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China changes worker representation requirements

THE ISSUE

China revised its Company Law to require worker representation in many privately-held companies, effective July 1, 2024. Companies sourcing from China should work with their suppliers to ensure the new requirements are implemented.

BACKGROUND

China's new Company Law includes significant changes to various aspects of company management in China from establishment to dissolution, such as capital contribution and reduction, share transfer, shareholder rights protection, and corporate governance—including additional worker representation requirements. This issue brief sets out the information companies should know about these important new revisions, provides guidance on how companies can work with their suppliers in China to implement them, and highlights the potential positive impact these changes will have on worker representation in China.

Previously, only state-owned enterprises were required to have worker representation at the corporate level. The Company Law now includes the requirement to establish worker councils with greater decision-making power, giving workers a stronger voice in decisions that affect them, such as company strategy and development of workplace policies. However, companies are also encouraged to pay attention to [other aspects of the revisions](#) in this legislation, which cover changes in more than 100 articles of the relevant laws, as these changes significantly impact the establishment, management, and dissolution of any workplace within the country.

The Company Law now includes:

1. **Protection of workers' rights:** For the first time, the "protection of the lawful rights of the workers" is included in the law, whereas previously the law only mentioned the "interests of companies, shareholders, and creditors" (Article 1).
2. **Democratic management system:** The term "democratic management system" is included in the revised legislation, emphasizing the inclusion of worker representatives in decision-making processes on key business decisions, such as developing company bylaws, restructuring, dissolution, and bankruptcy applications (Article 17).
3. **Social responsibility:** The term "social responsibility" is included, alongside "ecological and environmental protection," as an area for companies to consider in their operations. Participation in public welfare activities and publishing social responsibility reports are also emphasized (Article 20).

4. **Worker representation on boards:** Companies with 300 or more workers must have an elected worker representative on the board of directors (unless the company has a board of supervisors). Democratic elections must be organized within workplaces to elect these worker representatives (Article 68).
5. **Audit committee membership:** Elected worker representatives on the company's board of directors can serve as members of the audit committee, assuming the roles and responsibilities of the "board of supervisors" listed in the legislation (Article 69).
6. **Small limited liability companies:** Companies with fewer than 300 workers can form a "board of supervisors" consisting of at least three members, comprising representatives of shareholders and democratically elected worker representatives. This number may increase based on the company bylaws, but the number of democratically elected worker representatives cannot be less than one-third of the total number of supervisors on the board. Directors or managers cannot be elected as supervisors (Article 76).
7. **Board of supervisors' roles and responsibilities (Articles 78, 79, and 80):**
 - Checking the company's financial affairs;
 - Supervising duty-related acts of directors and senior managers, proposing the removal of those who violate laws, regulations, shareholder resolutions, or company bylaws;
 - Requesting reports from directors and managers on their duties and their performance;
 - Demanding corrections from directors or managers if their actions harm the company's interests;
 - Proposing interim shareholder meetings if needed or if the board of directors fails to do so;
 - Preparing proposals for shareholder meetings;
 - Initiating legal actions against directors or managers involved in misconduct such as corruption, bribery, nepotism, and illegal shareholding;
 - Attending board of directors meetings as non-voting attendees, questioning the agenda, and requesting independent accounting investigations if there are suspicions of abnormal company operations; and
 - Ensuring directors and senior managers provide truthful information and materials and do not obstruct the board of supervisors' functions.
8. **Minimum requirements for the board of supervisors:**
 - **Frequency of meetings:** Meetings must be held at least once a year.
 - **Interim meetings:** Any supervisor can propose interim meetings.

- **Discussion and voting procedures:** Procedures are specified in the bylaws unless otherwise provided by law.
- **Resolution approval:** Resolutions require approval from more than half of the board members.
- **Voting rights:** Each supervisor has one vote.
- **Meeting minutes:** Decisions must be recorded in minutes and signed by present supervisors.
- **Expenses:** The company bears the necessary expenses for the board of supervisors to exercise its functions.

There are gray areas that will need to be clarified by the government as the law is implemented over time. For example, no penalties are specified in the law for when a company fails to follow these requirements, either through direct violation or by exploiting loopholes like reducing the number of shareholders to claim immunity. However, if implemented in good faith, including elected worker representatives in the decision-making process for key business decisions may have a positive impact for workers, the environment, and the community.

FLA RECOMMENDATIONS

Companies sourcing from China should familiarize themselves with these legal changes to ensure their suppliers in China are aware of and ready to comply with the new law.

Companies sourcing from China can check with their suppliers to see if:

- They are aware of this legal change and the new concepts, such as democratic corporate governance;
- Their existing worker representation system is in line with this legislation;
- There are no direct violations of legislative requirements or attempts to evade new legal requirements by exploiting potential gray areas;
- They have organized “democratic elections” to identify worker representatives. If not, they should plan to organize these elections as described in the legislation; and
- They have provided training to the general workforce about this legislation and more comprehensive training for the elected worker representatives about their extended roles and responsibilities.

Companies sourcing from China also should integrate the requirements of the revised legislation into their monitoring programs to ensure proper implementation and compliance with all relevant aspects of this important legislation. Depending on the feedback received from their suppliers, companies sourcing from China are expected to provide consultation and support to help their suppliers align with the significant legislative changes through collaboration and good faith efforts between the companies and their suppliers.

ADDITIONAL RESOURCES

1. Taylor Wessing, [Employees' Participation in Corporate Governance under the Revised Chinese Company Law](#)
2. DLA Piper, [China makes welcome amendments to its Company Law](#)

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