CHINA REGULATORY UPDATES

瀚一律师事务所
HAN YI LAW OFFICES

www.hanyilaw.com

Q4, 2023

TABLE OF CONTENTS / 本期内容

COMPANY LAW / 公司法

Newly Amended Company Law Officially Adopted / 《公司法》正式修订 2

PRIVATE FUNDS / 私募基金

CSRC Seeks Public Comments on Draft Supervision and Administration Rules for Private Funds / 证监会就《私募投资基金监督管理办法》公开征求意见 3

FINANCIAL REGULATION / 金融监管

Implementation Measures for Administrative Licensing Items on Non-Bank Financial Institutions Issued / 《非银行金融机构行政许可事项实施办法》正式实施 4

CIVIL CODE / 民法典

SPC Releases Judicial Interpretation of Civil Code General Principles on Contracts / 最高人民法院发布民法典合同编通则司法解释 5

COMPANY LAW / 公司法

Newly Amended Company Law Officially Adopted 《公司法》正式修订

2023年12月29日，第十四届全国人大常委会第十七次会议表决通过新修订的《中华人民共和国公司法》（“新《公司法》”）。新《公司法》将于2024年7月1日起正式施行。本次修订先后经历2021年12月、2022年12月以及2023年9月三次发布修订草案并公开征求意见（*具体分析请见我所《每月立法动态》2021年12月&2022年1月合刊、2023年1月刊和2023年第三季度刊*），也是自2005年以来《公司法》又一次的全面修订，主要涉及公司登记、股东出资责任、公司治理、控股股东和董监高义务等方面规定的完善。与第三次修订草案（“《三审稿》”）相比，新《公司法》主要有以下变化：

1. 完善股东出资期限：(i) 《三审稿》取消了原《公司法》自2013年起确立的注册资本认缴制，规定了有限责任公司股东应当在公司成立五年内缴足认缴的出资额，新《公司法》在此基础上新增“法律、行政法规以及国务院决定可以对有限责任公司股东出资期限作出特别规定”，为特殊领域公司设定不同于五年的认缴期限留出空间；(ii) 《三审稿》关于股份有限公司股东出资期限的规定与有限责任公司一致，但新《公司法》对股份有限公司股东出资期限提出了更加严格的规定，明确“股份有限公司发起人应当在公司成立前按照认购的股份全额缴纳股款”；(iii)对于新《公司法》实施前已经设立的公司（“存量公司”），新《公司法》对该等公司的注册资本缴纳期限设置了过渡期，具体实施办法将由国务院制定。因此对于存量公司出资期限的具体调整方式和时间安排，有待主管机关出台相应的操作指引。

2. 进一步明确公司减资：《三审稿》中要求“公司减少注册资本，应当按照股东出资或者持有股份的比例相应减少出资额或者股份”，但并未明确公司是否可以进行定向减资。新《公司法》增加了“有限责任公司全体股东另有约定或者股份有限公司章程另有规定的除外”的例外情形表述，这意味着定向减资最终为新《公司法》所明确接受，也反映了此前司法实践中定向减资需经全体股东一致同意的主流裁判观点。

3. 加强股东权利保护：无论是《三审稿》还是原《公司法》，股东权利仅能在本公司层面行使，无法穿透到公司的全资子公司层面，但新《公司法》(i) 规定了股东有权依照本法对全资子公司的董事、监事、高级管理人员等侵犯全资子公司合法权益的行为，书面请求全资子公司的监事会、董事会向人民法院提起诉讼或者以自己的名义直接向人民法院提起诉讼；且(ii) 规定了股东有权依照本法要求查阅、复制公司的全资子公司相关资料。

On December 29, 2023, the 7th session of the Standing Committee of the 14th National People’s Congress officially adopted the revised and restated version of the PRC *Company Law* (the “New Company Law”). The New Company Law will take effect as of July 1, 2024. Experiencing three drafts released for public comments respectively in December 2021, December 2022 and September 2023 (*please refer to our December 2021 & January 2022, December 2022, and 2023 Quarter 3 issues of China Regulatory Updates for details*), the New Company Law represents a new revised and restated version of the PRC Company Law, mainly involving amedements and improvements of regulations in connection with company registration, capital contribution, corporate governance, duties of controlling shareholders, directors, supervisors and senior executives. Compared with the third draft for public comments (the “Third Draft”), major highlihts of the New Company Law include the followings, among others:

1. Contribution period for registered capital is further streamlined. (i) the Third Draft abolished the capital subscription regime which has been adoptedsince 2013 and proposed a new requirement that the registered capital of a limited liability company (LLC) must be fully paid within five years from its incorporation, based on which the New Compnay Law adds that regardless of the foregoing requirement, “laws, administrative regulations, and the decisions of the State Council may set forth special requirements on the time limits for capital contributions of LLCs by their shareholders”. It provides flexibitie for companies in some special industries to set a capital contribution period other than the 5-year time limit; (ii) accoridng to the Third Draft, the capital contribution period for shareholders of a company limited by shares (CLS) is consistent with that for LLCs; however, the New Company Law requires the sponsors of a CLS shall make full capital contributions to the company before the incorporation of the CLS; and (iii) unlike the Third Draft which kept silent on capital contribution requirement on the companies which are eastablised before the effective date of the revised version (“Existing Companies”), the New Company Law proposes to set forth a transitional time period for the full contribution of the capital amounts subscribed by their shareholders. As the transitional period is still subject to the implementation measures to be further formulated and announced by the State Council, the Exisitng Companies would have to wait to see what kind of actions that they could take to comply wih this new requirement in accordance with thedetailed guidelines to be implemented by the relevant authorities.

2. Capital reduction is further clarified. The Third Draft stated that “in the event of capital reduction, all the shareholders shall reduce their capital contributions or shares in proportion to their shareholding ratios in the company”. However, it failed to address the commonly concerned practice, i.e., whether a disproportional capital reduction is allowed upon agreement of all shareholders of a company. The practice is generally endorsed by the New Company Law through allowing all shareholders of LLCs or the articles of association of CLSs to agree or provide capital reducitons other than the proportional ones.

3. The protection of shareholders’ rights is further elevated. While under the Third Draft and the current PRC Company Law, shareholder rights of a company are only limited to the company itself excluding those to the company’s wholly-owned subsidiaries, the New Company Law provides that (i) shareholders of a comay may request the board of supervisors or the board of directors of a wholly-owned subsidiary in writing to file a lawsuit or file a lawsuit directly

以上仅列出了新《公司法》与《三审稿》之间的主要区别和变化；有关新《公司法》与现行《公司法》的主要区别和变化，我们将在日后的专项备忘录中予以汇总和点评，并及时分享给感兴趣的读者。

作为《公司法》施行以来的第二次全面修订，本次修订在现行公司法基本框架和主要制度基础上，吸收了相关商业和司法实践的经验，并与《民法典》等其他法律法规进行了衔接，将对公司治理、投融资、资本市场、争议解决等实务领域产生重要影响。

in their own namesunder any circumstance where the directors, supervisors or senior executives violate the lawful interests of the subsidiary; and (ii) shareholders of a company may request to check and make copies of information relating to the company's wholly-owned subsidiaries by law.

Please note that the above only summarizes major changes and highlights of the New Company Law compared to the Third Draft. For a comprehensive summary and in-depth analysis of major changes between the New Company Law and the current version, we will prepare a specific commentary memo and share with the interested readers later on.

As the second comprehensive revisions to the Company Law since its implementation, the New Company Law, based on the basic framework and essential systems established under the current version, reflects some prevailing commercial and judicial practices and adjusts to be consistent with other related laws and regulations such as the Civil Code and is supposed to have an important impact on the furtur practice of Chinese Companies in terms of such key areaes as capital contribiton, corporate governance, investment and financing, and dispute resolution, among others.

PRIVATE FUNDS / 私募基金

CSRC Seeks Public Comments on Draft Supervision and Administration Rules for Private Funds
证监会就《私募投资基金监督管理办法》公开征求意见

2023年12月8日，中国证券监督管理委员会（"证监会"）发布《私募投资基金监督管理办法（征求意见稿）》（"《征求意见稿》"）并向公众公开征求意见。为落实与细化2023年9月1日正式施行的《私募投资基金监督管理条例》（"《管理条例》"），《征求意见稿》对2014年8月施行的《私募投资基金监督管理暂行办法》（"《暂行办法》"）和相关监管规则进行了全面修订和完善。其中，有以下方面的新增和变化尤其值得关注：

1. 将母基金明确列入私募基金类型。《征求意见稿》首次将母基金作为与私募股权基金（含创业投资基金、不动产私募基金）、私募证券基金并列的基金类型，并从投资范围、实缴规模和投资门槛等方面对上述基金类型进行了差异化的规定。对于市场比较关注的嵌套问题，《征求意见稿》规定私募基金嵌套不超过两层的同时，特别明确了母基金不计入嵌套层数，具体办法由证监会另行规定。

2. 加强了了对基金托管的要求。为加强基金财产独立性、应对此前实践中高发的行业风险，《征求意见稿》增加了应当托管的基金范围，即符合下列情形的私募基金，应当由私募基金托管人托管：(i)采用契约形式设立的；(ii)接受资产管理产品、私募基金投资的；(iii)主要投资单一标的、境外资产、场外衍生品等情形的；(iv)开展杠杆融资的；(v)证监会规定的其他情形。此外，基金业协会应当对所有未托管的私募基金进行特别公示。

3. 提升了对管理人内部治理的要求。《征求意见稿》要求私募基金管理人应当具备信息技术系统、安全防范设备，并首次提出要建立利益冲突防范问责机制，以保证私募基金管理人能够安

To further implement the *Regulations on the Supervision and Administration of Private Funds* (the "Regulations") which issued by the State Council and has become effective as of September 1, 2023 and address some of the commonly concerned issues in the prevailing practice, on December 8, 2023, the China Securities Regulatory Commission ("CSRC") issued the *Measures for the Supervision and Administration of Private Funds (Draft for Comments)* (the "Draft") for public comments which is supposed to replace the *Interim Measures for the Supervision and Administration of Private Funds 2014* (the "Interim Measures") and the relevant regulatory rules. Compared to the Regulations, highlights of the Draft mainly include, among others:

1. Fund of funds is regulated as a specific type of private funds for the first time. The Draft places funds of funds under its regulatory domain as one of the primary types of private funds alongside two other types of funds: private equity funds (including venture capital funds and real estate investment trusts) and private securities investment funds. The Draft also sets forth different requirements on the three types of private funds in terms of their respective required scopes of investment, scales of paid-in amount for the funds raised and thresholds for qualified investors. To address the commonly concerned multi-level nesting issue of the funds, the Draft clarifies that a private fund may at most have two layers of nesting while a fund of fund is not counted as a layer subject to detailed rules to be furher formulated by the CSRC.

2. Custody requirements are further strengthened. To reinforce the independence of fund assets and lower high industry risks that occurred in previous practice, the Draft expands the scope of the funds that shall be managed under custody to the following ones: (i) funds established in the form of a contractual arrangement; (ii) funds accepting investment from any asset management products or other private funds; (iii) funds mainly investing in one single target, offshore assets or OTC derivatives; (iv) funds using leveraged financing; and (v) other circumstances provided by the CSRC. Furthermore, the Asset Management Association of China (AMAC) is mandated to publicly announce all private funds not managed under custody.

3. Internal governance requirements for fund managers are further tightened. The Draft stipulates that fund managers shall put in place information technology systems, risk

全、独立、有效履行投资管理职责。此外，《征求意见稿》首次明确要求私募基金管理人不得出资设立分支机构，且私募基金管理人设立子公司必须以管理私募基金财产为前提。

4. 细化单一标的私募基金的差异化管理要求。《征求意见稿》首次明确指出将80%以上基金财产投资于单一标的的私募基金属于单一标的私募基金，且应当符合更严格的备案要求：(i) 基金合同必须明确约定；(ii) 实缴规模不少于2000万元，且单个投资者实缴不少于500万元（单个个人投资者实缴不少于1000万元）；(iii) 该标的与私募基金管理人没有关联关系，但全体投资人一致同意的情形除外；(iv) 对全体投资人应进行符合规定的书面特别风险提示。虽然《私募投资基金登记备案办法》对单一标的私募基金提出了上述第(ii)和(iv)项相应要求，但并未明确规定其认定标准和其他相应规定。

5. 提高了合格投资者的认定标准和投资门槛。与《暂行办法》相比，主要区别在：(i) 规定自然人作为合格投资者必须具备两年以上投资经历，且家庭金融资产不低于500万元，家庭金融净资产不低于300万元，或近三年本人年均收入不低于40万元，而《暂行办法》此前对投资经历并不做要求；(ii) 规定单个投资者投资于单只私募股权基金不得少于300万元，并且投资于单一标的私募基金、未托管的私募基金等部分特别情形的私募基金不得少于500万元，而《暂行办法》此前规定单个投资者投资任何单只私募基金只需不少于100万元；(iii) 允许私募基金管理人设立单一投资者私募基金，并就具体事项与投资人进行特别约定，但是规定实缴规模不得少于1亿元，而且单一投资人仅能是：(A) 金融机构；(B) 社会保障基金、基本养老保险基金、年金基金等养老基金；(C) 慈善基金等社会公益基金；(D) 合格境外投资者；以及 (E) 政府基金或政府资金参与设立的基金等。

作为《暂行办法》施行后的首次修订，《征求意见稿》无论对私募基金管理人登记、私募基金备案，还是投资人参与私募基金投资，均将发挥长足的影响力。预计监管部门今后还将以差异化管理为原则，出台更多的监管细则，以规范各类型私募基金的运作，我们将对此保持持续关注。

precaution equipment as well as conflict of interest prevention and accountability mechanisms to ensure they are capable of performing their investment management duties safely, independently, and effectively. In addition, the Draft, for the first time, stipulates that fund managers shall not establish any branch, and the establishment of subsidiaries shall be premised on the goal of managing fund assets.

4. Requirements for private funds investing in a single target are specifically differentiated. The Draft specifically defferenticate the private funds investing more than 80% of its fund assets in a single target from other funds and places special record-filing requirements on such funds: (i) their fund contracts shall expressly state that; (ii) the paid-in amount of the funds raised shall not be less than RMB 20 million and the investment amount of a single investor shall not be less than RMB 5 million (for any natural person, the miminum investment amount should not be less than RMB10 million); (iii) there is no affiliated relationship between the investment target and the fund manager, unless otherwise agreed by all investors unanimously and (iv) a special written risk warning shall be served to all investors. All these provide detailed guides for similar requirements under the *Measures for the Registration and Filing of Private Funds* and are supposed to further facilitate implementation of such requirements in practice.

5. Criteria for qualified investors are observably raised. Compared with the Interim Measures, major changes to the criteria for a qualified investor of a provide fund are: (i) for a natural person, the investor shall have more than two-year investment experience (*which was not required under the Interim Measures*), and his or her household financial assets shall be no less than RMB5 million and household net financial assets shall not be less than RMB3 million, or his or her average annual incomes shall be no less than RMB400,000 in the last three years; (ii) the investment amount of a single investor shall be no less than RMB3 million in a single private equity fund or no less than RMB5 million under certain circumstances (e.g., in a single-target fund or funds not managed under custody), while the Interim Measures only required a single investor to invest no less than RMB1 million in any single fund; (iii) funds with a single investor are allowed if the fund manager can enter into special agreements with the investor on some specific issues and the paid-in investment amount of the investor is no less than RMB100 million. Qualified single investoir in this category is however limited to be one of the following types of entities: (A) a financial institution; (B) a pension fund such as a social security fund, a basic pension insurance fund, an annuity fund, etc.; (C) a welfare fund such as a charity fund; (D) a QFII; and (E) a government fund or a fund established with the participation of government funds.

With the aim to replace the Interim Measures in its entirety, the Draft will have a profound impacts on the private fund industry and all related market participants. It is expected that competent government authorities will further introduce implementing rules and detailed guides to streamline managemet and operation of various types of private funds based on the differentiated administration principle. We will continue to monitor any major regulatory development in this regard closely.

FINANCIAL REGULATION / 金融监管

Implementation Measures for Administrative Licensing Items on Non-Bank Financial Institutions Issued 《非银行金融机构行政许可事项实施办法》正式实施

2023年10月9日，国家金融监督管理总局修订发布《非银行金融机构行政许可事项实施办法》（“《实施办法》”），自2023年11月10起施行。相比之前的

On October 9, 2023, the National Administration of Financial Regulation amended and issued the *Implementation Measures for Administrative Licensing Items for Non-bank Financial Institutions* (the "Implementation Measures"), which officially took

版本，《实施办法》的主要修订内容之一是持续扩大对外开放，进一步放宽了外商投资企业集团财务公司和金融资产管理公司的准入条件，具体包括：

1. 企业集团财务公司：与2022年11月开始施行的《企业集团财务公司管理办法》协调一致，《实施办法》(i) 取消了境外金融机构作为境内企业集团财务公司出资人的总资产要求，即删除了“其最近一个会计年度末的总资产原则上不少于10亿美元或等值的可自由兑换货币”的规定，仅保留2020年修订版本的“最近两年长期信用评级为良好及以上”的要求；并(ii) 规定了外资跨国集团可以直接申请设立财务公司，也可以通过在中国境内设立的外资投资性公司申请设立财务公司，且细化了设立财务公司的净资产要求，即要求“其最近一个会计年度末净资产不低于120亿元人民币或等值的可自由兑换货币，且净资产不低于总资产的40%”。

2. 金融资产管理公司：修订前的版本仅允许境外金融机构成为境内金融资产管理公司的出资人，《实施办法》则(i) 新增了境外非金融机构可以作为境内金融资产管理公司出资人的规定，并对其治理结构、净资产规模、合规状况、财务状况、管理经验、资金来源等方面做出具体要求；并且 (ii) 取消了境外金融机构作为境内金融资产管理公司出资人的总资产要求，即删除“其最近一个会计年度末的总资产原则上不少于100亿美元或等值的可自由兑换货币”的规定。

以上修订对于外资在境内发展非银行金融业务无疑是重要利好，在吸引更多外资进入中国从事非银行金融业务的同时，也能促进境内非银行金融机构吸收国际先进经验和专业人才，优化公司治理。

effect as of November 10, 2023. This is the third amendment after the original issue of the Implementation Measures in 2007 and the following amendments in 2015 and 2020. Compared with the previous version, one of the main changes of the Implementation Measures is to further expand opening-up and further relax the restrictions on market access for overseas investors to invest in enterprise group finance companies and financial asset management companies, including:

1. Enterprise group finance companies. To be consistent with the *Administrative Measures for Finance Companies of Enterprise Groups* implemented in November 2022, the Implementation Measures (i) removed the total assets requirement for overseas financial institutions to be contributors of enterprise group financial companies, namely, deleting the provision from the previous version that “its total assets at the end of the past accounting year shall not be less than USD1 billion or the equivalent value in a freely convertible currency” while only keeping the requirement that “its long-term credit rating shall be good or above in the past two years”; and (ii) provided that a foreign-funded multinational group may apply for the establishment of a finance company directly or through its foreign-funded investment company established within China, and further refines the net assets requirement the foreign-funded multinational group shall meet, that is, “its net assets at the end of the past accounting year shall not be less than RMB12 billion or the equivalent value in a freely convertible currency, and its net assets shall not be less than 40% of its total assets”.

2. Financial asset management companies. The 2020 amended version only allowed overseas financial institutions to be contributors to financial asset management companies. However, the Implementation Measures (i) allowed overseas non-financial institutions to be contributors to financial asset management companies and refine detailed requirements for their governance structure, net asset scale, compliance conditions, financial status, operation experience, funding sources, etc.; and (ii) removed the total assets requirement for overseas financial institutions as contributors to financial asset management companies, namely, deleting the requirement that “its total assets at the end of the last accounting year shall not be less than RMB 10 billion or the equivalent value in a freely convertible currency”.

The above amendments undoubtedly have a positive effect on the development of non-bank financial industry, attracting more foreign capital to enter China to engage in non-bank finance businesses, as well as promoting domestic non-bank financial institutions to absorb advanced international experience and professional talents to optimize corporate governance.

CIVIL CODE / 民法典

SPC Releases Judicial Interpretation of Civil Code General Principles on Contracts 最高人民法院发布民法典合同编通则司法解释

2023年12月5日，《最高人民法院关于适用〈中华人民共和国民法典〉合同编通则若干问题的解释》（“《合同编通则解释》”）正式发布并于同日起实施。自2021年1月1日《民法典》开始施行，最高人民法院根据原合同法制定的司法解释同步废止，司法实践缺乏新的司法解释的指引。《合同编通则解释》在清理和调整原司法解释的基础上，结合了司法实践经验和各界观点，对《民法典》合同编通则的适用作出了具体的说明和明确的指引。《合同编通则解释》主要有以下亮点引起广泛关注：

1. 明确违反强制性规定但不导致合同无效的例外情形。《民法典》规定了“违反法律、行政法规强

On December 5, 2023, the *Interpretation of the Supreme People's Court (the "SPC") on Several Issues Concerning the Application of the General Principles of of the PRC Civil Code* on Contracts (the "Interpretation") was formally released. After the PRC Civil Code came into effect on January 1, 2021, the original judicial interpretations made by the SPC under the previous Contract Law were repealed simultaneously, and the market was left with the absence of new judicial interpretations or detailed guidelines of the PRC Civil Code on contracts. It is predicted that the Interpretation combining the judicial practice and diverse perspectives will address some commonly concerned issues in practice, eliminate practical uncertainties and provide detailed guidance and explanations on how to interperate and apply relevant rules under the Civil Code on contract. Noteworthy highlights of the Interpretation mainly includes:

1. Exceptions for breach of mandatory provisions leading to the invalidity of a contract are clarified. The Civil Code

制性规定的民事法律行为无效。但是，该强制性规定不导致该民事法律行为无效的除外”。根据先前的最高院司法解释和实践，法院一般对强制性规定分为强制性效力规定和管理性强制性规定，并将导致合同无效的强制性规定限定在效力性强制性规定上。《合同编通则解释》则不再做上述区分，在行为人承担行政责任或者刑事责任即可实现强制性规定目的前提下，列举了违反强制性规定但是不导致合同无效的五类具体适用情形。这种方式较好地避免效力性强制性规定与管理性强制性规定在实践中难以区分、判定标准不统一的难题，也为法官行使自由裁量权做出了新的尝试。

2. 明确违约损害赔偿中“可得利益”的计算规则。《民法典》规定了“违约所造成的损失包括合同履行后（非违约方）可以获得的利益；但是不得超过违约一方订立合同时预见到或者应当预见到的因违约可能造成的损失”。《合同编通则解释》则对上述可得利益计算规则进行了完善：(i) 明确了可得利益数额可以采取利润法、替代交易法、市场价格法等方法进行计算；(ii) 明确了在以持续履行的债务为内容的定期合同中，可以参考合同主体、交易类型、市场价格变化、剩余履行期限等因素确定非违约方寻找替代交易的合理期限，并根据该期限对应合同价款确定可得利益数额；(iii) 明确了无法确定非违约方可得利益时，法官可以综合考虑违约一方因违约获得的利益、过错程度、其他违约情节等因素，遵循公平原则和诚信原则确定可得利益数额；(iv) 明确了在计算违约损失赔偿的数额时，应当扣除非违约方未采取适当措施导致的扩大损失、非违约方的过错造成的相应损失以及非违约方因违约获得的额外利益和减少的必要开支等因素。

除此以外，《合同编通则解释》还对预约合同和交易意向的区分标准、格式条款的“重复使用”的判断标准、隐藏合同效力的认定等法律问题进行了细化规定，对未来合同法相关的司法实践和商业交易具有指导意义。

stipulates that any civil act that violates a mandatory requirement under applicable laws and administrative regulations shall be deemed as null and void, unless the mandatory requirement does not have the legal effect rendering the civil act null and void. Thus, before the Interpretation, judges of Chinese courts at different levels ususually classified the mandatory requirements into two categories (i.e., mandatory requirements with effect on validity and those only having an administrative nature) and had to firstly determine which category a mandatory requirement falls in. Instead of adopting the aforesaid classification on the mandatory requirements, the Interpretation examplified five specific circumstances where the breach of a mandatory requirement may not lead to the invalidity of a contract as long as the lawful purpose of the requirement could be realized through imposing administrative or criminal punishments on the relevant parties involved. This approach effectively addresses the challenge of distinguishing between the two types of mandatory requirements, which are often difficult to differentiate in practice due to inconsistent criteria. It also provides new attempts for judges to exercise their discretionary powers in this regard.

2. Rules for calculating the obtainable benefits are clarified. The Civil Code stipulates that “the losses resulting from a breach of contract include the benefits that the non-breaching party could have obtained after the performance of the contract, provided, however, that these benefits shall not exceed the losses foreseeable or should have been foreseen by the breaching party at the time of contract formation. The Interpretation further refines the rules for calculating the aforementioned obtainable benefits: (i) the amount of obtainable benefits can be calculated using methods such as the profit method, substitute transaction method, market price method, and etc.; (ii) for fixed-term contracts involving ongoing performance obligations, factors such as the contracting parties, transaction type, market price changes, remaining performance period, etc., should be considered to determine a reasonable period for the non-breaching party to seek a substitute transaction. The amount of obtainable benefits is then determined based on the contract price corresponding to this period; (iii) when it is impossible to determine the obtainable benefits for the non-breaching party, judges can comprehensively consider factors such as the breaching party's benefits from the breach, degree of fault, and other breach circumstances. The determination of the amount of obtainable benefits should follow the principles of fairness and good faith; and (iv) when calculating the amount of damages for a breach, factors such as the non-breaching party's failure to take appropriate measures leading to increased losses, losses caused by the non-breaching party's fault, additional benefits obtained by the non-breaching party due to the breach, and reduced necessary expenses should be deducted.

In addition, the Interpretation also provides detailed regulations on legal issues such as distinguishing between reservation contracts and transaction intentions, criteria for determining the “repeated use” of standard terms, and recognizing the effectiveness of hidden contracts. It is agreed that these specifications will have guiding significance for future judicial practices and commercial transactions related to contract law.

For further information, please write us at ***inquiry@hanyilaw.com.***

CONTACT US

上海市中山西路2020号
华宜大厦1座1801室
邮编：200235
电话：(86-21) 6083-9800

Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800