



THINK GLOBAL, ACT LOCAL

February 2014

## Legal Environment in China

### LEGAL ENVIRONMENT IN CHINA

The new leadership in China has been thriving to establish an environment of higher confidence, easiness of processes and transparency of the judicial institutions, as it deems the legal system as a necessary base for further promoting Foreign Investment in China.

An important regulatory framework on this issues is the Company Law of the PRC, often regarded as too complex for providing an easy access to the market by foreign companies.

Aware of the importance of increasingly gaining international trust, the Standing Committee of the National People's Congress has recently approved amendments to the Company law which, although without profoundly altering its content, deems to simplify some processes and act as an agent for attracting higher levels of Foreign Investment.

Step by step, the market itself is starting to be the main supervisor of company actions in China.

In this Newsletter, PLMJ, through its partnership with Dacheng Law Firm, pretends to focus on the major changes on the Company Law, adding a much-valued contribution in interpreting the spirit of the Law.

Our dedicated teams – China Desk – are fully available for any further clarification.



FUNDAÇÃO  
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JORGE DIAS  
(detail)

Sinais, 2012

Tinta acrílica, stencil e MDF sobre contraplacado  
Dimensões variáveis  
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## THE INTERPRETATION OF RECENT AMENDMENTS TO THE COMPANY LAW OF PRC

On December 28th, 2013, the Standing Committee of the National People's Congress approved amendments to the company law, which will come into force on March 1st, 2014. The major change is to ease company registration, which would stimulate more investments and shape a better environment for deepening market reform.

The simplification of registration and cancelation of registration capital thresholds would probably trigger a steep rise in quantity of small and medium-sized enterprises. However, with respect to the quality of those increased companies, and to what extent they can function adequately and satisfactorily, there still leaves a doubt.

The detailed revisions with textual analysis, as my interpretation, are as follows:

Amended Text	Original Text	Interpretation
1. Delete "actually paid capital" in Article 7, paragraph 2.	<p><b>Article 7</b> For a lawfully established company, the company registration authority shall issue a company business license to the company. The date of issuance of the company business license shall be the date of establishment of the company.</p> <p>The company business license shall state the name, domicile, registered capital, <b>actually paid capital</b>, business scope, legal representative, etc.</p> <p>If any of the items as stated in the business license is changed, the company shall modify the registration and the company registration authority shall replace its old business license by a new one.</p>	<p>Actually paid capital is no longer a matter for company registration record.</p> <p>However, it should be noted that shareholders in a limited liability company shall bear the limited liabilities in accordance with the total amount of their subscribed capital contributions. Thus, to some extent, the size of the registered capital would still reflect a company's decided financial strength and its capacity to bear civil liabilities.</p> <p>The more registered capital, the more liability each shareholder will bear within the scope of their subscribed capital.</p> <p>Accordingly, for shareholders, it is unwise to make subscriptions willfully solely upon the new amended system.</p>
2. Article 23(2) has been amended to read "(2) capital contributions should comply with the regulated all shareholders' subscribed capital contributions by the articles of association".	<p><b>article 23</b> The establishment of a limited liability company shall meet the following conditions:</p> <p>(1)The number of shareholders constitutes the quorum;</p> <p><b>(2)The amount of capital contributions paid by the shareholders reaches the statutory minimum amount of the registered capital;</b></p> <p>(3)The shareholders jointly work out the bylaw;</p> <p>(4)The company has a name and its organizational structure complies with that of a limited liability company; and</p> <p>(5)The company has a domicile.</p>	<p>No statutory minimum amount of the registered capital will be set for limited liability company. That is to say, one Yuan is enough for registering a limited liability company.</p>

<p>3. Article 26 has been amended to read “The registered capital of a limited liability company shall be the total amount of capital contributions subscribed to by all the shareholders registered in the company registration authority. “If any law or administrative regulation prescribes a relatively higher minimum amount of registered capital of a limited liability company, the provisions of that law or administrative regulation shall be followed”.</p>	<p><b>Article 26</b> The registered capital of a limited liability company shall be the total amount of capital contributions subscribed to by all the shareholders registered in the company registration authority. The amount of the initial capital contributions made by all shareholders shall not be less than 20% of the registered capital, nor less than the statutory minimum amount of registered capital, the margin shall be paid off by the shareholders within 2 years from the day when the company is established; for an investment company, it may be paid off within 5 years.</p> <p><b>The minimum amount of registered capital of a limited liability company shall be RMB 30, 000 Yuan. If any law or administrative regulation prescribes a relatively higher minimum amount of registered capital of a limited liability company, the provisions of that law or administrative regulation shall be followed.</b></p>	<p>The amended paragraph 2 mainly refers to the provisions on requirements of minimum registered capital in Securities Law of the People’s Republic of China, Law of the People’s Republic of China on Commercial Banks, Regulations of the People’s Republic of China on Managements of International Freight Forwarders etc.</p>
<p>4. Delete Article 27, paragraph 3.</p>	<p><b>Article 27</b> A shareholder may make capital contributions in cash, in kind, or intellectual property right, land use right, or other non-monetary properties that may be assessed on the basis of currency and may be transferred according to the law, excluding the properties that shall not be treated as capital contributions under any law or administrative regulation.</p> <p>The value of the non-monetary properties as capital contributions shall be assessed and verified, which shall not be over-valued or under-valued. If any law or administrative regulations provides for the value assessment, such law or administrative regulation shall be followed.</p> <p><b>The amount of the capital contributions in cash paid by all the shareholders shall be no less than 30% of the registered capital of the limited liability company.</b></p>	<p>Since the amendments remove the requirements on minimum registered capital the 30% monetary contribution turns out to be meaningless.</p> <p>For people who have technical background, they don’t have to be limited to the 3% monetary contribution requirement as a support for their technical contribution.</p> <p>Now, after the amendments, technical or other appreciable in-kind contributions can be “paid” in full on establishing a company.</p>
<p>5. Delete Article 29.</p>	<p><b>Article 29</b> The capital contributions made by the shareholders shall be verified by a lawfully established capital verification institution and the institute shall issue a certification to prove the contribution.</p>	<p>The requirements for capital contributions verification has completely become a history and fees for establishing a company have been largely reduced (almost no other fees except registration fee are required).</p>

<p>6. Change Article 30 into Article 29 and Article 30 has been amended to read "After the initial capital contributions made by the shareholders in compliance with the articles of association, the representative designated by all the shareholders or the agent entrusted by all the shareholders shall apply for establishment registration by submitting a company registration application, bylaw, capital verification and other documents to the company registration authority."</p>	<p><b>Article 30</b> After the initial stock limited company is established by promotion, its registered capital shall be the total capital stocks subscribed by all the promoters with the company registration authority. The minimum amount of initial capital contributions to be made by all promoters shall be not less than 20% of the total registered capital, the remaining amount shall be paid by the promoters within 2 years from the day when the company is established, while for an investment company, the remaining amount may be paid within 5 years. Before the registered capital is paid, no stock may be offered to others for subscription.</p> <p>Where a joint stock limited company is established by stock floatation, its registered capital shall be the total actually paid capital stocks registered with the company registration authority.</p> <p><b>The minimum amount of the registered capital of a joint stock limited company shall be RMB 5 million Yuan. If any law or administrative regulation provides a relatively higher minimum amount of registered capital, such provision shall be followed.</b></p>	<p>Yuan can meet the requirements to establish a joint stock limited company with less than 2 but not more than 200 promoters.</p> <p>Where a joint stock limited company is established by promotion, promoters should consider the possibility of subsequent financing. Before all the initial agreed capital is paid, no stock may be offered to others for subscription, namely, no new shareholder can be introduced. This is a new rule.</p>
<p>7. Change Article 77 into Article 76 and Article 77(2) has been amended to read "The capital stock subscribed to by the promoters and raised by stock floatation reaches the minimum amount of the capital provided in the articles of association".</p>	<p><b>Article 77</b> The establishment of a joint stock limited company shall satisfy the following conditions:</p> <p>(1)The number of promoters meets the quorum requirement;</p> <p><b>(2)The capital stock subscribed to by the promoters and raised by stock floatation reaches the minimum amount of the statutory capital;</b></p> <p>(3)The issuance of shares and the preparatory work conform to the provisions of laws;</p> <p>(4)The bylaw is formulated by the promoters, and is adopted at the establishment meeting if the company is to be launched by stock floatation;</p> <p>(5)The company has a name and its organizational structure complies with that of a joint stock limited company;</p> <p>(6)The company has a domicile.</p>	<p>One of the main differences between a limited liability company and a joint stock limited company was the varying levels of statutory registered capital.</p> <p>After the amendments, the former intended to be more human resource integrated and the later be capital integrated.</p> <p>The maximum number of promoters and ways for establishment would be the other two main difference.</p>

<p>8. Change Article 81 into Article 80 and paragraph 1 has been amended to read "Where a joint stock limited company is established by promotion, its registered capital shall be the total capital stocks subscribed by all the promoters with the company registration authority. Before the registered capital is paid, no stock may be offered to others for subscription." Paragraph 3 has been amended to read "If any law or administrative regulation provides a relatively higher minimum amount of registered capital, such provision shall be followed."</p>	<p><b>Article 81</b> Where a joint stock limited company is established by promotion, its registered capital shall be the total capital stocks subscribed by all the promoters with the company registration authority. The minimum amount of initial capital contributions to be made by all promoters shall be not less than 20% of the total registered capital, the remaining amount shall be paid by the promoters within 2 years from the day when the company is established, while for an investment company, the remaining amount may be paid within 5 years. Before the registered capital is paid, no stock may be offered to others for subscription.</p> <p>Where a joint stock limited company is established by stock floatation, its registered capital shall be the total actually paid capital stocks registered with the company registration authority.</p> <p>The minimum amount of the registered capital of a joint stock limited company shall be RMB 5 million Yuan. If any law or administrative regulation provides a relatively higher minimum amount of registered capital, such provision shall be followed.</p>	<p>After the amendments, 2 Yuan can meet the requirements to establish a joint stock limited company with less than 2 but not more than 200 promoters.</p> <p>Where a joint stock limited company is established by promotion, promoters should consider the possibility of subsequent financing. Before all the initial agreed capital is paid, no stock may be offered to others for subscription, namely, no new shareholder can be introduced. This is a new rule.</p>
<p>9. Change Article 84 into Article 83 and paragraph 1 has been amended to read "When establishing a joint stock company limited by promotion, the promoters shall subscribe, in writing, to the full amount of subscribed shares provided in the articles of association; in the case of making capital contributions in non-monetary properties, the promoters shall go through the procedures for the transfer of property rights according to laws.</p>	<p><b>Article 84</b> When establishing a joint stock company limited by promotion, the promoters shall subscribe, in writing, to the full amount of shares provided in the bylaw. In the case of paying the capital contributions at one time, the promoters shall make the payment in a lump sum; in the case of paying the capital contributions by installments, the promoters shall make the down payment immediately. In the case of making capital contributions in non-monetary properties, the promoters shall go through the procedures for the transfer of property rights according to laws.</p> <p>If any of the promoters fails to make capital contributions by following the provisions of the preceding paragraph, it shall bear the liabilities for breach of contract under the stipulations in the promoter's agreement.</p> <p>After the promoters have made their down payment, they should elect the board of directors and board of supervisors. The board of directors shall file a registration application with the company registration authority and submit thereto the bylaw, the capital verification certification as issued by a lawfully established capital verification institution, as well as other documents as provided for by the laws and administrative regulation.</p>	<p>The shareholders shall subscribe to the full amount of the agreed shares provided in the articles of association, otherwise, shall be liable for other shareholders who have already made their capital contributions.</p>



<p>10. Delete Article 178, paragraph 3.</p> <p>In addition, the order of the provisions should be adjusted accordingly.</p>	<p><b>Article 178</b> Where a company finds it necessary to reduce its registered capital, it must work out balance sheets and checklists of properties. The company shall, within ten days after the decision of reducing registered capital, notify the creditors and make a public announcement on a newspaper within 30 days. The creditors shall, within 30 days after receiving the notice or within 45 days after the issuance of the public announcement if it fails to receive the notice, be entitled to demand the company to pay off the debts or to provide respective guaranties.</p> <p>The registered capital of the company after reducing its registered capital shall not be lower than the minimum amount required by laws.</p>	<p>After the amendments, the Company Law no longer has requirements on minimum registered capital.</p>
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With these measures, the companies will be supervised by the market as a whole and the market will be more at risk of the mushroomed companies.

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