

CHINESE BUSINESS LAW

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PART I

GENERAL THEORY OF CHINESE BUSINESS LAW

(3 HOURS)

1 Commercial Subjects

1.1 Commercial Individuals

1.2 Commercial Partnerships

1.3 Enterprises

➤ **Key Point:** *This section lays focus on commercial subjects which are typical in Chinese market. Generally speaking, these commercial subjects can be classified into three types, namely commercial individuals, commercial partnerships and enterprises. They are different in structure, way to bear civil responsibilities and many other aspects, but all of them play an essential role in Chinese market. This course will introduce these subjects from a theoretical point of view, as well as by vivid exemplifications in Chinese business practice. In addition, this section will also introduce enterprises with special capital structure, including state-owned enterprises, Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and wholly foreign-owned enterprises, aiming at helping students understand enterprises in a much broader sense.*

2 Commercial Registration

2.1 Introduction to Commercial Registration in China

2.2 Legal Practice of Commercial Registration in China

➤ **Key Point:** *This section takes the registration of companies as an*

example, in order to expound details of commercial registration procedures of China, which are taken as compulsory prerequisites for subjects entering commercial market. To illustrate, there is also a discussion, which will throw light on Wechat business and explore the way to regulate, or specifically to register Wechat business.

3 Commercial Acts

3.1 Typical Commercial Acts: Incorporation, Securities, Bankruptcy

3.2 Licensing of Commercial Acts

➤ **Key Point:** *This section will introduce the commercial acts conducted by enterprises, their members and other relative parties from the establishment to the decease of enterprises. The first section introduces incorporation, securities and bankruptcy, which are respectively regulated in Company Law of the PRC, Securities Law of the PRC and Enterprise Bankruptcy Law of the PRC, as well as their relative judicial interpretations and relative regulations.*

The second section will introduce one of the typical and commonly seen governmental acts, licensing. This section elaborates the licensing process that enterprises shall undergo and introduces the particular request for some certain commercial area, covering the issuance, the trading of securities and the express delivery. What's more, another essential example is the recording of Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and wholly foreign-owned enterprises. In this section, the newly amended law and the newly revised Catalogue of Industries for Guiding Foreign Investment in 2017 will be presented to students.

PART II

GENERAL THEORY OF CHINESE COMPANY LAW

(19 HOURS)

1 An Introduction to Chinese Company Law

1.1 The Position of Company Law in Chinese Legal System

1.2 Considerations and Innovations Behind the Legislation, Judicial Interpretations and Policies of Chinese Company Law

- **Key Point:** *This section aims to provide students with an overall understanding of the Chinese company law. The first section has shown the changes among different revisions of Company Law of the PRC and introduces the innovation of the latest version in 2014 in the aspect of registered capital. The second section has explained the background policy considerations for such revisions to help students understand better.*

2 Categorizing Companies in China: Limited Liability Companies, Joint Stock Limited Companies, etc.

2.1 Limited Liability Companies

2.2 Joint Stock Limited Companies

2.3 The Single Shareholder Limited Liability Companies

2.4 The Wholly State-owned Companies

- **Key Point:** *This section introduces the categorization of companies in China. The first two sections introduce the basic types of companies in China: limited liability companies and joint stock limited companies,*

the former of which is also taken as the basic model for company legislation. The third and fourth sections introduce two types of limited liability companies which are special in the constitution of shareholders: the single shareholder limited liability company and the wholly stated-owned company. The exemplification in real legal practice has been used, in order to help students comprehend the form of companies in a more practical sense.

3 Corporate Legal Personality and Shareholders' Limited Liability

3.1 Companies as Legal Persons

3.2 Shareholders' Limited Liability

3.3 Piercing the Corporate Veil

➤ **Key Point:** *This section stresses on the independent personality theories of companies and its manifestations, revealing the effects of the companies' independent personality as well. What's more, it is also introduce the doctrine of piercing the corporate veil, which is used to balance the interests among creditors, shareholders and debtors, and protect the interests of creditors of the company. In the process of discussion, this section has quoted cases to analyze, trying to reveal the attitudes of judges in legal practice.*

4 Articles of Incorporation

4.1 Establishment of a Company

4.2 Articles of Incorporation

➤ **Key Point:** *This section focuses on the articles of incorporation. The first section introduces the establishment of a company and pays attention to the legal consequences of flaws in establishment or even a failed establishment. The second section focuses on articles of*

incorporation of a company. Apart from basic knowledge of articles of incorporation, this section attempts to clarify related puzzlements, like the binding force of articles of incorporation over a third person, who trades with the company.

5 Corporate Capital

5.1 Shareholders' Contribution

5.1.1 Forms of Shareholders' Contribution

5.1.2 Shareholders' Liability for Breach of Obligations of Capital Contribution

➤ **Key Point:** *This section firstly focuses on typical forms of shareholders' contribution. Apart from typical forms of contribution, the section also attempts to analyze non-classical types of contribution, which arise recently in Chinese business practice, unregulated. In addition, this section also introduces the liabilities that the shareholders should take to the company, any other shareholders or creditors, when they fail to fulfill or fail to fully fulfill the obligation of capital contribution.*

5.2 Corporate Capital

5.2.1 Corporate Capital

5.2.2 Increase and Deduction of Registered Capital

➤ **Key Point:** *This section throws light on the corporate capital. Firstly, it introduces the conception and request of laws of corporate capital. Secondly, this course arranges detailed elaboration for the substantial and procedural requirements for a company to conduct capital increase or deduction, which varies from a limited liability company to a joint stock limited company, consisting of contents as shareholders'*

preemptive right to subscribe new capitals to limited liability companies, etc.

6 Shareholders and Rights of Shareholders

6.1 The Identity of Shareholders

6.1.1 Identification of Shareholders

6.1.2 Nominal Shareholders and Actual Contributors

➤ **Key Point:** *This section focuses on the identification of shareholders. Firstly, it introduces the official approaches to identify shareholders, which are the capital contribution certificate and the registry of shareholders. Secondly, it introduces some occasions where the actual contributor differs from the nominal contributor of a company and their legal effects. On these occasions, the actual contributor might enter into an agreement with a nominal contributor of a limited liability company, which stipulates that the actual contributor shall make capital contributions and enjoy the investment rights and interests, and the nominal contributor shall be the nominal shareholder.*

6.2 Shareholders' Rights

6.2.1 Shareholders' Rights to Profit

6.2.2 Shareholders' Rights to Participate in the Management of the Company

6.2.3 Shareholders' Rights to Transfer Shares

6.2.4 Shareholders' Rights to Sue

➤ **Key Point:** *This section is the introduction of shareholders' rights, which can be separated into four types. The first one is the right to profit,*

which is the major right of shareholders. The second one is the right to participate in the management of the company, including the right to vote, the right to call a shareholder meeting, as well as the right to inspect the company's account books and records. The third one is the right to transfer shares, which differ regarding different formation of companies. The fourth type of right is the right to sue, which can be exercised by shareholders when the interests of shareholders are harmed. The aim of this section is to teach students the detailed conditions for the shareholders to realize these rights.

7 Corporate Governance

7.1 Corporate Institutions

7.1.1 Shareholders' Meeting (Assembly)

7.1.2 The Board of Directors

7.1.3 Managers

7.1.4 The Board of Supervisors

➤ **Key Point:** *This section introduces corporate institutions, including the shareholders' meeting, the board of directors and the board of supervisors. The shareholders' meeting is regarded as the major institution of a company, resolutions of which are executed by the board of directors. The board of directors is the institution that is responsible for the execution of business affairs. Likewise, the board of supervisors acts as a mandatory institution of a company, which supervises execution of business affairs by directors and delegated managers.*

7.2 Restrictions for Qualifications and Duties of Directors, Supervisors and Senior Management Officers

➤ **Key Point:** *This section talks about the restrictions and the duties that*

directors, supervisors or senior managers of a company should qualify and perform. The duties they should perform include the duty of diligence and the duty of loyalty. The former one means directors' or senior managers' performance of obligations with a reasonable degree of care. The later one refers to the standard of act by which a fiduciary places the interests of the corporation above that of his own.

7.3 The Validity of Corporate Resolutions

➤ **Key Point:** *This section talks about the validity of corporate resolutions. There may be three types of outcomes for an invalid resolution of the board of directors or shareholders' meeting, including being declared to have never been formed, being void or being revoked. And this section also discusses the factors which can lead to the outcomes above. The section also further discusses the situations added by Supreme People's Court where the resolution can be deemed to have never been formed.*

8 Changes of a Company

8.1 Merger and Divestiture

➤ **Key Point:** *This section introduces the merger and divestiture of a company. Firstly, it talks about the definition and the forms of merger, which are the form of merger and the form of consolidation. By the former approach, a company is merged into another corporation. While under the later approach, two or more separate corporate entities become a new corporate entity with the former two or more entities dissolved. Secondly, this section comes to the definition and types of divestiture. One type is a corporation has divested a portion of the properties or business to form a new corporate entity or a few new corporate entities. The other type is a company divests to become two or more corporate entities with the original corporation dissolved.*

8.2 Dissolution and Liquidation

➤ **Key Point:** *This section focuses on the dissolution and liquidation of a company. Dissolution encompasses voluntary and involuntary dissolution. A voluntary dissolution occurs when the company dissolves upon the occurrence of a certain event, which might be provided under the articles of incorporation or the resolution of the shareholder meeting. An involuntary dissolution is the dissolution pursuant to the law or an administrative order. Liquidation refers to the series of acts and procedures that bring about a closure to the legal relationships of the corporation.*

PART III

CHINESE BANKRUPTCY LAW

(5 HOURS)

1 An Introduction to Enterprise Bankruptcy Law of the PRC

1.1 The Background of Enterprise Bankruptcy Law of the PRC

1.2 Applicability and Accessibility of Enterprise Bankruptcy Law of the PRC

➤ **Key Point:** *This section will introduce the background of Enterprise Bankruptcy Law of the PRC. Enterprise Bankruptcy Law of the PRC are comprehensively applied to all enterprises that hold legal person status, including foreign enterprises, limited liability companies, and joint stock limited companies, as well as state owned enterprises. At present, there is no personal bankruptcy system in China. Enterprise Bankruptcy Law of the PRC does not apply to insolvent individuals (individual business). Therefore, this section will discuss the necessity of improving natural person bankruptcy system in China. Enterprise Bankruptcy Law of the PRC mainly contains three kinds of procedures, namely settlement, restructuring, bankruptcy liquidation, which are the core points to introduce in the bankruptcy law section.*

2 Bankruptcy Proceedings

2.1 Subjects Filing the Bankruptcy Petition

2.2 The Discretion of the People's Court

2.3 Perplexing Test for Insolvency

2.4 Suspension of Proceedings

➤ **Key Point:** *This section will stress on the subjects that have the right to file the bankruptcy petition. The subjects include the debtor, creditor and liquidator. Then bankruptcy cases are quoted to illustrate the People's Courts' decision-making process to students. This section will introduce the two coexisting criteria for insolvency. One is the liquidity test and another is the balance sheet test. This section will also elaborate situations that bankruptcy liquidation application shall not be accepted. Besides, the acceptance of bankruptcy has an influence on civil proceedings, which will be suspended. There are two situations, namely civil proceedings initiated before acceptance of the bankruptcy petition and civil proceedings initiated after acceptance of the bankruptcy petition.*

3 Bankruptcy Administrator

3.1 Administrator

3.2 Administration

➤ **Key Point:** *This section focuses on the administrator that takes custody of the debtor's property and administers the business and estate of the debtor. The administrator must carry out its duties and report to the People's Court, and is subject to monitoring and supervision of the creditors. The functions and duties of the administrator will be discussed in this course.*

4 Bankruptcy Property

4.1 Ascertainment of Bankruptcy Property

4.2 Detailed Issues of Ascertainment of Bankruptcy Property

- **Key Point:** *Bankruptcy property is the focus of this section. At first, this section aims to introduce the ascertainment of bankruptcy property. The ascertainment of property of a special nature, containing subsidiary company, intellectual property, state-owned land use right got by allocation, shall be discussed separately. Then, administrators upon petitioning the People's Court have the power to undo certain transactions involving property of the debtor taken within one year before the People's Court accepts the bankruptcy petition. Some acts involving the debtor's property are simply invalid, and other acts can be revoked. This section will elaborate these situations.*

5 Distribution of Bankruptcy Property

5.1 Filing of Claims

5.2 Creditors' Committee

5.3 Distribution

- **Key Point:** *This section will focus on the distribution of bankruptcy property. A creditor shall file its claims with the administrator within the claim filing period. After acceptance of the claims, Enterprise Bankruptcy Law of the PRC provides for the establishment of creditors' meetings and creditors' committees. Voting mechanism of creditors' committees separate from unsecured creditors to secured creditors. In distribution, matters concerning the operation of retention of title clauses, offsetting the debt, priority of secured creditors, bankruptcy expenses and debts for common benefits, sequence of distribution and*

pari passu as well as additional recourse for creditors will be elaborately discussed in this section.

PART IV

SECURITIES LAW

(5 HOURS)

1 An Introduction to Chinese Securities Law

➤ **Key Point:** *In this section of the course, historical and basic information of China's securities market as well as sources of Chinese securities law will be introduced. China's securities market commenced in the mid-1980's in the open coastal cities. The two stock exchanges in China were established in Shanghai in December 1990 and Shenzhen SEZ (special economic zone) in June 1991. The State Council Securities Regulatory Committee (SSRC) and the China Securities Regulatory Commission (hereinafter CSRC) were established by the State Council in 1992. The first version of Securities Law of the PRC took effect in 1999. Nowadays, the securities law in effect is Securities Law of the PRC revised in 2014. Additionally, there are national securities-related laws, administrative regulations and ministerial rules acting as sources of securities law as well.*

2 Securities Issuance

2.1 Scope of Securities

2.2 Conditions of Initial Issuance

2.3 Procedures for Issuing Securities

➤ **Key Point:** *Securities issuance will be introduced in this section. Firstly, this section introduces the scope of securities in the context of Securities Law of the PRC, encompassing stocks, corporate bonds and so on. Secondly, this section will elaborate the four requirements of*

initial issuance provided by Securities Law of the PRC. Requirements prescribed by the securities regulatory authority under the State Council shall also be obeyed in process of IPOs. The procedure for issuing securities is another point to introduce, which mainly contains four portions, sponsorship, approval, securities underwriting and issuance. Each will be elaborately discussed in this portion.

3 Securities Trading

3.1 Stock Listing

3.2 Prohibited Conducts

➤ **Key Point:** *This section will introduce the securities trading in China to students. Stocks shall have been publicly issued upon the approval of the securities regulatory authority under the State Council. In the process of stock listing, duty of disclosure is of great significance. Because the investors rely on the information released by listed companies to judge the quality of the companies and render an informed decision for investment, Securities Law of the PRC requires issuers to disclose information in time and in an honest, accurate and complete way. In addition to listing, there are procedures for de-listing as well, namely suspension and termination. The prohibited conducts in the process of securities trading are stressed out in this section. Mainly four behaviors shall be rigidly prohibited, encompassing insider trading, manipulation, false representation and fraud. This section will discuss them in detail.*

4 Acquisition of Listed Companies

4.1 Acquisition by Tender Offer

4.2 Acquisition by Agreement

➤ **Key Point:** *This section will lay emphasis on the acquisition of listed*

companies. The purchase of shares from shareholders is a realistic means to acquire the target company over its objection. Such purchase may be made by tender offer or agreement. Tender offer means investors directly buy stocks of the target company from the stock market, by which the acquisition is generally at the investors' option. Sometimes, there exists statutory tender offer. Additionally, the parties shall enter into acquisition agreement by and between investors and shareholders of the target company. The detailed substantial and procedural requirements for these two acquiring approaches will be thoroughly discussed in this section.