

## Regional

# China's Supreme People's Court Passes New Judicial Interpretations on the PRC Company Law

## Introduction

The Supreme People's Court of the People's Republic of China (the "**PRC**") issued the Provisions on Several Issues Concerning the Application of the PRC Company Law (IV) (Draft for Public Consultation) (最高人民法院关于适用《中华人民共和国公司法》若干问题的规定(四)(征求意见稿)) (the "**Judicial Interpretation IV**") on 12 April 2016 and passed the same on 5 December 2016 in principle. Judicial Interpretation IV provides further guidance on issues relating to the following 5 aspects under the PRC Company Law (amended in 2013):

- (a) the validity of the resolutions issued by the shareholders and directors;
- (b) shareholders' right of information;
- (c) shareholders' right of requesting profit distribution;
- (d) shareholders' pre-emptive rights of purchasing equity interests and company's direct action; and
- (e) shareholder's derivative action.

## Validity of Board and Shareholders' Resolutions

Pursuant to Judicial Interpretation IV, not only shareholders, directors and supervisors but also individuals who have a direct interest in the resolution of shareholders' meeting (or the shareholder, as the case may be) or the resolution of board of directors (or the executive director, as the case may be) (collectively, "**Company Resolutions**"), such as senior management personnel, employees and creditors, are entitled to claim that such resolutions are invalid due to violation of the laws.

Furthermore, the Company Resolutions will be deemed void by the court in the event that such resolutions infringe on the company's or other shareholders' interests or the creditors' interests such as providing excessive distribution of profits, significant inappropriate affiliated transactions, etc. However, Judicial Interpretation IV is not particularly clear as to what constitutes "excessive" or "significant inappropriate".

One of the points of significance of Judicial Interpretation IV is that it clearly provides that any qualified party that applies to challenge the validity of the Company Resolutions before a court is entitled to seek an injunction to halt the implementation of the resolution in question if that resolution will have irreversible effect after being implemented or will cause irreversible damage to the legitimate rights or interests of the applicant or any

---

## Regional

interested parties. The granting of such injunction may be subject to the provision of security by the applicant at the court's discretion. The court may reject the application for injunction based on its determination that such application is intended to maliciously interfere or delay the implementation of the resolution.

## Shareholders' Right of Information

Judicial Interpretation IV expands the scope of information that may be accessible to shareholders of a limited liability company by including recording vouchers and source documents that relate to accounting books. It has been further explained that the following circumstances shall not constitute a justification for a company to reject shareholders' request for information:

- (i) the contribution of the registered capital by the shareholder does not fully comply with the provisions in the articles of association;
- (ii) the articles of association of the company restrict shareholders from accessing or copying company files and documents; or
- (iii) agreement between shareholders restricts shareholders from accessing or copying company files and documents.

In Article 33 of the PRC Company Law, the company is entitled to reject a shareholder's request for inspecting company information if the shareholder is believed to have improper purpose or may impair the legitimate interests of the company. Judicial Interpretation IV sets forth 4 scenarios that satisfy as "improper motive" in the context of PRC Company Law:

- (i) the shareholder runs a business that substantially competes with the main business of the company;
- (ii) the shareholder intends to obtain benefits by informing third parties about the acquired company information;
- (iii) in the past two years, the shareholder obtained benefits through accessing or copying company files and documents and then informing third parties about such information; and
- (iv) other facts that can prove the shareholder's purpose is to interfere with the operation of business of the company, damage the company's interests or to jeopardize the common interest of all shareholders.

## Shareholders' Right of Requesting Profit Distribution

According to Judicial Interpretation IV, a court may uphold a shareholder's request for profit distribution if there is a valid resolution providing for a specific profit distribution plan or, if there is no such valid resolution, the shareholder of a limited liability company can prove that the failure to distribute profits by the company is attributable to abuse of power by other shareholders or fraud of the directors or senior management personnel. Under the former scenario, the judgment will also apply to shareholders which are entitled to profit distribution but not involved in the lawsuit.

---

## Regional

### Shareholders' Pre-emptive Rights of Purchasing Equity Interests

Judicial Interpretation IV clearly provides that the shareholders will not have the pre-emptive right to purchase equity interests in the event the change of shareholding is due to inheritance or bequest or other shareholders claim to purchase only part (not the whole) of the equity interests to be sold, unless it is otherwise provided in the company's articles of association. Given such interpretation, it becomes important for the shareholders to decide before the articles of association are drafted and signed on whether or not to give shareholders pre-emptive rights in such an event.

Judicial Interpretation IV also elaborates on detailed procedures for the enforcement of shareholders' pre-emptive rights of purchasing equity interests. The main points are as follows:

- (i) It explains that factors to be taken into account for determining "under the same conditions" in Article 71 (Pre-emptive Right) of the PRC Company Law should include but are not limited to the price of the equity interests to be transferred, payment method and timeline.
- (ii) The notice of pre-emptive rights being sent to other shareholders shall specify the assignee's name, type of the equity interests, amount, price, performance timeline, method and other major points of the equity transfer agreement. In addition, unless the articles of association provides otherwise, the notice period shall be the period specified in the notice or 30 days (whichever is longer).
- (iii) In the event that the articles of association of a company excessively restrict shareholders' rights of transferring their equity interests to the extent that the equity interests, as a matter of fact, cannot be transferred, relevant provisions can be deemed void by the court.

### Shareholder's Derivative Action

According to Judicial Interpretation IV, a shareholder is entitled to join a derivative action initiated by other shareholders as a co-plaintiff, provided that he/it makes the same claim as the original plaintiff and the application to join the proceedings is made prior to the end of the court debate in the first instance. Under such scenario, a co-plaintiff will be bound by the proceedings that have already taken place before his acquirement of its standing in the lawsuit, and the decision of a derivative action will be binding on all shareholders, including those not involved in the suit.

In addition, Judicial Interpretation IV stipulates that shareholders of a company are entitled to bring a derivative action in the event that interests of this company's wholly-owned subsidiary are infringed by its directors, senior management personnel or other persons.

This update is prepared based on the draft of Judicial Interpretation IV released on 12 April 2016. When the PRC Supreme People's Court announced that it passed Judicial Interpretation IV on 5 December 2016 in principle, it did not enclose the approved version. Although we do not expect a substantial deviation from the draft released on 12 April 2016, we would still like to highlight that this update is subject to the approved version to be released by the PRC Supreme People's Court.

# Client Update: Singapore

## 2017 JANUARY

**LAWYERS  
WHO  
KNOW  
ASIA**

## Contacts



**Chia Kim Huat**  
Regional Head, Corporate  
and Transactional Practice  
Rajah & Tann Singapore LLP

D +65 6232 0464  
F +65 6428 2188  
[kim.huat.chia@rajahtann.com](mailto:kim.huat.chia@rajahtann.com)



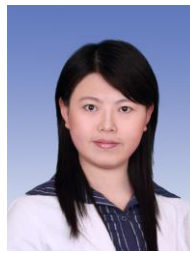
**Linda Qiao**  
Senior International Counsel  
Rajah & Tann Shanghai  
Representative Office

D +86 21 6120 8818  
F +86 21 6120 8820  
[linda.qiao@rajahtann.com](mailto:linda.qiao@rajahtann.com)



**Chen Xi**  
Partner (Foreign Lawyer)  
Rajah & Tann Singapore LLP

D +65 6232 0158  
F +65 6428 2256  
[chen.xi@rajahtann.com](mailto:chen.xi@rajahtann.com)



**Joanna Wang**  
Associate  
Rajah & Tann Shanghai  
Representative Office

D +86 21 6120 8818  
F +86 21 6120 8820  
[joanna.wang@rajahtann.com](mailto:joanna.wang@rajahtann.com)

Please feel free to also contact Knowledge and Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com)

### ASEAN Economic Community Portal

The launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com>.

*Please note that Rajah & Tann Singapore LLP Shanghai Representative Office is a foreign law firm licenced by the Ministry of Justice of the People's Republic of China (the "PRC") and that Rajah & Tann Singapore LLP (like other foreign law firms) is not permitted by the Ministry of Justice of the PRC to issue opinions on matters of PRC law. The views (if any) presented in relation to any PRC laws and regulations for this matter are based on our knowledge and understanding of the PRC laws and regulations obtained from our past experience in handling PRC matters and by conducting our own research, and also from informal consultations with PRC lawyers from time to time. As such, such views do not constitute (and should not be construed as constituting) an opinion or advice on the laws and regulations of the PRC.*

## Our Regional Contacts

RAJAH & TANN | *Singapore*

**Rajah & Tann Singapore LLP**

T +65 6535 3600  
F +65 6225 9630  
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

**Christopher & Lee Ong**

T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

**R&T Sok & Heng Law Office**

T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

**Rajah & Tann NK Legal Myanmar Company Limited**

T +95 9 73040763 / +95 1 657902 / +95 1 657903  
F +95 1 9665537  
mm.rajahtannasia.com

RAJAH & TANN 立杰上海  
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP  
Shanghai Representative Office**

T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL  
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977  
F +632 552 1978  
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

**Assegaf Hamzah & Partners**

**Jakarta Office**

T +62 21 2555 7800  
F +62 21 2555 7899

**Surabaya Office**

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

RAJAH & TANN | *Thailand*

**R&T Asia (Thailand) Limited**

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

**Rajah & Tann LCT Lawyers**

**Ho Chi Minh City Office**

T +84 8 3821 2382 / +84 8 3821 2673  
F +84 8 3520 8206

RAJAH & TANN | *Lao PDR*

**Rajah & Tann (Laos) Sole Co., Ltd.**

T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

**Hanoi Office**

T +84 4 3267 6127  
F +84 4 3267 6128  
www.rajahtannlct.com

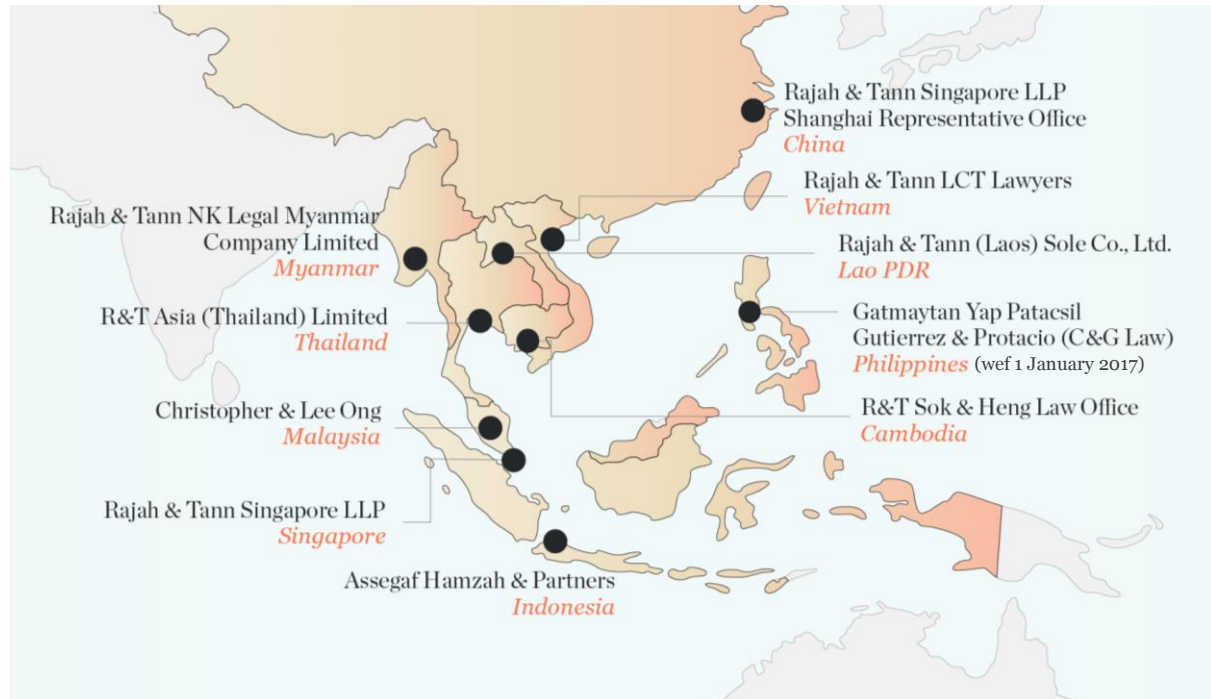
Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

# Client Update: Singapore

## 2017 JANUARY

**LAWYERS  
WHO  
KNOW  
ASIA**

## Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines (wef 1 January 2017), Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail Knowledge & Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com).