SPC Judicial Interpretation (II) on Company Dissolution and Liquidation

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — Company Dissolution

Article 1 — Where a shareholder holding 10 percent or more of the voting rights of all shareholders of a company individually or jointly applies to the people's court for dissolution of the company on any of the following grounds, and the requirements set forth in Article 182 of the Company Law are met, the people's court shall accept the case:

1. The company has been unable to convene a shareholders' meeting or shareholders' general meeting for more than two consecutive years, and serious difficulties have arisen in the company's operation and management;

2. The voting ratio of shareholders at a shareholders' meeting or shareholders' general meeting has failed to reach the statutory or charter-prescribed proportion for more than two consecutive years, and no valid resolution of the shareholders' meeting or shareholders' general meeting has been adopted, resulting in serious difficulties in the company's operation and management;

3. Serious conflict exists among the company's directors, and the conflict cannot be resolved through the shareholders' meeting or shareholders' general meeting, resulting in serious difficulties in the company's operation and management;

4. Other serious difficulties have arisen in operation and management, and the continued existence of the company will cause material loss to the interests of shareholders.

Article 2 — Where a shareholder files an action for dissolution of a company and also applies to the people's court for liquidation of the company, the people's court shall not accept the application for liquidation. The people's court may, after ruling to dissolve the company, inform the shareholders that they may organize liquidation on their own or separately apply to the people's court for liquidation of the company in accordance with the provisions of Article 183 of the Company Law and Article 7 of these Provisions.

Article 3 — Where a shareholder files an action for dissolution of a company, the shareholder shall provide evidence that he or she has been unable to resolve the matter through other means, such as proposing to convene a shareholders' meeting or proposing a resolution.

Article 4 — Where a shareholder files an action for dissolution of a company and the people's court, after hearing the case, finds that the conditions for dissolution are not met, the people's court shall rule to dismiss

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the lawsuit. Where the dispute between shareholders can be resolved through other means such as the company buying back part of the shares, another shareholder or a third party acquiring shares, capital reduction, or division of the company, the people's court may mediate the case. Where the parties cannot reach a mediation agreement, the people's court shall render a timely judgment.

Article 5 — Where a people's court renders a judgment to dissolve a company, the judgment shall be binding on all shareholders of the company. Where a shareholder files an action for dissolution of a company and the people's court rules to dismiss the lawsuit, the shareholder may file another lawsuit on different grounds.

Article 6 — Where a people's court makes a judgment on a dispute over company dissolution, the company shall be the defendant. The plaintiff shall be the shareholder filing the action. Other shareholders may apply to join the lawsuit as co-plaintiffs or as third parties.

Chapter II — Company Liquidation

Article 7 — In any of the following circumstances, where a company fails to establish a liquidation group within the statutory time limit and the company is therefore unable to carry out liquidation, the company's shareholders, directors, controlling persons, or actual controllers may apply to the people's court for designation of a liquidation group to conduct liquidation:

1. Where a company is dissolved but fails to establish a liquidation group within 15 days from the date of occurrence of the cause for dissolution to conduct liquidation;

2. Where a liquidation group is established but deliberately delays the liquidation;

3. Where the unlawful liquidation by a liquidation group may seriously harm the interests of creditors or shareholders.

Article 8 — Where a people's court accepts an application for liquidation of a company, the people's court shall promptly designate members of the liquidation group. The members of the liquidation group may be selected from the company's shareholders, directors, supervisors, senior managers, or from law firms, accounting firms, bankruptcy liquidation firms, or other social intermediary institutions qualified for liquidation practice, or from persons with relevant professional knowledge and practice qualifications among the staff of the aforesaid institutions.

Article 9 — Where a people's court-designated liquidation group commits any of the following acts and the company's creditors claim that the members of the liquidation group shall bear corresponding liability for compensation, the people's court shall support such claim in accordance with the law:

1. Maliciously disposing of the company's property, causing losses to creditors;

2. Failing to perform the obligation to notify and announce to creditors, resulting in creditors' failure to file claims in time;

3. Failing to perform liquidation duties, causing losses to the company's property;

4. Distributing the company's property without settling the company's debts;

5. Other acts causing losses to the company or creditors.

Article 10 — Where a company is dissolved in accordance with the law and goes through liquidation, the liquidation group shall notify the company's creditors within 10 days from the date of its establishment and make a public announcement in a newspaper within 60 days. Creditors shall, within 30 days from the date of receiving the notice, or within 45 days from the date of the public announcement if no notice is received, file their claims with the liquidation group.

Article 11 — Where a liquidation group fails to perform the obligation to notify and make a public announcement in accordance with the provisions of Article 10, resulting in the creditors' failure to file claims

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in time, and the creditors claim compensation for their losses, the members of the liquidation group shall bear the liability for compensation in accordance with the law.

Article 12 — Where creditors file claims during the period specified by the liquidation group, the liquidation group shall register the claims. During the period of creditor claim filing, the liquidation group shall not settle or pay off the creditors' claims.

Article 13 — Where the property distributed by the liquidation group to the company's shareholders exceeds the amount distributable after the company's debts are fully settled, the creditors may claim that the shareholders shall return the over-distributed property plus interest for the period. Where such claim is made, the people's court shall support it.

Article 14 — Where the property distributed by the liquidation group to the company's shareholders exceeds the amount distributable after the company's debts are fully settled, and the liquidation group has completed the company's deregistration with the company registration authority, the people's court shall support the creditors' claim requiring the shareholders to compensate for the losses caused thereby.

Article 15 — Where a liquidation group fails to perform its duties as required by laws or administrative regulations, or the articles of association of the company, or engages in acts harming the interests of the company or creditors, the company's shareholders or creditors may file a lawsuit with the people's court. Where the circumstances constitute a crime, criminal liability shall be pursued in accordance with the law.

Article 16 — Where a company's shareholders, directors, controlling persons, or actual controllers fail to fulfill their obligations within the statutory time limit, resulting in the loss or destruction of the company's major property, account books, and important documents, and making liquidation impossible, the company's creditors may claim that the aforesaid persons shall bear joint and several liability for the company's debts. Where such claim is made, the people's court shall support it in accordance with the law.

Article 17 — Where a company is dissolved and should be liquidated in accordance with the law, and the company's shareholders fail to establish a liquidation group to conduct liquidation, resulting in the depreciation, loss, destruction, or loss of the company's property, the company's creditors may claim that the shareholders shall bear liability for compensation to the extent of the loss caused. Where the shareholders' failure to fulfill their obligations results in the loss or destruction of major company property, account books, or important documents, making liquidation impossible, the creditors may claim that the shareholders shall bear joint and several liability for the company's debts. Where such claims are made, the people's court shall support them in accordance with the law.

Article 18 — Where shareholders, directors, or actual controllers of a company maliciously dispose of the company's property after the company is dissolved, causing losses to creditors, or obtain the company's deregistration by providing false liquidation reports without conducting lawful liquidation, and the creditors claim that the shareholders, directors, or actual controllers shall bear corresponding civil liability for the company's debts, the people's court shall support such claim in accordance with the law.

Article 19 — Where a company is deregistered without lawful liquidation, and the shareholders or third parties promise at the time of deregistration with the company registration authority that they will be responsible for the company's debts, the creditors may claim that the shareholders or third parties who made the promise shall bear corresponding civil liability for the company's debts. Where such claim is made, the people's court shall support it in accordance with the law.

Article 20 — Where a liquidation group discovers that the company's property is insufficient to pay off its debts during the liquidation of the company, the liquidation group may negotiate with the creditors to prepare a debt settlement plan. Where the debt settlement plan is adopted by all creditors and confirmed by the people's court, the people's court shall make a ruling to approve the plan and conclude the liquidation procedure. Where the debt settlement plan is not adopted by all creditors or not confirmed by the people's

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court, the liquidation group shall apply to the people's court for a declaration of bankruptcy in accordance with the law.

Article 21 — Where the people's court-designated liquidation group commits any of the following acts, the company's shareholders or creditors may claim that the liquidation group shall bear corresponding liability for compensation:

1. Failing to perform liquidation duties, causing losses to the company's property;

2. In the course of liquidation, the liquidation group maliciously disposes of the company's property, causing losses to creditors;

3. Where a liquidation group violates laws, administrative regulations, or the company's articles of association, harming the interests of the company or creditors.

Article 22 — Where a company is dissolved and a liquidation group is established, and the liquidation group discovers that the company is insolvent, the liquidation group shall apply to the people's court for a declaration of bankruptcy in accordance with the law. Before the people's court rules to accept the bankruptcy case, the liquidation group shall continue to handle the liquidation affairs of the company.

Article 23 — Where a people's court organizes liquidation, the liquidation group shall complete the liquidation within six months from the date of its establishment. Where the liquidation cannot be completed within six months due to special circumstances, the liquidation group may apply to the people's court for an extension.

Article 24 — These Provisions shall take effect as of May 19, 2008. The Provisions on Several Issues Concerning the Application of the Company Law of the PRC (II) promulgated by the Supreme People's Court on May 12, 2008, and the judicial interpretations previously promulgated by the Supreme People's Court shall apply accordingly; where there is any inconsistency with these Provisions, these Provisions shall prevail. Cases that have been finally concluded before the implementation of these Provisions and where a party applies for retrial or cases decided for retrial in accordance with trial supervision procedures shall not be governed by these Provisions.

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