:

The title of "executive director" will no longer be used.

b. Addition of rules for the establishment of an audit committee under the board of directors

The new Company Law introduces the audit committee system, which allows the audit committee to exercise the powers of the supervisory board or the supervisors. This system aims to strengthen the financial supervision mechanism of companies. Additionally, the new law permits employee directors to become members of the audit committee, enhancing the system of employee directors and improving their functions and status.

In recent years, cases of financial disputes in companies have highlighted the need for

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effective financial supervision to promptly discover and recover losses. The establishment of an audit committee composed of directors within the board of directors can facilitate efficient financial oversight and prevent majority shareholders from transferring company assets, thereby protecting the interests of the company and minority shareholders. However, the provisions regarding the audit committee are still somewhat unclear and generalized, requiring further refinement and clarification.

5.Refinement of rules for the board of directors' meeting procedures

Regarding attendance and voting at meetings, the current Company Law specifies that each director has one vote for the board of directors' meetings of limited liability companies. However, it does not explicitly define the required proportion or quorum for the board of directors' meetings. The new Company Law addresses this by stipulating that the board of directors' meetings should have a majority of the directors in attendance, and resolutions should be passed by a majority of the directors present. This requirement provides clarity on the quorum and voting procedures for board meetings.

Relevant Terms – Comparison Table:

Current Company Law	New Company Law
Article 44 The board of directors established by a limited liability company shall be composed of ~~3 up to 13 members unless it is otherwise provided by Article 51 of this Law.~~	Article 68 The board of directors of a limited liability company shall have three or more members, who may include a representative of the company's employees. The board of directors of a limited liability company which has 300 or more employees shall include representatives of the employees of the company, unless a board of supervisors has been established in accordance with the law and has representatives of the employees of the company. The representatives of the employees who serve as board directors shall be democratically elected through the assembly of the representatives of the employees, the assembly of employees, or other methods. The board of directors shall have one chairman and may have deputy chairmen. The appointment of the chairman

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	and deputy chairman shall be specified in the bylaw.
Article 46 The board of directors shall be responsible for the shareholders' meeting and exercise the following functions: (1) Convening shareholders' meetings and presenting reports thereto; (2) Implementing the resolutions made at the shareholders' meetings; (3) Determining the company's business and investment plans; ~~(4) Working out the company's annual financial budget plans and final account plans;~~ (5) Working out the company's profit distribution plans and loss recovery plans; (6) Working out the company's plans on the increase or reduction of registered capital, as well as on the issuance of corporate bonds; (7) Working out the company's plans on merger, split, change of the company form, or dissolution, etc.; (8) Making decisions on the establishment of the company's internal management departments; (9) Making decisions on hiring or dismissing the company's manager and his salary and compensation, and, according to the nomination of the manager, deciding on the hiring or dismissal of vice manager(s) and the persons in charge of finance as well as their salaries and compensations; (10) Working out the company's basic management system; and (11) Other functions as specified in the bylaw.	Article 67 A limited liability company shall establish a board of directors, subject to Article 75 of this Law. The board of directors shall exercise the following functions: (1) Convening shareholders' meetings and presenting reports thereto; (2) Implementing the resolutions made at the shareholders' meetings; (3) Determining the company's business and investment plans; (4) Working out the company's profit distribution plans and loss recovery plans; (5) Working out the company's plans on the increase or reduction of registered capital, as well as on the issuance of corporate bonds; (6) Working out the company's plans on merger, split, change of the company form, or dissolution, etc.; (7) Making decisions on the establishment of the company's internal management departments; (8) Making decisions on hiring or dismissing the company's manager and his salary and compensation, and, according to the nomination of the manager, deciding on the hiring or dismissal of vice manager(s) and the persons in charge of finance as well as their salaries and compensations; (9) Working out the company's basic management system; and (10) Other functions as specified in the company's bylaw or conferred by the shareholders' meeting. Any restriction on the power of the board of directors imposed by the company's bylaws or shareholders' meeting shall not be set up against bona fide opposite parties.
/	Article 52 When a shareholder fails to pay capital contribution as required by the company's bylaw, and the company issues a written demand for payment of capital contribution in accordance with paragraph 1 of the preceding article, it may specify a grace period for payment of capital contribution, which grace period shall not be less than 60 days from the date when the company issues the written

	demand. If a shareholder fails to perform the obligation of capital contribution after expiration of the grace period, the company may, under the resolution introduced by the board of directors, issue a notice of forfeiture to the shareholder in written form. The shareholder shall forfeit the equities with respect to which it has not paid the capital contribution, on the date of issuance of the notice of forfeiture. The equities forfeited in accordance with the provisions of the preceding paragraph shall be transferred in accordance with the law, or the registered capital shall be reduced accordingly, with the equities canceled; if no transfer or cancellation is made within six months, the other shareholders of the company shall pay the corresponding capital contribution in full in proportion to their capital contributions. If the shareholder challenges the forfeiture, it shall, within 30 days of receiving the notice of forfeiture, sue in the people's court.
Article 49 A limited liability company may have a manager, who shall be hired or dismissed upon decision of the board of directors. The manager shall be responsible for the board of directors ~~and shall exercise the following powers:~~ ~~(1)Taking charge of the management of the production and business operations of the company, organizing the implementation of the resolutions of the board of directors;~~ ~~(2)Organizing the execution of the company's annual business plans and investment plans;~~ ~~(3)Drafting plans on the establishment of the company's internal management departments;~~ ~~(4)Drafting the company's basic management system;~~ ~~(5)Formulating the company's specific rules and policies;~~ ~~(6)Proposing to hire or dismiss the company's vice manager(s) and the person in charge of finance;~~ ~~(7)Deciding on the hiring or dismissal of the persons-in-charge other than those who shall be decided by the board of directors; and~~ ~~(8)Other powers conferred by the board of~~	Article 74 A limited liability company may have a manager, who shall be hired or dismissed upon decision of the board of directors. The manager shall be responsible to the board of directors, and perform functions in accordance with the company's bylaw or under the authority of the board of directors. The manager attends the meetings of the board of directors as a non-voting representative.

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~~directors.~~ ~~If the bylaw provides otherwise for the powers of managers, the bylaw shall be followed.~~ ~~The manager attends the meetings of the board of directors as a non-voting representative.~~	
Article 50 For a limited liability company with a relatively small number of shareholders or for a relatively small limited liability company, it may have an executive director and no board of directors. The executive director may concurrently hold the post of the company's manger. ~~The powers of the executive director shall be specified in the bylaw.~~	Article 75 A limited liability company that is small or has a small number of shareholders is not required to establish a board of directors, and may have one director who exercises the functions of the board of directors as provided for in this Law. The director may concurrently hold the post of the company's manger.
Article 45 The term of office of the directors shall be provided for by the bylaw, but each term of office shall not exceed 3 years. The directors may, after the expiry of their term of office, hold a consecutive term upon re-election. If no reelection is timely carried out after the expiry of the term of office of the directors, or if the number of the members of the board of directors is less than the quorum due to the resignation of some directors from the board of directors prior to the expiry of their term of office, the original directors shall, before the newly elected directors assume their posts, perform the powers of the directors according to the laws, administrative regulations, as well as the bylaw.	Article 70 The term of office of the directors shall be provided for by the bylaw, but each term of office shall not exceed 3 years. The directors may, after the expiry of their term of office, hold a consecutive term upon re-election. If no reelection is timely carried out after the expiry of the term of office of the directors, or if the number of the members of the board of directors is less than the quorum due to the resignation of some directors from the board of directors prior to the expiry of their term of office, the original directors shall, before the newly elected directors assume their posts, perform the powers of the directors according to the laws, administrative regulations, as well as the bylaw. Where a director resigns, he shall notify the company in writing, and the resignation shall take effect on the day the company receives the notice, provided that if there is a circumstance specified in the preceding paragraph, the director shall continue to perform his powers.
/	Article 71 The shareholders' meeting may resolve to remove a director, with effect on the date of resolution. If a director is removed before expiration of his term of office without good reason, the director may request compensation from the company.

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