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INTERNATIONAL BUSINESS AND INVESTMENT IN CHINA,
IT IS WRONG TO READ THE FACE OF THE CHINESE-FOREIGN JOINT
VENTURE LAW THAT THE BOARD OF DIRECTORS IS THE HIGHEST AUTHORITY

*Fengping Gao**

I. INTRODUCTION

In 2017 China's inbound Foreign Direct Investment records hit an all-time at 135 billion U.S. dollars.¹ Meanwhile, a large number of international businesses, including U.S. companies, pulled out from China and transferred their business to South Asian countries and United States for a variety of considerations, including but not limited to the cheaper labor, lax environmental regulations, and corporate tax cut and other policy objectives initiated under the Trump Administration. The departure of foreign investors could trigger the controversy among the original parties to the Chinese-Foreign Equity Joint Ventures ("FJV").

In a recent international business case, the original board chairperson disagreed with the resolution reached by the shareholders to dismiss him, alleging that he was conferred with the highest authority of the law to represent the company. Without the cooperation of the incumbent board of directors, the successor of the chairperson failed to register with the authorities in compliance with the law. The failure of registration was invoked as another justification under the procedural law for the original chairperson to entrench his board position. Consequently, since new directors were not installed, the FJV was not able to make institutional decisions for the board of directors. The controversy remained detrimental to the venture for five years.

The extensive litigation is not an isolated dispute with respect to the internal struggle of the FJV. The relevant issues in another case, *Sino-environment Technology*,² were also brought before the Supreme People's Court of China. The highest court published its

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¹ *China Focus: China 2017 FDI Rises to Record High, ODI Falls*, XINHUA (Jan. 16, 2018), www.xinhuanet.com/english/2018-01/16/c_136900334.htm.

² See *Sino-environment Technology Group (Fujian) Limited v. Sino-environment Technology Group Limited* (SUP. PEOPLE'S CT. 2014), <http://lawinfochina.com/display.aspx?lib=case&id=1503&EncodingName=gb2312> (addressing disputes of shareholders capital contribution) (China) [hereinafter *Sino-environment Technology*]. See also Sean Webb et. al., *China Guiding Cases Project: Sino-Environment Technology Group Limited, Singapore v. Thumb Env-Tech Group (Fujian) Co., Ltd.*, STANFORD LAW SCHOOL (Nov. 16, 2016), <https://cgc.law.stanford.edu/wp-content/uploads/sites/2/2016/11/B-and-R-TC1-English.pdf>.

decision on the official gazette as a “typical case,” which means the contested legal issues are likely to be brought before the courts again and have a significant social impact on China.³

The FJV’s are specifically covered by poorly drafted laws and regulations under the Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures.⁴ These regulations provide the highest authority for the board of directors. Such a provision contradicts the fundamental principle of company law prescribing the board of the shareholders to be the organ of authority at the company.⁵ Additionally, registration with authorities could easily be employed as the internal block to defeat the intent of the shareholders; thus, leading the internal struggle into an impasse if such a procedural undertaking is regarded as the condition to effectuate the replacement of the board directors. FJV laws and regulations should be read side-by-side in order to solve controversy and untangle the ambiguity of legislation.⁶ Regarding the issue of non-cooperation of a board of directors, the legal principle should be applicable in cases of board dismissal where “one cannot benefit from one’s own wrongdoing or misconduct.”⁷

The purpose of this paper is to provide both an academic analysis on the issues for international legal professionals, as well as practical advice to the house counsels of the FJV. Part I provides background information with respect to the establishment of the FJVs and the unique formation of its board of directors. Part II separately discusses the two issues often raised by the original dismissed board of directors as defenses, namely, whether the board of directors is the highest authority of the venture, and whether the successor registration must be performed in order to effectuate the replacement. Part III evaluates the first claim with the agency theory, the basis of the separation of ownership and management, and the method by reading the text in conjunction with the context of the law. As to the procedural registration issue, the paper resorts to the authority of the highest court case which directly deals with the problem. The paper concludes the alleged defenses are void. Finally, Part IV appends the legal advice in this regard.

II. THE FJV AND ITS BOARD IN CHINA

With respect to the FJV in China, the specific governing laws and regulations include the Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures (2001) (“FJV LAW”)⁸ and the Regulations for the Implementation of the Law on Sino-Foreign Equity Joint Ventures (2001)⁹ (“FJV Regulations”). China Company Law serves as

³ See Zhang Hangtao, *The Criminal Case of Zhemba Court was Appraised by the Supreme People’s Court as a Typical Case of Punishing the Lawful Rights and Interests of Minors*, SUP. PEOPLE’S CT. (Sep. 07, 2015), <http://sxzbxfy.chinacourt.org/public/detail.php?id=661>.

⁴ See Zhonghua Renmin Gongheguo Gongsi Fa (中华人民共和国公司法), Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures (promulgated by the Fifth Nat’l People’s Cong., Jul. 01, 1979, effective Jul. 01, 1979) 1979 P.R.C. LAWS (China).

⁵ *Id.*

⁶ *Id.*

⁷ See *Moore Stephens v. Stone Rolls Limited* (2009) UKHL 39, (2008) EWCA 644 (appeal taken from Wales), <https://publications.parliament.uk/pa/ld200809/ldjudgmt/jd090730/moore-1.htm>.

⁸ See Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures, 2001 P.R.C. LAWS, http://www.fdi.gov.cn/1800000121_39_2447_0_7.html (China) [hereinafter FJV Law].

⁹ See Regulations for the Implementation of the Law on Sino-foreign Equity Joint Ventures (promulgated by the St. Council, Sept. 20, 1983, rev’d by St. Council, Jul. 22, 2001, effective Sept. 20, 1983), art. 6,

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the general law in this regard and applies to all companies registered in China. The FJV falls within the scope of the China Company Law, either when this general law is cross-referenced by the specific laws and regulations, or when the specific laws and regulations are silent on the question.

A. The Establishment of an FJV in China

The establishment of an FJV is regulated by Chapter II Establishment & Registration of the FJV Regulations, which provides, in the relevant parts:

Article 6: The establishment of a joint venture in China shall be subject to examination and approval by the Ministry of Foreign Trade and Economic Cooperation [hereinafter referred to as MOFTEC]. . . . After approval, a certificate of approval shall be issued by MOFTEC. . . ;

Article 7: When applying for establishing a joint venture, the foreign and Chinese parties shall jointly submit the following documents to the examination and approval authority: (1) NAN application for the establishment of a joint venture;(2) the feasibility study report jointly prepared by the parties to the joint venture; (3) joint venture agreement, contract, and articles of association signed by representatives authorized by the parties of the joint venture;(4) list of candidates for chairperson, vice-chairperson and directors nominated by the parties to the venture; (5) other documents required by the examination and approval authority;

Article 8: Upon receipt of all the documents stipulated in Article 7 of these Regulations, the examination and approval authority shall, within three (3) months, decide whether to approve or disapprove them;

Article 9: The applicant shall, within one (1) month after receipt of the certificate of approval, carry out registration procedures with the administrative authority of industry and commerce...The date on which the business license of a joint venture is issued shall be regarded as the date of formal establishment of the joint venture.¹⁰

An FJV can be established through an application to MOFTEC by both the Chinese and the foreign parties to the FJV.¹¹ After the FJV passes examination, MOFTEC will issue

<http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200301/20030100064563.shtml> [hereinafter FJV Regulations].

¹⁰ *Id.*

¹¹ See generally *The Ministry of Foreign Trade of the Central People's Government*, MINISTRY OF FOREIGN TRADE AND ECONOMIC COOPERATION ("MOFTEC") (Dec. 7, 2010), <http://english.mofcom.gov.cn/history.shtml>.

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an approval certificate.¹² Once obtained, parties to the FJV must register with the Administration for Industry and Commerce within 30 days.¹³ Once the company is properly registered and, in turn, obtains its business license, the FJV is officially established in accordance with Article 9 of the FJV Regulations.¹⁴

Pertinent to the general law, the China Company Law, the relevant provision also identically provides:

Article 7: A company established according to the law shall be issued a company business license by the company registration authority. The date of issue of the company business license shall be that of establishment of the company.¹⁵

B. The Distinct Formation of an FJV's Board

The formation of the board of directors of an FJV is different from that of the companies of similar types in China. The FJV Law sets forth below:

Article 6: A joint venture shall have a board of directors, which shall have its size and composition stipulated in the contract and the articles of association after consultation between the parties to the venture, and the directors shall be appointed and replaced by the parties to the venture. The Chairman and the vice-chairman are determined by the parties to the venture or elected by the board of directors. Either party of the Chinese-foreign joint ventures may be the chairman and the other shall assume the office of vice-chairman. In handling major problems, the board of directors shall reach a decision through consultation by the parties to the venture, in accordance with the principle of equality and mutual benefit.¹⁶

The preceding Article defines the parties as “partners;” however, that may be misleading in the field of corporate law as a FJV is not a partnership. Pursuant to Article 4 of the FJV Law, a FJV “shall take the form of a limited liability company.”¹⁷

If a FJV is a limited liability company as defined by Chapter II Establishment and Organizational Structure of Limited Liability Companies of the China Company Law, Article 40, stipulates that a limited liability company shall have a board of directors.¹⁸ If a limited

¹² See Detailed Rules of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) on the Approval and Control of Resident Representative Offices of Foreign Enterprises, (promulgated by Decree No 3 of the Ministry of Foreign Trade and Economic Cooperation on Feb. 1, 1995), <http://www.china.org.cn/english/features/investment/36746.html> (China).

¹³ See FJV Regulations, *supra* note 9, art. 9.

¹⁴ *Id.*

¹⁵ Company Law of the People's Republic of China, (promulgated by the 5th Session of the Standing Comm. of the 8th Nat' People's Cong. Dec. 29, 1993, rev'd Dec. 12, 2013) 2013 P.R.C LAWS, http://www.fdi.gov.cn/1800000121_39_4814_0_7.html [hereinafter Company Law].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Company Law, *supra* note 15.

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liability company does not have a board of directors, a meeting shall be presided over by the executive director(s).¹⁹ The first paragraph Article 6 of the FJV Law is in conformity with the China Company Law requirement regarding board establishment.²⁰

In sharp contrast with other domestic limited liability companies, where the board of directors is elected by shareholders, the board of directors of an FJV is established “through consultation by the equity joint venture partners.”²¹ Article 6 of the FJV law sets forth the unique formation method utilized by FJVs where, “each equity joint venture partner shall be responsible for the appointment and replacement of its own directors”²² after the partners consultation.²³

III. THE ISSUES RAISED BY THE FJV BOARD OF DIRECTORS

Distinct from other jurisdictions, such as the United States, where the board of directors typically defend themselves, in the event of a hostile take-over FJVs opt to use staggered boards and classify their boards in various terms. The employed means is popular but not limited to this method utilized by the FJV.²⁴ With respect to that of the FJV in China, there are two relevant defenses available, discussed below.

A. The First Defense is That the Board of Directors is the Highest Authority of the
Venture

China is primarily regarded as a civil law tradition jurisdiction.²⁵ An international court will have to refer the provisions of the relevant laws and regulations as the primary legal authorities. Nevertheless, the FJV law and the FJV Regulations could cause controversy. Article 30 of the FJV Regulations furnishes the power of the board of directors:

Article 30: The highest authority of the joint venture shall be its board of directors. It shall decide all major issues concerning the joint venture.²⁶

Similarly, Article 6 of the FJV Law stipulates, in the relevant part:

Article 6: A joint venture shall have a board of directors... in handling major problems, the board of directors shall reach a decision through

¹⁹ *Id.*

²⁰ See FJV Law, *supra* note 8.

²¹ *Id.* at art 6.

²² *Id.*

²³ *Id.*

²⁴ See Lucian Arye Bebchuk et al., *The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy*, 54 STAN. L. REV. 887 (2002).

²⁵ *Legal Research Guide: China*, CONGRESS (Dec. 7, 2016), <https://www.loc.gov/law/help/legal-research-guide/china.php>.

²⁶ See FJV Regulations, *supra* note 9, art. 30.

consultation by the parties to the venture, in accordance with the principle of equity and mutual benefit.²⁷

Both Article 30 of the FJV Regulations and Article 6 of the FJV Law state the board of directors could decide “all major issues concerning the joint venture” or in a similar phrase, “all the important matters of an equity joint venture.”²⁸ The provisions apparently do not address the limitation concerning the “highest authority” of the board of directors. If reading the face of the law, the board should be in total control of the venture. Consequently, it is arguable that the board could refuse “the appointment and replacement of its own directors.” As such, in a variety of cases, the board of directors invokes the provisions above as justifications.

B. The Second Defense is that the Effective Replacement of a Board Member is Conditional on the Success of the Registration

The administrative procedural defense could be invoked in cases by the board members in their favor. Since an FJV falls within the scope of the China Company Law, Article 13 of the China Company Law provides for the registration with mandatory authorities:

Article 13: The chairman of the board, the executive director or the manager of the company shall act as the legal representative of a company pursuant to the articles of association of the company and the same shall be registered according to the law. In the event of any change in the legal representative of the company, formalities shall be carried out for registration change.²⁹

Article 13 states that the legal representative shall be registered according to the law. In the event of a change in its legal representative,³⁰ which is assumed by “the chairman of the board, the executive director, or the general manager,” shall also be carried out for the registration change; which may be challengeable.³¹

Further, Article 6, 7 and 14 of the FJV Regulations incorporating the language of the China Company Law above, prescribe, in the relevant parts:

Article 6: The establishment of a joint venture in China shall be subject to examination and approval by the Ministry of Foreign Trade and Economic Cooperation of the People’s Republic of China (hereinafter referred to as MOFTEC). After approval, a certificate of approval shall be issued by MOFTEC. . . .

²⁷ See FJV Law, *supra* note 8, art. 6.

²⁸ See FJV Regulations, *supra* note 9, art. 30, FJV Law, *supra* note 8, art. 6.

²⁹ See China Company Law, *supra* note 15, art. 13.

³⁰ *Id.*

³¹ See China Company Law, *supra* note 15, art. 13.

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Article 7: When applying for establishing a joint venture, the foreign and Chinese parties shall jointly submit the following documents to the examination and approval authority... (4) list of candidates for chairperson, vice-chairperson and directors nominated by the parties to the venture;

Article 14: The agreement, contract and articles of association shall come into force after being approved by the examination and approval authority. The same applies in the event of amendments.³²

The board of directors is an indispensable section to be articulated in the article of association, which is required to be submitted to authorities along with the candidates of directors.³³ In the event of a change to the director, vice chairman, or chairman, the approval process shall be reinitiated as stated in Article 6, 7 and 14 of the FJV Regulations.³⁴ The amendment undertakings work both to obtain the MOFTEC approval and to conduct the registration with the Administration for Industry and Commerce.³⁵ With respect to the person concerned, different from Article 13 of the China Company Law which requires only the legal representative to be registered,³⁶ the FJV Regulations Article 7 sets out all the board directors subject to registration.³⁷ On this ground, the board of directors could thus argue that the newly appointed replacement needs to be registered before legitimately taking the seat of directorship.

However, the replacement would be blocked internally by the current board if such a replacement happens to the chairperson, who is designated as the legal representative of the company in accordance with the Article 13 of the China Company Law.³⁸ Contrary to its counterparts in the United States, as the legal representative of the company, there is more power vested into the chairperson of the board directors. A legal representative acts on behalf of the company in relation to both the business activities and the civil obligations.³⁹ It becomes predominant when the law provides the legal representative with the exclusive power to utilize their signature, as well as have possession of the company seal, in daily business operations.⁴⁰ Scholars criticize that if “the power of representation is vested in a

³² FJV Regulations, *supra* note 9, art 6, 7, 14.

³³ *See generally id.*

³⁴ FJV Regulations, *supra* note 9, art 6, 7, 14.

³⁵ *Id.*

³⁶ *See* The China Company Law, *supra* note 10.

³⁷ FJV Regulations, *supra* note 9, art 6, 7, 14.

³⁸ The China Company Law, *supra* note 10.

³⁹ *See generally Roles and Responsibilities of the China Legal Representative* CHINA BRIEFING (Aug. 11, 2011), <http://www.china-briefing.com/news/roles-and-responsibilities-of-the-china-legal-representative/>.

⁴⁰ *Administrative Rules Governing the Registration of Companies* (“Company Administrative Rules”), MINISTRY OF COMMERCE PEOPLE’S REPUBLIC OF CHINA (June 24, 1994), <http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200306/20030600095908.shtml> (stating that a legal representative of a corporation shall be the person who represents the enterprise as its signatory in the exercise of its functions and powers).

single person,”⁴¹ it is “inherently susceptible to abuse.”⁴² It is worth noting that even if a replacement targets a non-chairperson, the process is not necessarily less difficult. Since a party of the venture appoints “its own directors,”⁴³ the dismissed director could be supported by the controlled board or another party to the venture. In reality, it is no surprise that such a delay could benefit other parties (e.g., in the process of liquidation).

On the grounds of legal requirement, the current board of directors would claim a justification to demand the registration undertaking.

IV. ANALYSIS

The following part is dedicated to assessing both the board’s “highest authority” defense and the registration procedural defense.

A. Regarding the Board Alleged “the Highest Authority” Issue

This paper analyzes whether the FJV⁴⁴ board enjoys the highest authority separately through three different perspectives as follows:

1. The Principal-Agent Relationship Between the Directors and the Parties to the FJV

According to the Agency Theory,⁴⁵ an agency is the relationship between two parties, namely, a principal and an agent.⁴⁶ The agent⁴⁷ represents the principal in the business.⁴⁸

In the FJV, a contract forms the relationship between the shareholders and the directors of the venture.⁴⁹ Based on the definition of agency, shareholders are principals, and directors act as their agents.⁵⁰ Through “the appoint[ment] and replace[ment]” of its own directors after the partners consult, the FJV parties delegate the directors to the board to represent their interests in daily business operations.⁵¹

⁴¹ See Charles Zhen Qu, *The Representative Power of The Shareholders' General Meeting Under Chinese Law*, 17 PAC. RIM L. & POL'Y J. 295, 296 (2008).

⁴² *Id.*

⁴³ FJV Law, *supra* note 8, art.6.

⁴⁴ *Id.*

⁴⁵ See Stephen A. Ross, *The Economic Theory of Agency: The Principal's Problem*, 64 THE AM. ECON. REV., 134 (1973).

⁴⁶ *Id.* at 135.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ FJV Law, *supra* note 8, art. 3 (“The joint venture agreement, contract and articles of association signed by the parties to the venture shall be submitted to the competent authorities of the foreign economic relations and trade. . . .”).

⁵⁰ See Deborah A. DeMott, *Shareholders as Principals*, Key Developments in Corporate Law and Equity: Essays in Honour of Professor Harold Ford 105 (IAN RAMSAY ED., 2002).

⁵¹ FJV Law, *supra* note 8.

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Once a contract is formed pursuant to the FJV, such a principal-agent relationship creates a fiduciary relationship amongst the parties.⁵² The agents then owe a fiduciary duty to the principals.⁵³ Once a fiduciary duty is formed, the agent acting on behalf of the principals must carry out the assigned tasks with the principal's best interest as priority.⁵⁴ The agent is responsible for completing tasks given by the principal upon instruction with a certain level of skill and care.⁵⁵ Additionally, a duty of loyalty is also implied within the principal-agent relationship, which requires the agent to refrain from putting himself or herself in a position that creates or encourages a conflict between his or her interest and the interest of the principal.⁵⁶ Under the FJV, when the principal decides to terminate the principal-agent relationship or the agent resigns, the relationship is effectively in accordance with the General Rules of Civil Law of China.⁵⁷

The directors appointed by a party under the FJV pursuant to Article 3, creates a principal-agent relationship.⁵⁸ As a result, a fiduciary relationship is created between the party to the FJV and the director appointed by that party.⁵⁹ Under the established relationship, the appointed directors must carry out the assigned tasks of the owner.⁶⁰ The director is thus responsible for completing the task once the instruction is reasonably given by the party.⁶¹ Under the FJV, when a dismissing notice is given, the instruction shall be duly honored.⁶² Any refusal or delay is an improper manner under the meaning of the fiduciary duty and/or the loyalty.⁶³ Therefore, a defense by the board director to not fulfill a duty cannot be justified on the ground of agency theory.

2. Shareholder Meetings Transformed as Partners Consultations

On the basis of the separation of ownership and management, which is one of the fundamental formalities of modern companies, owners of a company could hire the skilled management board members to conduct the complicated daily business matters on their

⁵² See DeMott, *supra* note 48. See also Restatement (Third) of Agency § 1.01 (Lexis 2006).

⁵³ See Restatement (Third) of Agency, § 1.01 (Lexis 2006).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See FJV Law, *supra* note 8, art. 14 (stating "[t]he contract may be terminated through consultation and agreement by the parties to the venture, subject to approval by the approval authorities and to registration with the state competent authorities of administration for industry and commerce.").

⁵⁸ *Id.* art. 6.

⁵⁹ *Id.*

⁶⁰ See *id.*, arts. 14, 16.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Melissa Horton, *What are some examples of fiduciary duty?*, INVESTOPEDIA, (Dec. 15, 2017), <https://www.investopedia.com/ask/answers/042915/what-are-some-examples-fiduciary-duty.asp>.

behalf.⁶⁴ Meanwhile, the separation of ownership and management would in principle improve the equal treatment to all the shareholders.⁶⁵

In general, directors are elected by the shareholders meeting by virtue of the general company law.⁶⁶ The shareholders' voting power is enshrined in Article 37 of the China Company Law:

Article 37: The board of shareholders shall exercise the following functions and powers: (ii) to elect and replace directors and supervisors that are not appointed from representatives of staff and workers, and to decide on matters concerning the remuneration of directors and supervisors....⁶⁷

In contrast with this general requirement prescribed by the China Company Law in the preceding paragraph, the first paragraph of Article 6 of the FJV Law specifically sets forth:

A joint venture shall have a board of directors, which shall have its size and composition stipulated in the contract and the articles of association after consultation between the parties to the venture, and the directors shall be appointed and replaced by the parties to the venture. The Chairman and the vice-chairman are determined by the parties to the venture or elected by the board of directors. Either party of the Chinese-foreign joint ventures may be the chairman and the other shall assume the office of vice-chairman. In handling major problems, the board of directors shall reach a decision through consultation by the parties to the venture, in accordance with the principle of equality and mutual benefit....⁶⁸

When comparing Article 37 of the China Company Law and the first paragraph of Article 6 of the FJV,⁶⁹ the "...consultation by the equity joint venture partners"⁷⁰ replaces the shareholders⁷¹ meeting as the organ of authority within the venture.⁷² After the consultation, the partner to the venture is responsible for the appointment and replacement of its own directors.⁷³ In doing so, the shareholders meeting transforms itself as the FJV partners consult.⁷⁴ Thus, the ownership and management of the FJV are separated.⁷⁵

⁶⁴ See OECD Corporate Governance Factbook, OECD (2017), <https://www.oecd.org/daf/ca/Corporate-Governance-Factbook.pdf>.

⁶⁵ *Id.*

⁶⁶ See generally FJV Law, *supra* note 8.

⁶⁷ Company Law, *supra* note 15, art. 37.

⁶⁸ FJV Law, *supra* note 8.

⁶⁹ See Company Law, *supra* note 15, art. 37; FJV Law, *supra* note 8.

⁷⁰ See FJV Law, *supra* note 8.

⁷¹ See Company Law, *supra* note 15, art. 37.

⁷² FJV Law, *supra* note 8, art. 6.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

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Pursuant to the limited liability company provisions under the China Company Law, in general, the promoters, or the founding shareholders, are made up of a limited number of people who work closely together.⁷⁶ Comparatively, pursuant to Article 4 of the FJV, the irregular type of the limited liability company, is expected to have fewer shareholders or parties in practice.⁷⁷ Pursuant to Article 5 of the FJV, the parties to the venture are to create an investment contract.⁷⁸ The contract requirement helps to ascertain the intent of the parties to the venture.⁷⁹ This is feasible because the participant parties are a few in number. When the Chinese law was drafted over forty years ago, the nation was concerned about issues of international travel and communications. The law further remains flexible in order to fulfill the country's "open up policy" objectives to attract foreign investments.⁸⁰ Thus, the fundamental formality of modern companies, the separation of ownership and management, is respected by the FJV Law.⁸¹ The parties to the venture are not deprived of their shareholder power regarding the appointment and replacement of its own directors.⁸² Instead, the partners consult and appoint substitutes at their shareholders meeting.⁸³ Therefore, the board's authority is limited.⁸⁴ The asserted highest authority of the board of directors contradicts with the fundamental separation, and wrongly mingles the ownership with the management.⁸⁵

3. Interpretation of "All Major Issues" and "All the Important Issues"

The verbiage "[a]ll major issues" pursuant to Article 18 of the China Company Law, and "[a]ll the important problems" pursuant to Article 6 of the FJV, are translated slightly

⁷⁶ See Company Law, *supra* note 15, art. 71 ("The shareholders of a limited liability company may transfer all or part of their equity interests among them. Where a shareholder transfers its equity interests to a person other than a shareholder, it shall obtain the consent of more than half of the other shareholders... Provided all conditions are equal, the other shareholders shall have the priority purchase right for the equity interests the transfer of which has been consented by the shareholders...."). See also, China Company Law, *supra* note 15, art. 34 (stating "[w]hen the company increases its capital, the shareholder shall have the priority right to subscribe for capital contribution in proportion to its paid-up capital contribution. . .").

⁷⁷ See FJV Law, *supra* note 8, art. 4, ("An equity joint venture shall take the form of a limited liability company. . .").

⁷⁸ See FJV Law, *supra* note 8 art. 5 ("[T]he various contributions referred to in the present Article shall be specified in the contracts concerning the equity joint venture or in its articles of association, and the value of each contribution (excluding that of the site) shall be ascertained by the parties to the venture through joint assessment.").

⁷⁹ See Company Law, *supra* note 15 ("When applying, the foreign and Chinese parties shall jointly submit the following documents to the examination and approval authority: (1) an application for the establishment of a joint venture; (2) the feasibility study report jointly prepared by the parties to the joint venture; (3) joint venture agreement, contract and articles of association signed by representatives authorized by the parties to the venture.").

⁸⁰ See Guoqiang Long, *China's Policies on FDI: Review and Evaluation*, CDGEV 315, 318 (2005), <https://www.cgdev.org/sites/default/files/9780881323818-Ch12.pdf>.

⁸¹ See generally FJV Regulations, *supra* note 9.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

differently, yet both originate from a Chinese text, “zhong da wen ti.”⁸⁶ Article 30 of the FJV Regulations text reads: “The highest authority of the joint venture shall be its board of directors. It shall decide *all major issues* concerning the joint venture.”⁸⁷ The second sentence, however, states that the board decides “all major issues,” namely, “zhong da wen ti.”⁸⁸ However, because the FJV is a limited liability company, Article 36 of the China Company Law states that the board of shareholders is the organ of authority in a limited liability company.⁸⁹ In the FJV, the power of the board of shareholders is transformed pursuant to the parties to the venture.⁹⁰ Therefore, Article 6 of the FJV will likely cause a direct confrontation of power between the board of directors and the parties to the venture.⁹¹

On the other hand, when cross-referencing Article 6, second paragraph, of the FJV Law, the “zhong da wen ti” defines “all major issues” by setting out the list of the functions and powers of the board of the directors regarding hiring issues in a diminishing manner as follows:

The functions and powers of the board of directors are, as stipulated in the articles of association of the equity joint venture, to discuss and decide all major issues concerning the venture, namely, the venture’s development plans, proposals for production and business operations, the budget for revenues and expenditures, the distribution of profits, the plans concerning manpower and wages, the termination of business, and the appointment or employment of the general manager, the vice-general manager(s) the chief engineer, the treasurer and the auditors, as well as the determination of their functions, powers and terms of employment⁹²

As demonstrated above, Article 6, second paragraph, of the FJV Law provides for a long list of the functions and powers of the board of directors, wherein, there is no prescription in relation to “the appoint[ment] and replace[ment]” of its own directors.⁹³ Instead, paragraph 1 of Article 6 elaborates the power of the parties to the venture to address “the appointment and replacement of its own directors.”⁹⁴ Within this context, the first paragraph of Article 6 of the FJV Law includes the power of the board of directors to discuss “all major issues concerning the venture.”⁹⁵ Thus, the highest authority to decide “all major

⁸⁶ See Company Law, *supra* note 15; FJV Regulations, *supra* note 9; Lu Shao Chang & 卢绍昌 1976, *Ying yi zhong de wen ti*, Nan yang da xue, yan jiu yuan, hua yu yan jiu zhong xin, Xin jia po, <https://nla.gov.au/anbd.bib-an15477917> (China).

⁸⁷ See FJV Regulations, *supra* note 9, art. 30 (emphasis added).

⁸⁸ *Id.*

⁸⁹ See Company Law, *supra* note 15, art. 36, (“The board of shareholders of a limited liability company shall be composed of all the shareholders. The board of shareholders shall be the organ of authority of the company and shall exercise its functions and powers pursuant to the Law.”).

⁹⁰ See FJV Regulations, *supra* note 9, art. 6.

⁹¹ *Id.*

⁹² See FJV Law, *supra* note 8, art.6.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

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issues concerning the venture” should not be read so expansively to subvert the purpose and object of the other provisions of this Article.⁹⁶

The FJV Regulations issued by the State Council are superseded by the FJV Law promulgated by the Congress in the event of conflict, and to the extent of conflict.⁹⁷ Put another way, on the condition that both the laws and the regulations concern such a specific topic, if the FJV Regulations conflict with the specific governing FJV Law, the provision of the FJV Law prevails.⁹⁸ The text of “zhong da wen ti” in Article 30 of the FJV Regulations must be read together with the context of Article 6 of the FJV Law where “zhong da wen ti” is explicitly given the meaning that the power of the appointment and replacement of its directors is out of its reach.⁹⁹ Therefore, the proposition by the board of directors in this regard gives no justification in the context of the laws and regulations.

B. The Second Issue Regarding the Registration Procedural Contention by the
Board

The Supreme People’s Court of China in *Sino-environment Technology*,¹⁰⁰ illustrates the issue of whether the replacement of the board of directors is conditioned upon succeeding the registration in connection with a newly appointed director.¹⁰¹

1. Factual Background of the Case

Sino-environment Technology Group (Fujian) Limited is a foreign enterprise subsidiary registered in China Fujian Province.¹⁰² Sino-environment Technology Group Limited is the parent holding company incorporated in Singapore.¹⁰³ Later, the parent company went into liquidation.¹⁰⁴ The Singaporean liquidator was officially assigned to represent the parent holding company.¹⁰⁵ The liquidator dismissed the board of directors of the subsidiary and appointed its own managing partner as the new chairperson of the board.¹⁰⁶ The new chairperson serves as the legal representative on the subsidiary’s behalf.¹⁰⁷ The

⁹⁶ *Id.*

⁹⁷ See Legislation Law of the People’s Republic of China, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, <https://www.cecc.gov/resources/legal-provisions/legislation-law-chinese-and-english-text> (last visited Oct. 6, 2018) (explaining that the law’s effectiveness is higher than that of administrative regulations, local laws and regulations and rules).

⁹⁸ See generally *id.*

⁹⁹ See The FJV Regulations, *supra* note 9, art. 30. See also The FJV Law, *supra* note 8, art. 6.

¹⁰⁰ See *Sino-environment Technology*, *supra* note 2.

¹⁰¹ See Webb, *supra* note 2.

¹⁰² *Id.* at p. 3.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

liquidator further instructed the new chairperson to reduce the registered capital of the subsidiary to relieve its financial burden.¹⁰⁸

However, the subsidiary's incumbents internally blocked the new chairperson's registration with authorities in China.¹⁰⁹ In doing so, they argued the new chairperson had no authority to act on behalf of the company since he was not registered.¹¹⁰ In contrast with capital reduction instructed by the owner, the subsidiary's original chairperson/legal representative and the original board initiated the litigation against the foreign parent company in Fujian Province Higher People's Court. The issue was over the fulfillment of the obligation to increase RMB 45 million registered capital as the decision was properly passed by the original board.¹¹¹ The newly appointed chairperson/legal representative of Sino-environment Technology Group (Fujian) Limited, on the other hand, filed a motion to withdraw this litigation which was initiated by the incumbents.¹¹² The successor contended that since the former management was removed, the former managers lacked authority of representation.¹¹³ Therefore, filing such a lawsuit against its shareholders was not the "real intention" of its subsidiary.¹¹⁴

2. Legislative Intent of the Registration Requirement Explained by China Supreme People's Court

The issue in *Sino-environment Technology* is central to whether the successful registration of the newly appointed chairperson/legal representative with the authorities serves as the condition to effectuate the removal of the original board and the incumbent directors.¹¹⁵

The Court interpreted that the legislative intent of the registration embodied in Article 13 of the China Company Law is to disclose to the public the basic state of management.¹¹⁶ A third party outside the company shall be able to make the judgment with knowledge of the registration regarding whether someone has power to act on behalf of the entity.¹¹⁷ Nevertheless, regarding the internal dispute between a company management and its shareholders over the appointment and replacement of its chairperson and/or the board, the judgment shall be made upon whether the valid resolution is reached by the shareholders.¹¹⁸ Insofar as the resolution is valid, the legal effect of the new appointment and replacement of the original board shall take place within the company.¹¹⁹

¹⁰⁸ *Id.*

¹⁰⁹ See *Sino-environment Technology*, *supra* note 2.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Webb, *supra* note 2.

¹¹⁶ See China Company Law, *supra* note 10, art. 13 ("stating The chairman of the board, the executive director or the manager of the company shall act as the legal representative of a company pursuant to the articles of association of the company and the same shall be registered according to the law. In the event of any change in the legal representative of the company, formalities shall be carried out for registration change").

¹¹⁷ See Webb, *supra* note 101.

¹¹⁸ See *Sino-environment Technology*, *supra* note 2.

¹¹⁹ *Id.*

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The Supreme People's Court clarified that the mandatory registration with the authorities is not the condition to validate such a replacement or removal.¹²⁰ The appointment and replacement shall take place "within the company."¹²¹ in the first place.¹²²

3. The Authority and Significance of This Supreme Court Case

Sino-environment Technology is a "typical case" issued by the Supreme Court at its official venue. The other venue falls under the regime of China's guiding cases system.¹²³ Under the regime of the current national judicial reform in China, the highest court is required to periodically publish both the guiding cases and the typical cases to guide the practice through nationwide China's judicial system.¹²⁴ The cases serve to have a "guiding effect on adjudication and enforcement work in courts throughout the country,"¹²⁵ while the typical cases are regarded as the standard of reference for judges.¹²⁶ Due to the highest status of the hearing court in the hierarchy, the typical cases decided by the Supreme Court are much more persuasive, second only to guiding cases in terms of the authority.¹²⁷

On the basis of its legal significance and its impact on international business, international legal institutions initiated training programs for international legal practitioners on China's guiding case system.¹²⁸ On the basis of the importance of the issue involved and the impact on the international business,¹²⁹ *Sino-environment Technology* is so referred here.

V. CONCLUSION

The analyses conclude that the two defenses are invalid. With regard to the first issue, in light of the various analyses above, the board of directors, "the highest authority," should be confined based on the principal-agent theory. The agent owes a fiduciary duty to the business owner to act on the owner's behalf with loyalty. When reading the laws side by side, the power of appointment and replacement of directors, which is specified with the

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See Webb, *supra* note 101.

¹²³ See Judicial Reform in China, Information Office of the St. Council (Oct. 2012), http://english.gov.cn/archive/white_paper/2014/08/23/content_28147498303170.htm.

¹²⁴ *Id.*

¹²⁵ See Provisions of the Supreme People's Court. Concerning Work on Case Guidance, (promulgated by the Adjudication Comm. of the Sup. People's Ct. on Nov. 15, 2010, effective Nov. 26, 2010), CHINA GUIDING CASE PROJECT (Jun., 2015), <http://cgc.law.stanford.edu/guiding-cases-rules/20101126-english/>.

¹²⁶ See *Sino-environment Technology*, *supra* note 2.

¹²⁷ Wang Xiaojing, *An Li na dian shi* (案例那些事儿) (2015), <http://lawyer.ruc.edu.cn/html/lvshijie/20150624/3875.html> (China).

¹²⁸ Supreme People's Court Monitor, *Case Law Chinese Style—where Is It Going?* (2015), <https://supremepeoplescourtmonitor.com/tag/typical-cases/> (last visited Jan.4, 2017) (China).

¹²⁹ See Webb, *supra* note 2, (stating that in spite of typical cases which is not within the scope of the defined "guiding cases," the Stanford Law School project implicitly confirms typical cases an imperative part of the Chinese new legal regime).

“partner’s consultation,” is not vested within the board of directors.¹³⁰ The design of the law is consistent with the separation of ownership and management.

In relation to the second issue, the typical case adjudicated by the Supreme People’s Court clarifies that the legislative intent of the management registration with the authorities is to disclose to the public; whereas the “internal” appointment and replacement of its directors takes place “within the company,” to the extent of the decision being properly resolved by the owners of the venture. Furthermore, the two issues above are interconnected as illustrated in *Sino-environment Technology*. The ruling also infers that the shareholders ultimate power over the board of directors on the ground that the “internal” appointment and replacement of its directors takes place “within the company.” Therefore, it is not accurate to read the face of the law that the board of directors is the highest authority of the FJV.

Recommendations

The goal of the following discussion is to offer advice, to an FJV that is either in the liquidation process or an FJV which is still in good standing.

1. The New Practice Deviates from the to Form the Board of Shareholders Instead

Chinese authorities acquiesce that a FJV will derogate from the FJV Law “partners consultation” discipline in order to establish the board of shareholders in practice. As mentioned earlier, the FJV is regarded as a limited liability company.¹³¹ However, the empirical research shows that a large number of FJVs are the listed companies,¹³² which are not within the parameters of a limited liability company.¹³³ Strictly speaking, the practice deviates from a provision of the FJV Law, Article 120 of the China Company law reads:

For the purposes of the Law, the term “listed company” refers to a company limited by shares whose shares are listed and traded on a stock exchange.¹³⁴

As this Article has previously stated, a public “listed company” is named “a company limited by shares.”¹³⁵ For example, Inner Mongolia North Hauler Joint Stock Co., Ltd. an FJV, is listed and traded on the stock exchange in China.¹³⁶ The foreign investor is Terex Equipment Limited.¹³⁷ Further studies show that, as early as 2001, MOFTEC and

¹³⁰ See FJV Regulations, *supra* note 9.

¹³¹ See FJV Regulations, *supra* note 9, art.16, (“[A] joint venture is a limited liability company”).

¹³² *Id.* art. 34.

¹³³ *Id.*

¹³⁴ Company Law, *supra* note 15.

¹³⁵ *Id.*

¹³⁶ *Id.* art.120 (“For the purposes of the Law, the term ‘listed company’ refers to a company limited by shares whose shares are listed and traded on a stock exchange”).

¹³⁷ See Market Stocks, BLOOMBERG, <https://www.bloomberg.com/markets/stocks> (last visited Sept. 5, 2018).

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China Securities Committee issued a new rule, titled “Some Opinions Relevant to Foreign Investment in Listed Companies,”¹³⁸ which provides in relevant part:

Article 1: The establishment of foreign-invested stock companies: The establishment of foreign-invested stock companies or the application of existing foreign-invested limited liability companies for changing into foreign-invested stock companies shall satisfy the requests as mentioned in the Interim Provisions on Some Issues Regarding the Establishment of Foreign-invested Stock Companies (Order No. 1 [1995] of the MOFTEC) and shall be subject to the approval of the MOFTEC according to stipulated procedures.¹³⁹

This rule governs the access that FJVs have to the Chinese stock market.¹⁴⁰ There have been hundreds of FJVs listed and traded on the Chinese stock market thereafter.¹⁴¹ Nevertheless, this is not a unique foreign investment policy from the international business perspective.¹⁴² With respect to the foreign investment policy, both Australia and Canada also require some foreign investors to be listed with the stock exchange of Australia and Canada.¹⁴³ Chinese authorities even encouraged those non-listed FJVs to issue B-Share stocks, which was a vehicle utilized to offer stock issuance solely to foreign investors.¹⁴⁴ This policy was purported to attract more foreign investment.¹⁴⁵

The listed FJVs taking the form of a company limited by shares shall convene the shareholders meeting.¹⁴⁶ Thus, the establishment of the shareholders meeting turns to be compulsory for the transformed FJV.¹⁴⁷ The China Company Law sets forth the shareholders meeting in the following articles:

¹³⁸ See Notice of the Ministry of Foreign Trade and Economic Cooperation and China Securities Regulatory Commission on Issuing the Some Opinions Relevant to Foreign Investment in Listed Companies, (promulgated by Ministry of Foreign Economy & Trade and China Securities Regulatory Commission, Oct. 08, 2001, effective Oct. 08, 2001) CLI 4.37539 (EN) (China).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See Company List, SSE, <http://english.sse.com.cn/listed/company/> (last visited Feb. 2, 2018).

¹⁴² See David Fickling, *China's Foreign Investment Door Opens, But Only Barely*, BLOOMBERG (Jul. 25, 2018, 10:56 PM), <https://www.bloomberg.com/opinion/articles/2018-07-02/china-s-foreign-investment-door-opens-but-only-barely>.

¹⁴³ See Australia's Foreign Investment Policy, DEPT. OF FOREIGN AFFAIRS <https://firb.gov.au/files/2015/09/Australias-Foreign-Investment-Policy-2016-2017.pdf> (last visited Feb. 2, 2018).

¹⁴⁴ See *generally Business Alert- China*, HKTDC (Aug. 15, 2001), <http://info.hktdc.com/alert/cba-e0108c.htm>.

¹⁴⁵ *Id.*

¹⁴⁶ See China Company Law, *supra* note 15, art.100.

¹⁴⁷ See FJV Regulations, *supra* note 9.

Article 98: The general meeting of a company limited by shares shall be composed of all shareholders. The general meeting shall be the organ of authority of the company and shall exercise its functions and powers in accordance with the Law.¹⁴⁸

Article 100: The annual general meeting of the general meeting shall be held once every year. An extraordinary general meeting shall be convened within two months of the occurrence of any of the following circumstances....¹⁴⁹

In sum, FJVs are not prohibited from forming their board of shareholders to improve control.¹⁵⁰ Some FJVs can even employ a more complex ownership structure. In reality, the shareholders' meeting improves the management of the FJVs.¹⁵¹ It is becoming a trend to install shareholder meetings, as evidenced by the increasing amount of FJVs listed.¹⁵²

2. Modifying the AoA of the FJV to Specify Board Director Replacement Issue

As addressed above, the issue is caused not only because the law is ambiguous, but also because the FJV's bylaws are silent as to the appointment and replacement of its directors, specifically in the article of association.¹⁵³ In general, a FJV needs to adopt both the language of the FJV Regulations and the format provided by the office of the Administration for Industry and Commerce.¹⁵⁴ Chinese local attorneys also prefer to use the conforming language and the legal documents recommended by the authorities so that they could pass the approval and registration and move forward.¹⁵⁵ For instance, in the last case wherein the article of association of the troubled venture duplicated stated that "the board of directors was the highest authority of the venture" from the law discussed above.¹⁵⁶ This time bomb remains latent until the chasm of the shareholders appears.¹⁵⁷ To avoid such potential issues, the FJV counsels should review the articles of association and address the issue in a practical manner.¹⁵⁸

The backfire of the appointment and replacement of its own directors could either go alone or in connection with the entire board and/or other parties of the enmity. *Sino-environment Technology* exemplifies the problem with the board people with the cognizance

¹⁴⁸ See The China Company Law, *supra* note 15, art 100.

¹⁴⁹ *Id.*

¹⁵⁰ See OECD Corporate Governance Factbook, *supra* note 64.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See *Guidelines for Articles of Association of Listed Companies*, IBDC, (2014), <http://www.icbc-ltd.com/SiteCollectionDocuments/ICBC/Resources/ICBCLTD/download/2014/GuidelinesforArticles20141114.pdf>.

¹⁵⁴ See *Nanning Intermediate People's Court of Guangxi Zhuang Autonomous Region* (2014) South Citizens Second Word No. 339, <http://wenshu.court.gov.cn/content/content?DocID=43bf8c43-caea-4647-b1aa-aa7e679afc64&KeyWord=东宇公司|朱树美|刘傲雪> (last visited Dec. 8, 2018) (China).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

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of business will concur that other parties to the venture cannot be irrelevant to the internal power struggle.¹⁵⁹ The conflict of the parties to a venture is further defined as the five stages of development from latent conflict to manifest conflict due to the joint venture parties' differing interests and goals.¹⁶⁰ When the FJV comes in the case of a party withdrawal, it is not necessary that the director, even if he was previously appointed by the party, be on the party's side once the person in the scenario is promised to stay after the departure of the investor. Therefore, without a section in the bylaws to clarify the appointment and replacement of its directors to immediately take down the director and substitute with another, the interest of the departing party could hardly be sufficiently guarded during the tumultuous final stage of the venture.

3. Attempt to Secure the Chairperson Position of the Board of Directors

Finally, a party to the FJV should try to take the chairperson seat of the board of directors. The chairperson of the board serves as a legal representative, which acts on behalf of the board in relation to business activities, as well as civil obligations.¹⁶¹ In the course of daily business operations, the chairperson should be able to safeguard every transaction because the official seal of the venture and the signature are in his or her possession.¹⁶²

The following FJV proceeding proves it costly because the foreign party did not.¹⁶³ A United States automotive parts supplier entered into a FJV in China.¹⁶⁴ The American party contributed cash, whereas the other parties to the venture contributed equipment and land.¹⁶⁵ Regarding the board of directors, the American party did not secure the chairperson/legal representative position; instead they appointed a general manager to supervise the operation.¹⁶⁶ After the undertaking of the registration with authorities, the general manager noticed the contributed equipment asset was not what was prescribed in the contract, consequently, he refused it.¹⁶⁷ After rounds of negotiations, the controversy remained.¹⁶⁸ The general manager went back for holidays and expected to solve the issue in the next year.¹⁶⁹ After the general manager returned to China, he was informed that the chairperson/legal representative of the FJV, who was appointed by another party, sued his own company for the rental fee and then emptied the FJV's bank account, consisting mostly of the American party's cash. The American party rushed to hire an attorney, but the law requires that the legal action needs to be initiated by the legal representative of the company

¹⁵⁹ See *Sino-environment Technology*, *supra* note 2.

¹⁶⁰ Louis R. Pondy, *Organizational Conflict: Concepts and Models*, 12 ADMIN. SCI. Q., 296-320 (1967).

¹⁶¹ See CHINA BRIEFING, *supra* note 39.

¹⁶² See generally FJV Regulations, *supra* note 9.

¹⁶³ See generally Shareholder Agreements and Joint Ventures in China § 4:8 (Westlaw).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See generally Shareholder Agreements and Joint Ventures in China § 4:8 (Westlaw).

and served on the legal representative of the defendant.¹⁷⁰ In this particular case, that means that the American party needs to enforce the legal representative of the venture to initiate a lawsuit on behalf of the venture, against himself who acts on behalf the same venture, to recover any portion of the original funds.¹⁷¹

Therefore, proper holding of the chairperson position of the board of directors means, in many circumstances, the interest of the party could be better protected. Even in the case where the chairperson, as agent, was lacking loyalty, the party could make a prompt replacement. In the international business arena, it could still be less dangerous because if the person's hiring contract is well drafted, both the governing law and the jurisdiction of the hiring contract should be binding. Thus, the hiring contract should be able to hold the agent accountable.

¹⁷⁰ See generally Shareholder Agreements and Joint Ventures in China § 4:8 (Westlaw).

¹⁷¹ *Id.*