SPC Judicial Interpretation (IV) on Shareholder Rights and Derivative Actions

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Chapter I — Shareholder Information Rights

Article 1 — Where a shareholder files a lawsuit with the people's court to exercise the right to know or inspect the company's specific documents and materials in accordance with Article 33 or Article 97 of the Company Law, the people's court shall accept the case in accordance with the law. Where the company has evidence to prove that the plaintiff does not have shareholder status at the time of filing the lawsuit, the people's court shall rule to dismiss the lawsuit, except where the plaintiff has a preliminary case showing that his or her shareholder rights were harmed during the period of shareholding.

Article 2 — Where a shareholder files a lawsuit demanding to inspect the company's accounting books in accordance with Article 33 or Article 97 of the Company Law, the shareholder shall have submitted a written request to the company stating the purpose of the inspection. Where the company refuses to provide the inspection within 15 days of receiving the shareholder's written request without providing a written reply or a valid reason for refusal, the shareholder may file a lawsuit with the people's court.

Article 3 — Where a company refuses a shareholder's request to inspect accounting books on the ground that the shareholder has an improper purpose, the company shall bear the burden of proof. The people's

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court may determine that the shareholder has an improper purpose in any of the following circumstances:

1. The shareholder operates a business that competes with the company's main business, unless otherwise provided in the articles of association or unanimously agreed by all shareholders;

2. The shareholder requests inspection for the purpose of providing information to a third party that may harm the company's lawful interests;

3. The shareholder has, within three years prior to the request, provided information obtained through inspection of the company's accounting books to a third party that harmed the company's lawful interests;

4. Other circumstances where the shareholder is found to have an improper purpose.

Article 4 — Where a shareholder exercises the right to know or inspect the company's documents and materials, the shareholder may engage an accounting firm, law firm, or other intermediary institution to assist. Where the articles of association of the company provide otherwise, such provisions shall apply. Where the shareholder or the intermediary institution assisting the shareholder leaks company secrets, thereby harming the company's lawful interests, the company may claim that the shareholder or intermediary institution shall bear civil liability in accordance with the law.

Article 5 — Where a shareholder files a lawsuit demanding to inspect the company's accounting books and the people's court supports such claim, the judgment shall specify the time and place for inspection and the names of the documents to be inspected. The shareholder shall inspect the documents at the place designated by the company during the company's normal business hours.

Chapter II — Profit Distribution Rights

Article 6 — Where a shareholder files a lawsuit with the people's court demanding distribution of company profits, the shareholder shall have submitted to the company a valid resolution of the shareholders' meeting or shareholders' general meeting containing a specific profit distribution plan. Where no such resolution has been made, the people's court shall rule to dismiss the lawsuit, except where a shareholder abuses his or her rights, causing the company to fail to distribute profits and harming the interests of other shareholders.

Article 7 — Where a shareholder files a lawsuit demanding distribution of company profits and the company claims that there are no distributable profits, the company shall bear the burden of proof. Where the company refuses to distribute profits on the ground that the company needs to maintain sufficient funds for business operations, the people's court shall examine the reasonableness of such refusal.

Article 8 — Where a shareholder files a lawsuit demanding distribution of company profits and the people's court rules that the company shall distribute profits, the company shall distribute the profits to the shareholder in accordance with the resolution of the shareholders' meeting or the shareholders' general meeting, or in accordance with the judgment of the people's court, within the time limit specified in the judgment.

Chapter III — Preemptive Rights

Article 9 — Where a shareholder claims that the resolution of the shareholders' meeting or shareholders' general meeting on the increase of the company's registered capital infringes upon the shareholder's preemptive right to subscribe for new shares, the shareholder may file a lawsuit demanding that the resolution be declared invalid or be revoked within 60 days from the date of adoption of the resolution.

Article 10 — Where a company increases its registered capital and the shareholders' meeting or shareholders' general meeting infringes upon a shareholder's preemptive right to subscribe for new shares, and the shareholder files a lawsuit claiming that the resolution is invalid, the people's court shall examine whether the preemptive right was infringed upon. Where the preemptive right was infringed upon, the people's court shall rule that the resolution is invalid with respect to the portion infringing upon the

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shareholder's preemptive right.

Article 11 — Where a resolution on capital increase infringes upon a shareholder's preemptive right and the shareholder files a lawsuit demanding exercise of the preemptive right, the shareholder shall file the lawsuit within 30 days from the date of knowing or the date on which the shareholder should have known that his or her preemptive right was infringed upon, but in no case more than one year from the date of the resolution on capital increase. Where the shareholder fails to file a lawsuit within the time limit described in the preceding paragraph, the people's court shall not support the lawsuit.

Chapter IV — Shareholder Derivative Lawsuits

Article 12 — Where a shareholder files a derivative lawsuit in accordance with Article 151 of the Company Law, the shareholder shall first exhaust internal remedies by making a written request to the board of supervisors or the supervisor of a limited liability company with no board of supervisors, or to the board of directors or the executive director of a limited liability company with no board of directors, to file a lawsuit with the people's court. Where the company's articles of association provide for a different internal remedy procedure, such provisions shall apply.

Article 13 — Where a shareholder files a derivative lawsuit and the people's court accepts the case, the company shall be listed as a third party in the lawsuit. Where other shareholders join the lawsuit with the same claim, the people's court shall consolidate the cases.

Article 14 — Where a shareholder files a derivative lawsuit and the people's court determines after trial that the lawsuit is well-founded, the people's court shall rule that the defendant shall bear civil liability to the company. The reasonable expenses incurred by the shareholder for the lawsuit, such as attorney fees and investigation expenses, shall be borne by the company.

Article 15 — Where a shareholder files a derivative lawsuit and the people's court determines after trial that the lawsuit is not well-founded, and the company suffers losses as a result of the lawsuit, the shareholder shall bear civil liability to the company in accordance with the law.

Article 16 — Where a shareholder files a derivative lawsuit and the parties reach a settlement agreement, the settlement agreement shall be submitted to the people's court for examination and approval. The people's court may request the company's shareholders' meeting or shareholders' general meeting to adopt a resolution on the settlement agreement. Where the settlement agreement is not approved by the people's court, the people's court shall continue the trial and render a judgment.

Chapter V — Supplementary Provisions

Article 17 — Where a shareholder files a lawsuit demanding that the company purchase his or her shares at a reasonable price in accordance with Article 74 of the Company Law, the shareholder shall have voted against the resolution at the shareholders' meeting. Where the company fails to reach a share purchase agreement with the shareholder within 60 days from the date of adoption of the resolution, the shareholder may file a lawsuit with the people's court within 90 days from the date of adoption of the resolution.

Article 18 — Where a shareholder exercises the right to demand the company purchase his or her shares, the company shall determine a reasonable purchase price. Where the parties cannot agree on a reasonable price, the people's court may entrust a qualified intermediary institution to appraise the value of the company's net assets to determine a reasonable purchase price.

Article 19 — Where a shareholder files a lawsuit demanding that the company purchase his or her shares and the company has been dissolved or has entered bankruptcy proceedings, the people's court shall dismiss the lawsuit and inform the shareholder that the shareholder may exercise relevant rights in the dissolution and liquidation or bankruptcy proceedings.

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Article 20 — Where a shareholder files a lawsuit in accordance with Article 22 of the Company Law demanding that a resolution of the shareholders' meeting, shareholders' general meeting, or board of directors be declared invalid or be revoked, the company shall be the defendant. Where a resolution is confirmed invalid or revoked, the company shall apply to the company registration authority for cancellation or modification of registration based on the effective judgment.

Article 21 — Where a shareholder files a lawsuit demanding that a resolution be declared invalid or be revoked, the people's court may, upon application by the company or an interested party, order the shareholder to provide corresponding security. Where a shareholder abuses such litigation and causes losses to the company, the shareholder shall bear civil liability in accordance with the law.

Article 22 — The provisions of this Judicial Interpretation shall apply to civil disputes over the application of the Company Law accepted by people's courts. Where judicial interpretations previously promulgated by the Supreme People's Court are inconsistent with this Interpretation, this Interpretation shall prevail.

Article 23 — These Provisions shall take effect as of September 1, 2017.

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