

Chapter 2

Companies Under Chinese Law

The structure of *Company Law* (revised in 2005), which was maintained in current Company Law (revised in 2013), represented an important text in the modernization process of Chinese company law. However, despite the innovation and the strive to adapt to international standards; several normative gaps are present, and this is especially evident where corporate governance is concerned.

The Company Law regulates two types of companies: Limited Liability Companies (LLC) and Joint Stock Companies (JSC); their incorporation, the functioning of their organs (board of shareholders, board of directors, board of supervisors) and to their operation¹ are regulated therein. Therefore, the word “company” refers to an entity established in the People’s Republic of China, as one of the aforementioned forms, and subject to the discipline of the Company Law.²

The first twenty-two articles of the Company Law, composing Chapter One (*General Provisions*), apply both to LLCs and to JSCs. In this Chapter, some features of “socialism with Chinese characteristics” are quite evident.³ The articles in Chapter Two and Three apply to LLCs while the articles in Chapter Four and Five apply to JSCs. From Chapter Six to Thirteen (excluding Chapter Eleven) also apply to both kinds of companies. Chapter Eleven is concerned with branches of foreign companies.

¹Article 8 of *Company Law*: “The name of a limited liability company established in accordance with the Law shall feature the words “limited liability company” or “company limited”.

The name of a company limited by shares established in accordance with the Law shall feature the words “company limited by shares” or “joint stock company”.

²See Article 2 of *Company Law*.

³For example, Article 1 of *Company Law* lists, among the aims of corporate legislation, that of “promoting the development of socialist market economy”; under Article 17 paragraph 2, a company should use various methods to strengthen the education and the formation of its employees on the job, so as to improve their capabilities; finally, Article 19 states that companies should facilitate the activities of the Chinese Communist Party established within the company in accordance with the Constitution of the Party.

As a brief introduction, the term “foreign company” refers to “*a company established outside the territory of China under any foreign law (Article 191 CL)*”. According to Article 192 CL, ‘*to establish a branch in China, a foreign company shall file an application with China’s competent authority and submit relevant documents such as its articles of association, the company registration certificate issued by its country, etc. Upon approval, it shall go through registration procedures with the company registration authority according to the law and obtain a business license. The branch shall comply with the law of China and may not harm China’s social public interests, and correspondingly, the lawful rights and interests of such branch shall be protected by the laws of China. And please note that the branch established by a foreign company within the territory of China shall not have the status of a legal person, which means the foreign company who establishes the branch shall bear civil liability for business operations of the branch carried on within the territory of China.*’

Under Chapter Two of LLCs, there are some special provisions on single shareholder limited liability companies and wholly state-owned companies. To prevent an individual abusing the limited liability structure, Article 57 CL defines the term, “single shareholder limited liability company” as “*a limited liability company with only one natural or legal person as a shareholder*”. The Law restricts a natural person to establish only one single shareholder limited liability company and in turn, such a company shall not establish any new single shareholder limited liability company. Article 63 CL pronounces that, if the shareholder of a single shareholder limited liability company is unable to prove that the property of the company is independent of the shareholder’s own property, the shareholder shall bear joint and several liability for the debts of the company.

Generally, LLCs are the most common company type in China and are preferred by foreign investors. For the benefit of the reader, this review will focus on the general LLCs and its structure and governance.

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