

## Financial

### Legal Representative's Personal Risk Exposure in Civil and Commercial Proceedings

As China accelerates its opening-up of the financial market, an increasing number of foreign asset managers and foreign institutional investors have established wholly-owned or majority-owned entities in China, including licensed institutions and non-licensed institutions. Foreign shareholders may relocate staff from abroad or have local recruitments as the legal representatives of their domestic entities. Accordingly, the personal risk exposure of legal representative may turn to be a topic of general concern.

Under the PRC laws and regulations, the legal representative of a company refers to the person-in-charge who engages in civil activities on behalf of the company in accordance with laws, regulations and the articles of association of the company. There is no statutory requirement regarding the nationality, gender, age, occupation or other personal characteristics of the legal representative but a person falling under any of the following circumstances shall not serve as the legal representative of a company, namely, (i) lack of full civil legal capacity, (ii) having been held criminally liable, or (iii) having been held personally liable for the business failure of a company.

Legal representative of a company enjoys a wide range of powers, including but not limited to (i) representing the company externally, (ii) executing transaction documents on behalf of the company, (iii) initiating any judicial proceeding or arbitration on behalf of the company, and (iv) signing and receiving litigation or arbitration related legal documents on behalf of the company. Thus, if a company were subject to any litigation, arbitration or enforcement action based on an effective legal instrument (hereafter referred to as “civil and commercial proceedings”), then its legal representative might be exposed to certain personal risks.

This article intends to summarize the three main kinds of personal liabilities and restrictions that a legal representative may face in civil and commercial proceedings.

#### **I. Travel Ban**

Pursuant to the *Minutes of the Second National Work Conference for Foreign-related Commercial and Maritime Trials* released by the Supreme People's Court (SPC) in 2005, when hearing cases of foreign-related commercial disputes, a court may impose a travel ban to prohibit a person from leaving China if such person meets

the following criteria, namely, (i) there is a case concerning foreign-related commercial dispute pending in China; (ii) the person subject to the travel ban is a party to such pending case or the legal representative or person-in-charge of any party to such pending case; (iii) there is possibility that such person would shirk his/her responsibility to attend relevant trials or perform statutory obligations; or (iv) it would be difficult to adjudicate or enforce the case if such person leaves China. Thereafter, other laws, regulations and judicial interpretations, such as Article 12 of the *Exit and Entry Administration Law* promulgated in 2012 and Article 37 of the *Interpretations on Several Issues Concerning Application of Enforcement Procedures under the Civil Procedure Law* issued by the SPC in 2008, further provide that the people's court may decide to restrict the departure of (i) a Chinese citizen or foreigner that is involved in a pending civil case in China; (ii) a legal representatives or principal person-in-charge of a company that is subject to law enforcement procedures and (iii) a person directly responsible that may impact the repayment of the relevant debts.

## **II. Liabilities Arising from Failure to Cooperate with Relevant Law Enforcement Procedures**

Article 241 of the *Civil Procedure Law* as amended in 2017 provides that if a company subject to law enforcement procedures refuses to report its property status, makes a false report or delays reporting without a valid reason, the local court may fine or detain the principal person-in-charge or the person directly responsible (e.g., legal representative) of such company. Articles 9 and 15 of the *Provisions on Several Issues Concerning Investigation of Properties in Civil Enforcement Procedures* issued in 2017 by the SPC further specify that if a refusal to report or making a false report meets the standards for the prosecution of a criminal

offence, then the aforesaid persons may also be subject to criminal liabilities (which mainly refer to criminal liabilities incurred by the particular crime named "refusal to enforce court judgments or rulings" as stipulated under Article 313 of the *Criminal Law*). In addition, if (i) the court requests a company subject to law enforcement procedures, its legal representative, person-in-charge or de facto controller to attend court interviews and answer court's inquiries, and (ii) the aforesaid persons, upon being summoned by the court, refuse to turn up without a valid reason, then the court may issue a subpoena to force their attendance.

## **III. Restrictions on Spending**

Article 6 of the *Several Provisions of the Supreme People's Court Regarding Disclosing Information on the List of Dishonest Parties Subject to Law Enforcement Procedures* as amended in 2017 provides that if a company failed to perform relevant obligations in a timely manner as prescribed under an effective legal instrument (mainly refer to court judgments and arbitral awards) per the court's order, such company will be declared a Dishonest Party Subject to Law Enforcement Procedures, and the name of its legal representative or person-in-charge shall be publicized together with other company information.

Moreover, pursuant to the *Several Provisions of the Supreme People's Court Regarding Restriction on Extravagant Spending by Persons Subject to Law Enforcement Procedures* and other rules issued by the SPC, if a person subject to law enforcement procedures failed to fulfill relevant obligations stipulated in an effective legal instrument within the period prescribed in the notice of enforcement, then the court may take action to restrict such person's daily spending, namely, to prevent such person from making extravagant spending or any other spending that

is not essential for his/her living or business necessities. Furthermore, if a company subject to law enforcement procedures has restrictions imposed on its spending, then the legal representative of such company will also be subject to restrictive measures on spending, namely, he/she shall not (i) purchase tickets for second-class seats or above for cruises, purchase tickets for train carriage with cushioned berth or take airplanes when travelling by public transportation; (ii) make extravagant spending in premises such as star-rated hotels, night clubs or golf courses; (iii) purchase real estate, build a new property, or make a luxurious renovation or build an extension to their property; (iv) rent high-end office buildings, hotels or apartments, etc. to be used as business offices; (v) purchase cars that are not essential for operation of the business; (vi) travel for leisure or vacationing; (vii) enroll his/her child(ren) in private schools charging high fees; (viii) pay high insurance premiums to purchase insurance and wealth management products; or (ix) make any other spending that is not essential for his/her daily life and work, such as purchasing tickets for G-series express trains or first class seats of other express trains. If a legal representative engages in any of the foregoing activities using his/her personal

assets and for personal purposes, or such activities are considered essential for his/her living or business necessities, then he/she shall apply for the court's approval and may engage in such activities only after obtaining the court's approval.

Notably, in the course of civil or commercial proceedings, if the original legal representative of the company has already departed, the court will usually impose restrictions directly on the new legal representative's daily spending. However, according to the latest regulatory practice and judicial precedents, even if a company has acquired a new legal representative, the original legal representative may still be subject to such restrictive measures. If the original legal representative, while under restriction, claims that the restrictive measures shall be removed due to change in the business operation and management of the company (i.e. change of legal representative), then he/she has to prove that he/she is not the de facto controller of the company or a person directly responsible that may impact the repayment of debts, otherwise the court may refuse to remove the restrictive measures taken against the original legal representative.

Alan Ye	Partner	Tel: 86 21 2208 6235	Email: yezhy@junhe.com
Jie Zhang	Associate	Tel: 86 21 2208 6046	Email: zhangjie @junhe.com
Yiqing Zhao	Associate	Tel: 86 21 2208 6240	Email: zhaoyq@junhe.com
Translation: Hao Fang	Associate	Tel: 86 21 2283 8357	Email: fangh@junhe.com

---

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at [www.junhe.com](http://www.junhe.com) or our WeChat public account “君合法律评论”/WeChat account “JUNHE\_LegalUpdates”.

