

# China's amended Company Law facilitating more business

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## In brief

The 12<sup>th</sup> Standing Committee of National People's Congress (NPC) hammered down its decision to amend the <Company Law of the People's Republic of China> (New Company Law) at its sixth meeting on 28 December 2013. This round of amendments is the fourth one since the enactment of the Company Law and is an important one. The New Company Law shall take effect from 1 March 2014. These amendments originated from the Executive Meeting of the State Council held by Premier Li Keqiang on 25 October 2013. The Executive Meeting's role was to reform the registered capital system. The New Company Law revamps the company establishment system with the purposes of streamlining the registration formalities and relaxing the threshold for setting up a company in China. By doing so, it is expected to encourage more entrepreneurs to start their own businesses resulting in fostering the growth of the individual economic sector. More importantly, the New Company Law provides sound legislative protection in the vigorous economic development of China.

## In detail

Before the amendments become effective, there are strict requirements in the Company Law on the registered capital of a company, for instance, minimum amount of paid-up capital, minimum capital requirement and minimum capital contribution in cash. These requirements are substantially amended under the New Company Law.

### **Relaxed and simplified requirement on registered capital**

Under the New Company Law, the restrictions on the minimum registered capital for three types of companies, namely limited liability company, single shareholder limited liability company and joint stock limited company, are removed. At the same time,

there is no longer a prescribed timeframe for the shareholders (promoters) of these three types of companies to make full capital payment, except in situations where there are requirements in other relevant laws and regulations. Instead, shareholders (promoters) are only required to state the capital amount that they commit to subscribe in the articles of association of the company. This system is known as the 'capital subscription system'.

The requirement that cash contributed by the shareholders of a limited liability company as the initial capital should be no less than 30% of the registered capital is also removed.

Technically, shareholders of the limited liability company can now decide the ratio between cash and other assets, such as intellectual property, land use rights and properties, in their

initial capital contribution, except in situations where there are requirements in other relevant laws and administrative regulations. This amendment provides flexibility for the investors in setting up a limited liability company.

There are, however, specific regulations on the requirement of registered capital for special industries for companies to follow. Typical ones are those for banks, insurance and securities companies. Hence, in most cases, the amount of registered capital of a company represents its financial strength and its capability of taking liabilities. The amount of registered capital also represents the commitment of shareholders of the three types of companies in making capital contribution and taking the associated liabilities.

### **Simplified registration formality and cancellation of capital verification**

Under the New Company Law, it is no longer a requirement to stipulate the paid-up capital in the business license for the three types of companies mentioned above. Verification on the capital contribution is also abolished. Removal of these barriers substantially reduces the cost and the time in setting up these companies.

### **Impact to other laws and regulations**

The amendments to the Company Law are expected to lead to amendments in other related laws and regulations.

- The State Administration for Industry and Commerce of the PRC (SAIC) has already announced recently that it will soon table the proposal to adjust the *<Administrative Regulations of the PRC on Company Registration>*. Its intention is to develop a public information system on the credibility of market participants, to standardise the documents used in registration and to optimise the registration management system.
- Prior to the New Company Law, the amendment on the ‘Foreign-funded enterprises’<sup>1</sup> is already part of the legislative scheme of the 12<sup>th</sup> NPC Standing Committee. The Ministry of Commerce (MOC) is working on the draft amendments and is soliciting public comments<sup>2</sup>. The release of the New Company Law will doubtlessly speed up the process.
- Offences and penalties related to acts of ‘fraudulent capital contribution’ and ‘surreptitious withdraw of capital’ under the current *<Criminal Law of the PRC>* are also expected to be adjusted accordingly.
- In addition, it is expected there will be changes in certain judicial interpretation of the Company Law by the Supreme Court. Changes will include the interpretation of the obligation and liability of directors and executives in ensuring shareholders making their capital contribution in time and honouring their commitments given in the subscription. These clauses will likely be revised

corresponding to the updated capital subscription system.

### **The takeaway**

#### **Impact to enterprises planning for capital reduction**

Under the existing Company Law, the registered capital of the company after the reduction shall not be lower than the statutory minimum amount. The removal of such requirement will enable companies to reasonably reduce their registered capital to suit their business needs in accordance with their articles of association.

#### **Relaxation on registered capital does not mean relaxation in supervision**

The relaxation on registered capital under the New Company Law, such as removal of minimum registered capital and waiver of capital verification, does not mean there will be relaxation in the supervision on investment and business operation by government authorities. Instead of procedural examination, government authorities will now focus more on the overall administration and supervision on the shareholders, directors and executives, as well as company’s operation and compliance. In the view that a refined system of credibility for both individuals and companies is expected to play an important role in China, companies are recommended to pay more attention to the corporate governance system, to elevate their compliance level and to take on more social responsibilities.

#### **Business license reform in certain pilot cities**

Certain pilot cities<sup>3</sup> in Guangdong Province have implemented the business registration reform and started to use the new business license since March 2013. The new business license will be added with an ‘Importance Notice’ column providing directions to check the business scope, registered capital, operation period, items subject to administrative approval, annual report and supervision, etc., which are normally stated on the current business license. The above information will also be posted on the Administration of Industry and Commerce website in pilot cities, accessible by public. Hence, business license will no longer be the sole channel for the public who like to know the basic information of a

company. Instead, the public can check the basic information online. This reform is an integral part of the public information system of a modern economy and is expected to be rolled out nationwide with the implementation of the New Company Law.

#### **Contribution in kind**

The release of the New Company Law will be welcomed by the shareholders expecting to establish a company by making capital contribution in kind. The abolished 30% threshold for cash contribution means shareholders are allowed to set up a company with intellectual property and other non-monetary assets as part of their capital contribution. This will reduce their burden to contribute cash. However, investors are still required to evaluate the non-monetary assets and determine the contribution amount accordingly. Please stay tuned on any further policy to the existing rules on the capital contribution via non-monetary assets jointly released by the MOF and SAIC<sup>4</sup> in this regard.

### **Endnote**

1. It refers to the *<Law of the People’s Republic of China on Sino-Foreign Equity Joint Ventures>*, *<Law of the People’s Republic of China on Sino-Foreign Cooperative Joint Ventures>* and *<Law of the People’s Republic of China on Wholly Foreign-owned Enterprises>*.
2. Please refer to the *<Notice on Collection of Opinions Regarding Three ‘Foreign-funded’ Laws>* released on 9 December 2013 on the MOC website.
3. The pilot cities in Guangdong Province include: Shenzhen, Zhuhai, Dongguan, Shunde district in Foshan, etc. Enterprises registered in Shanghai Pilot Free Trade Zone are also allowed to use the new version of business license.
4. Please refer to the *<Notice on Certain Matters Regarding the Valuation and Administration on Capital Contribution via Non-monetary Assets>* (Caiqi [2009] No.46).

### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact a member of **PwC's China Business & Investment Advisory Team** :

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**PwC's China Business & Investment Advisory Team** specializes in China regulatory advisory and implementation work, ranging from market entry solutions, structure set-up, foreign exchange solutions, to restructuring solutions, e.g., equity transfer, merger and liquidation, etc. The team maintains close dialogues with various Chinese approval and registration authorities as well as industry bureaus at central and local levels. It also has extensive involvement and experience in advising clients on business cases from both the regulatory and practical perspectives.

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