

理德资讯 Veritas Update

2022 年 06 月刊

June 2022

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案件背景

Case Background

理德团队此前代理一起买卖合同纠纷案件，被告系一家公司，无财产可供执行。但发现被告在与委托人发生交易期间，违反法律程序进行减资，危及委托人的利益。理德团队因此将公司的股东追加为被告，要求公司股东在减资的范围内承担补充赔偿责任。理由如下：

The Veritas team previously represented a case in a dispute over a sales contract in which the defendant is a corporation and has no property to enforce. However, it was discovered that the defendant had violated legal procedures to reduce its capital and endanger the interests of the client during the period of

the transaction with the client. Therefore, we added the company's shareholders as defendants and undertake supplementary liability from the company's shareholders to the extent of the capital reduction. The reasons are as follows:

一、公司作为企业法人，具有独立的法人财产

A company is an enterprise legal person which owns independent legal person property

根据我国现行《公司法》相关规定，公司是企业法人，有独立的法人财产，享有法人财产权。公司以其全部财产对公司的债务承担责任。有限责任公司的股东以其认缴的出资额为限对公司承担责任。如果公司股东切实履行了自己的出资义务，那么是不需要对公司的债务承担责任。但是，如公司不当减资，则公司股东应当对公司债务在其减资范围内承担补充赔偿责任。

According to the relevant *provisions Company Law of the People's Republic of China (Amended in 2018)*, a company is an enterprise legal person which owns independent legal person property and enjoys legal person property rights. The liability of a company shall be limited to its entire assets. The liability of a shareholder of a limited liability company shall be limited to the amount of its capital contribution. If the shareholders of the company have effectively fulfilled their capital contribution obligations, they are not liable for the debts of the company. However, if the company improperly reduces its capital, the shareholders of the company shall be liable for the company's debts to the extent of their reduction.

二、公司违反法律程序的减资行为构成不当减资

Reduction of capital by a company in violation of legal procedures constitutes an improper reduction of capital

公司法在明确公司股东的有限责任制的同时，也明确应依法保护公司债权人的合法权益。公司注册资本既是公司股东承担有限责任的基础，也是公司的交易相对方判断公司的财产责任能力的重要依据，公司股东负有诚信出资以保障公司债权人交易安全的责任，公司减资时对其债权人负有根据债权人的要求进行清偿或提供担保的义务。注册资本的不当减少将直接影响公司对外偿债能力，危及债权人的利益。《公司法》第一百七十七条规定明确规定了公司减资的法律程序。公司未按照法定程序减资的行为构成不当减资。

The *Company law* is explicit in the limited liability of the shareholders of the company, but also explicit that the legitimate rights and interests of the company's creditors should be protected in accordance with the law. The company's registered capital is not only the basis for the company's shareholders to assume limited liability, but also an important basis for the company's counterparties to judge the company's ability to meet its property liabilities, the company has an obligation to its creditors to pay off or provide security at the request of the creditors in the event of a capital reduction. Improper reduction of registered capital will directly affect the company's external solvency and endanger the interests of creditors. The legal procedures for capital reduction are explicit defined in Article 177 of the *Company Law*. A

reduction of capital by a company in violation of legal procedures constitutes an improper reduction of capital.

我国法律并未明文规定公司违反法律程序进行减资的法律后果，也未明文规定相关人员应承担什么样的法律责任。但是公司减资系公司股东会决议的结果，减资的受益人是公司股东，该情形与股东抽逃出资对于债权人的侵害有着本质上的相同。因此，应当认为，公司违反法律程序的减资行为构成不当减资，其本质就是抽逃出资。相关股东及其他相关人员应承担与抽逃出资相同的法律责任。

China's laws do not explicitly stipulate the legal consequences of the company's capital reduction in violation of legal procedures, nor do they explicitly stipulate what kind of legal responsibility the relevant personnel should bear. However, the company's capital reduction is the result of the resolution of the shareholders' meeting, the beneficiary of the capital reduction is the company's shareholders, and the situation and shareholders' abstraction of capital for creditors have the same essence. Therefore, it should be considered that the company's reduction of capital in violation of legal procedures constitutes an improper reduction of capital, the essence of which is the abstraction of capital. The relevant shareholders and other relevant personnel shall bear the same legal responsibility as the abstraction of capital.

三、公司不当减资股东承担的法律责任

如前所述，公司违反法律程序的减资行为本质就是抽逃出资。中国法对股东抽逃出

资的责任有明确规定，抽逃出资的股东除应对公司或者其他股东承担返还出资本息的法律责任外，还应对公司债权人承担在抽逃出资本息范围内对公司债务不能清偿的部分承担补充赔偿责任。

As mentioned above, the essence of the company's capital reduction in violation of legal procedures is the abstraction of capital. Chinese law has clear provisions on the liability of shareholders for capital evasion, in addition to the legal responsibility of the company or other shareholders for the return of capital interest, the company's creditors should also be liable for supplementary compensation for the part of the company's debt that cannot be satisfied within the scope of the evaded capital interest.

因此，公司在减资时需依照法定程序进行，否则可能构成不当减资，公司的股东要在减资的范围内对公司债务承担补充赔偿责任。

Therefore, a company must follow the statutory procedures when reducing its capital, otherwise it may constitute an improper reduction of capital and the shareholders of the company are liable for supplementary liability for the debts of the company to the extent of the reduction.

【近期热点】

【Latest Highlight】

关于推动阶段性减免市场主体房屋租金工作的通知

China Further Supports Time-limited Reduction and Exemption of Rent

on Market Entities

6月21日, 住建部、发改委等8部门联合发布了《关于推动阶段性减免市场主体房屋租金工作的通知》(“《通知》”)。

Eight authorities including the Ministry of Housing and Urban-Rural Development ("MOHURD") and the National Development and Reform Commission ("NDRC") jointly released on June 21, 2022 the Circular on Accelerating the Work for Reduction or Exemption of Rent for Market Entities a Time-limited Basis ("*Notice*").

为贯彻落实《国务院关于印发扎实稳住经济一揽子政策措施的通知》(国发〔2022〕12号)要求, 推动阶段性减免市场主体房屋租金工作, 帮助服务业小微企业和个体工商户缓解房屋租金压力, 国家相关部委高度重视租金减免工作, 阶段性减免市场主体房屋租金, 是国务院的一项重大决策部署, 是稳住经济大盘的重要工作举措, 对保市场主体、保就业、保民生意义重大。通知中要求各地按照既定的租金减免工作机制, 结合自身实际, 统筹各类资金, 拿出务实管用措施推动减免市场主体房屋租金, 确保各项政策措施落地生效。

In order to implement the requirements of Notice of the State Council on Promulgation of a Package of Policies and Measures for Firmly Stabilizing the Economy (Guo Fa [2022] No. 12), to promote the work for reduction or exemption of rent for market entities on a time-limited basis, to help micro and small businesses and self-employed individuals in the service sector to alleviate the pressure of housing rent, the relevant state ministries and commissions attach great importance to the work of rent reduction, reduction or exemption

of rent for market entities on a time-limited basis, which is a major decision of the State Council, is an important work initiative to stabilize the economy, and is of great significance to protect market entities, employment and people's livelihood. *Notice* requires all places to work in accordance with the established rent reduction mechanism, combined with their own reality, the coordination of various types of funds, to come up with pragmatic and practical measures to promote the reduction of housing rent for market entities, to ensure that the policies and measures to take effect on the ground.

《通知》提出，要加快落实租金减免政策措施。主要内容如下：

It urged to accelerate the implementation of the rent reduction and exemption policies and measures. The main points are as follows:

被列为疫情中高风险地区所在的县级行政区域内的服务业小微企业和个体工商户承租国有房屋的，2022 年减免 6 个月租金，其他地区减免 3 个月租金。对出租人减免租金的，税务部门根据地方政府有关规定减免当年房产税、城镇土地使用税；鼓励国有银行对减免租金的出租人视需要给予优惠利率质押贷款等支持。（消息来源：中华人民共和国住房和城乡建设部）

(1) For micro and small businesses and self-employed individuals in the service sector in a county-level administrative area being identified as high-risk area that rent state-owned housing, the rent can be reduced or waived by six months in 2022, and the rent in other areas can be reduced or waived by three months. For lessors who are willing to reduce or exempt rent, the property tax and urban land use tax payable in the year would be

reduced or waived by tax authorities according to the applicable local rules, and pledge loans with preferential interest rate and other support would be given by state-owned banks. (Resource: Ministry of Housing and Urban-Rural Development of the People's Republic of China)

【新法速递】

【New Law Update】

全国人民代表大会常务委员会关于修改《中华人民共和国反垄断法》的决定

进一步明确反垄断相关制度在平台经济领域中的适用规则

*Decision of the **Standing Committee of the National People's Congress**
on Amending the **Anti-monopoly Law of the People's Republic of China***

Further clarify the rules of application of the anti-monopoly-related system
in the platform economy

2021 年 10 月，全国人大常委会第三十一次会议对反垄断法修正草案进行了初次审议。2022 年 6 月 24 日，十三届全国人大常委会第三十五次会议表决通过关于修改反垄断法的决定，反垄断法修正案将自 2022 年 8 月 1 日起施行。我国现行的反垄断法自 2018 年 8 月 1 日起施行的。

In October 2021, the thirty-first meeting of the Standing Committee of the National People's Congress conducted the initial consideration of the draft amendments to the Anti-Monopoly Law. On June 24, 2022, the 35th meeting of the Standing Committee of the 13th National People's Congress voted on the

decision to amend the Anti-Monopoly Law, and the amendment to the Anti-Monopoly Law will come into effect on August 1, 2022. China's current anti-monopoly law that has been in effect since August 1, 2018.

全国人大常委会法工委发言人杨合庆指出，反垄断法修正草案贯彻落实党中央关于强化反垄断和防止资本无序扩张的决策部署，根据平台经济领域竞争方式和特点，进一步明确反垄断相关制度在平台经济领域中的适用规则。既有总括性的规定，比如在总则中规定，经营者不得利用数据和算法、技术、资本优势以及平台规则等，从事本法规定的垄断行为，排除、限制竞争，同时也有针对垄断行为类型规定的细化规则，比如在滥用市场支配地位一章中规定了专门条款。提请此次审议的二次审议稿拟作五方面修改：

Yang Heqing, the spokesman of the Legal Working Committee of the Standing Committee of the National People's Congress, pointed out that the draft amendment to the anti-monopoly law implements the decision of the Party Central Committee on strengthening anti-monopoly and preventing disorderly expansion of capital, and further clarifies the rules of application of the anti-monopoly-related system in the platform economy in accordance with the mode and characteristics of competition in the platform economy. There are both general provisions, such as the provision in the General Provisions that operators shall not use data and algorithms, technology, capital advantages, and platform rules to engage in monopolistic conduct under this Law to exclude or restrict competition, as well as refined rules for types of monopolistic conduct, such as special provisions in the chapter on abuse of dominant market position. The second review draft submitted for this review is proposed to make

changes in five areas.

一、是根据反垄断执法体制改革的最新实践，明确“国务院反垄断执法机构”是本法执法部门。

First, according to the latest practice of anti-monopoly enforcement system reform, it is clear that "the State Council anti-monopoly enforcement agency" is the law enforcement department of this law.

二、是进一步明确反垄断相关制度在平台经济领域的具体适用规则。

Second, it is to further clarify the rules of application of the anti-monopoly-related system in the platform economy.

三、是完善垄断协议“安全港”规则。

Third, is to improve the monopoly agreement "safe harbor" rules.

四、是对未达到申报标准的经营者集中的调查、处理程序进行完善。

Fourth, it is the investigation and processing procedures to improve the concentration of operators who do not meet the declaration criteria.

五、是对经营者集中的审查工作提出具体要求。

Fifth, is the review of the concentration of operators to put forward specific requirements.

反垄断法修正草案的二审稿总结了反垄断执法实践，借鉴国际经验，对反垄断相关制度规则作了进一步完善。在垄断协议方面：

The second draft of the draft amendment to the Anti-monopoly Law summarizes the practice of anti-monopoly enforcement, draws on international experience, and makes further improvements to the rules of the

anti-monopoly-related system. In respect of monopoly agreements.

一是增加了“安全港”的规则，对经营者与交易相对人订立垄断协议，不包括竞争者之间订立的横向垄断协议。如果经营者的市场份额低于法律规定标准和规定条件的，法律不予禁止，这就是垄断协议的“避风港”规则。“安全港”规则能够给企业的竞争合规提供明确指引，在明确合规边界的同时，能最大限度促进企业的合作发展和协同运营，进一步激发中小企业的市场活力。

First, the "safe harbour" rule has been added, which excludes horizontal monopoly agreements between competitors from monopoly agreements entered into between operators and counterparties. If the operator's market share is lower than the standards and conditions stipulated by law, the law does not prohibit it, which is the "safe harbour" rule for monopoly agreements. The "safe harbour" rule can provide clear guidance to enterprises on competition compliance and, while defining the boundaries of compliance, can maximize the development of cooperation and synergistic operation of enterprises and further stimulate the market dynamics of SMEs.

二是增加规定经营者不得组织其他的经营者来达成垄断协议或者为其他经营者达成垄断协议提供实质性的帮助，也就是实践中有些经营者不直接参与，自己不订立垄断协议，但是组织别人制定垄断协议，妨碍公平竞争。

Second, it is added that operators shall not organize other operators to enter into monopoly agreements or provide substantial assistance to other operators to enter into monopoly agreements, that is, in practice, some operators do not participate directly and do not enter into monopoly

agreements themselves, but organize others to formulate monopoly agreements to hinder fair competition.

三是完善了纵向垄断协议的认定规则。对于经营者与交易相对人达成的纵向垄断协议，经营者能够证明不具有排除、限制竞争效果的，法律也不予禁止。

Third, the rules for the determination of vertical monopoly agreements have been improved. The law also does not prohibit vertical monopoly agreements entered into by an operator and a counterparty to a transaction if the operator can prove that they do not have the effect of excluding or restricting competition.

关于经营者集中方面，杨合庆介绍，增加了未达到申报标准的经营者集中的调查、处理程序，对于未达到申报标准但有证据证明具有或者可能具有排除、限制竞争效果的经营者集中，国务院反垄断执法机构可以要求经营者申报，经营者不申报的，反垄断执法机构应当依法进行调查。同时，增加了经营者集中审查期限中止计算的情形和通知要求，规范经营者集中审查程序。

As for the concentration of operators, Yang Heqing introduced that the investigation and handling procedures for the concentration of operators that do not meet the declaration standard have been increased. For the concentration of operators that do not meet the declaration standard but have evidence that they have or may have the effect of excluding or restricting competition, the anti-monopoly enforcement agency of the State Council may require the operators to declare the concentration. At the same time, the circumstances under which the period for review of concentration of operators

is suspended and the notification requirements are added to regulate the review procedure of concentration of operators.

“按照党中央关于加快建设全国统一大市场的决策部署，修正草案要求国务院反垄断执法机构健全经营者集中分类分级审查制度，依法加强对涉及国计民生的重要领域的经营者集中的审查，提高审查质量和效率。” 杨合庆说。（消息来源：中国人大网)www.npc.gov.cn

"In line with the decision of the Party Central Committee to accelerate the construction of a large nationwide unified market, the draft amendment requires the anti-monopoly enforcement agency of the State Council to improve the classification and grading review system of operator concentration, strengthen the review of operator concentration in important areas involving the people's livelihood of the country in accordance with the law, and improve the quality and efficiency of the review." Yang Heqing said. (Source: China National People's Congress) www.npc.gov.cn

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