

CHINA CORPORATE SECRETARY COMPLIANCE 2017

The deadline for business entities to file their annual audit reports with the Chinese authorities is fast approaching. In fact tax clearance shall be performed before May 31st and annual reporting to AIC shall be conducted by June 30st. In China, there is no obligation to appoint a corporate secretary. However, it is mandatory to keep records of the shareholders and/or board decisions. Keeping accurate and timely legal records is indeed essential for companies' transparency and efficient administration even for wholly owned foreign enterprise with a sole shareholder. Moreover, it is highly recommended to appoint an external corporate secretary, especially in case of frequent management turnover or if you intend to be part of M&A transaction.

You will find below the key points of corporate compliance requirements:

1. FREQUENCY OF THE MEETING OF SHAREHOLDERS AND THE BOARD OF DIRECTORS

	Type of Company	
Meetings mandatory per PRC law	WFOE (limited liability company)	Joint Venture
Shareholders' meeting (股东大会)	At least once a year	<i>Not applicable, functions of the shareholders' meeting are assumed by the Board of Directors</i>
Board of directors (董事会)	No minimum legal requirement	At least once a year

2. WFOE SHAREHOLDERS' MEETING

❖ What is the role of the shareholders' meeting?

According to PRC company law, the shareholders' meeting shall be called every year and shall approve the following:

1. The company's operational guidelines and investment plans;
2. The reports of the board of directors;
3. The annual budgets and final accounts of the company;
4. The company's profit distribution plans and loss recovery plans.

❖ Who shall convene the meeting?

Shareholder meetings shall be convened by the board of directors or the executive director.

❖ What are the acceptable methods by which the notice for a shareholders' meeting may be given to the members of the company? Can the notice be sent by email?

Chinese company law and regulations do not provide any specific requirements regarding the method for calling shareholders' meetings. The procedure may be determined by the company's articles of association.

Notice of the shareholders' meeting may be given to the shareholders:

- i. By hand, in return for a receipt,
- ii. By post to the nominated address of the shareholders, and
- iii. By electronic means (facsimile and email)

In practice, the objective is to make sure each shareholder actually receives the notice regardless of notification's method, so it is recommended to use any means that provides a record of conveyance.

❖ Can a general meeting be held by means of telecommunication?

If the company's articles of association permit so, the shareholders' meeting may be held by telecommunication.

❖ Records of resolutions and minutes of shareholders' meetings

According to PRC company law, minutes shall be taken for decisions made on matters discussed at the meeting, and shall be signed by the shareholders who attend the meeting. Minutes shall be preserved as company records.

❖ What about written resolutions made without holding an actual meeting?

Where the shareholders have unanimously agreed in writing (for any function or powers listed in Article 37 of PRC company law), a decision may be made directly without convening a meeting of the board of shareholders. In this case, the decision documents shall bear the signatures or seals of all the shareholders.

3. SPECIAL PROVISIONS FOR SINGLE SHAREHOLDER'S WFOE

When a shareholder makes a decision on any matters listed under paragraph 1 of Article 38 of PRC company law, such decisions shall be recorded in writing, signed by the shareholder and kept in the company records.

4. BOARD OF DIRECTORS' MEETING (FOR WFOE AND JV)

❖ Who shall convene the meeting?

A meeting of the board of directors shall be convened by the chairman of the board of directors.

❖ What are the acceptable methods by which the notice of meeting may be given to the directors? Can the notice be sent by email?

PRC company law and regulations do not provide any specific requirements regarding the method of calling directors' meetings. The procedure for calling a directors' meeting may be determined by the company's articles of association.

Again, in practice, the objective is to ensure each director actually receives the notice regardless of the notification's method, so it is recommended to use any means that provides a record of the communication.

❖ Records of resolutions and minutes of the directors meeting

The board of directors shall take minutes of decisions made on matters discussed at its meetings. Minutes shall be signed by the directors in attendance and the recorder (secretary to the board) of the minutes, which shall then be preserved as company records.

Please feel free to contact us should you have any questions.



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