

**Kobre & Kim's Cross-Border
Disputes Team**

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New Rights for Private Equity Investors and Private Credit Lenders Enhance Speed of Takeover of PRC Project Companies

Economic challenges in China have put many PRC companies in distress, putting pressure on offshore joint venture partners and private credit lenders who may face the difficult prospect of taking over onshore companies for a recovery. Fortunately, a new PRC company law will provide investors with strengthened information rights that they can leverage with a multijurisdictional strategy.

The recent challenging economic conditions in China are putting many PRC companies in distress. This has strained relations between joint venture partners and put private credit lenders at risk. In worst-case scenarios, parties face the difficult prospect of attempting a recovery by taking over PRC projects, companies or assets.

We previously detailed how a new Chinese company law that takes effect in July 2024 offered investors new powers to take control of PRC companies and assets. The new law also provides other fresh tools that private equity investors and private credit lenders can use, including strengthened information rights for shareholders of Chinese companies. Those shareholders would also include offshore liquidators or receivers who have stepped into the shoes of a parent company holding shares in PRC subsidiaries.

With these new powers, investors and lenders can more easily obtain essential information on PRC companies they can leverage. Combined with a multijurisdictional strategy, investors and lenders may be able to use the new Chinese company law to achieve a quicker and more effective takeover of project companies. This offers another form of protection to those who hold minority stakes in PRC projects and debt positions and would like more visibility into and control of project companies.

What are the PRC project company shareholders' new enhanced rights?

The new law has made several significant changes to shareholder information rights that enhance the speed of actions to take over PRC project companies, including:

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- Shareholders can request a company's accounting books—permitted since 2018—as well as the underlying accounting vouchers, which more accurately reflect a company's operational and financial well-being.
- Shareholders can now request the company's register of shareholders, which has detailed shareholder contact and shareholding information.
- Shareholders can access information from not only the company but also its wholly-owned subsidiaries.
- New shareholders can begin to exercise their rights once the company updates the register of shareholders, instead of waiting until the relevant regulator updates the information in their system.

What does this mean for private equity investors and private credit lenders?

Expanded access to critical information relevant to investors as they attempt a takeover or consider a negotiation brings clear benefits, such as:

- **Uncovering evidence of misconduct and other vulnerabilities.** The ability to assess critical company information can allow investors and lenders to uncover and bolster potential claims against the company's board. This may include a breach of the directors' duties, breach of agreements, unfair prejudicial treatment, insider dealing, embezzlement, fraud, and misappropriation. Any collected evidence can not only be used in pursuing claims against the board but also form part of a strategic communications strategy.
- **More current valuation of PRC project companies.** Analyzing the company's underlying accounting vouchers—on top of accounting books—can give investors a fuller picture of the company's value and is relevant to which project companies to target. Articles of association and board minutes can provide insight into the management of company operations, which can inform strategic next steps. The mere fact that this information has been requested or obtained can increase bargaining power.
- **Identifying changes to shareholdings.** Shareholders will soon be able to have a fuller picture of the company's existing shareholders, including identifying changes to shareholding, consideration paid, as well as distinguishing between subscribed and actually paid capital. This might give rise to evidence of dissipation of assets or claims based on evidence of misconduct.

Private equity investors and private credit lenders will have more to use powerful tools to access company information. This will allow investors to better design and execute a cross-border campaign to take over Chinese project companies and recover claims and assets faster and more effectively than before.

About Kobre & Kim

Kobre & Kim focuses on cross-border disputes and investigations, often involving serious allegations of fraud and misconduct. The firm:

- Focuses on helping private equity investors and private credit lenders take over project companies and realize value.
- Often monetizes high-value debt and equity claims around the world with our integrated onshore-offshore team including BVI, Cayman, Hong Kong, PRC, UK and US lawyers including King's Counsel.
- Maintains our independence as advocates ready to litigate against virtually any institution by avoiding repeat client relationships, and the conflicts of interest that come with them.