



HAN KUN LAW OFFICES

Legal Commentary



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Registered Capital Regime Undergoes Administrative Fine-tuning

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Following amendments to the PRC Company Law at the end of 2013, in the past two years, the Chinese government has launched a series of legislative efforts aimed at reconciling related laws and regulations to realize the full implication of the capital regime reforms. In furtherance of the reforms, on October 28, 2015, the Ministry of Commerce (“**MOFCOM**”) issued *the Decision on Revising Certain Rules and Normative Documents* (Announcement (2015) No. 2 of MOFCOM) (“**Revising Decision**”) to amend provisions in 29 administrative rules and normative documents related to minimum registered capital, contribution timetables, first capital contribution installments, capital verifications, and annual examinations. Provisions concerning foreign investment have been a particular area of focus.

Background on the Revising Decision: Simplification of the Registered Capital System

At the end of 2013, China adopted an amendment to the Company Law (“**Company Law Amendment**”) to reform the registered capital system. For most companies, except as otherwise provided under laws, administrative regulations or as directed by the State Council, the following requirements no longer exist: (a) at least 20% of registered capital must be paid-in upon formation (for foreign invested enterprises (“**FIEs**”), 15% within 90 days of formation) and the remainder paid within 2 years (5 years for investment companies); (b) minimum amount of registered capital; and (c) minimum cash capital contributions.

Shortly following the issuance of the Company Law Amendment, on February 7, 2014, the State Council issued a policy statement outlining reforms to the registration formalities directed by the Company Law Amendment, the *Circular of the State Council on Circulating the Reform Plan for the Registered Capital Registration System* (Guofa 2014 No. 7) (“**Reform Plan**”). The Reform Plan, in the form of a policy statement, calls for comprehensive reforms in the registration regime covering a variety of market participants, such as companies (including FIEs), proprietorships, partnerships, non-corporate enterprises and farmers' specialized cooperatives.

In the same manner, on February 19, 2014, the State Council issued the *Decisions to Repeal and Amend Certain Administrative Regulations* [Decree No. 648] (“**Decree No. 648**”). Decree No. 648 amends the provisions not in conformity with the Company Law Amendment and Reform Plan found in eight administrative regulations and abolishes two regulations which regulated capital contributions to FIEs.

In May 2015, the General Office of the State Council promulgated the *Notice of the General Office of the State Council on Accelerating the Implementation of the Reform of Registered Capital Registration* (Guo Ban Han [2015] No. 14) (“**Implementing Notice**”). Although the Implementing Notice has not been publicly issued, it forms the basis for the Revising Decision and promotes its formulation and issuance.

Highlights of the Revising Decision: Changes concerning Foreign Investment

One of the key focuses of the Revising Decision is to revise administrative rules and normative documents concerning foreign investment. 16 of the 29 revised rules and documents relate to foreign investment. Certain changes are industry-neutral and touch upon general aspects of foreign investment, and some relate to specific business sectors. Major revisions are summarized below:

No.	Rules	Revisions
1	<i>Interim Provisions on Certain Issues Concerning the Establishment of Foreign-Invested Joint Stock Companies, 1995</i>	<ol style="list-style-type: none"> 1. Repeal the RMB30 million minimum registered capital requirement and the 25% foreign investor minimum shareholding requirement 2. Repeal the requirement to make full capital contributions within 90 days following issuance of the approval certificate
2	<i>Interim Provisions on Investment Made by Foreign-Invested Enterprises in China, 2000</i>	<ol style="list-style-type: none"> 1. Repeal the requirement to make full capital contributions before FIEs may make equity investments 2. Repeal the restriction on accumulated investments not exceeding 50% of the FIE’s net assets
3	<i>Provisions on Mergers and Divisions of Foreign-Invested Enterprises, 2001</i>	Repeal the restriction on mergers or divisions of FIEs that no such activity before full capital contribution and the commencement of operations of the FIE(s)
4	<i>Administrative Provisions for Foreign-Invested Venture Capital Enterprises, 2003</i>	<ol style="list-style-type: none"> 1. Repeal the USD 10 million minimum subscribed capital requirement for partnership-type venture capital and USD 5 million for corporate venture capital 2. Repeal the USD 1 million minimum subscribed capital requirement for single investors, and the five year maximum contribution period

No.	Rules	Revisions
		3. Repeal the restriction that there can be no reduction in subscribed capital during the term of the venture capital entity 4. Repeal the joint annual examination requirement
5	<i>Administrative Measures on Foreign Investment in the Commercial Sector</i> , 2003	Repeal the joint annual examination passage requirement and the requirement to make full capital contributions for new store openings
6	<i>Notice on Issues Related to Expanding the Distribution Business Scope of a Foreign-Invested Non-Commercial Enterprise</i> , 2005	Repeal the joint annual examination requirement
7	<i>Provisions on the Establishment of Investment Companies by Foreign Investors</i> , 2004	1. Permit investment-FIEs to also be formed as companies limited by shares 2. Repeal the USD 30 million minimum registered capital requirement 3. Repeal the capital verification report requirement for portfolio(s) when applying for company formation 4. Repeal the requirement to fully contribute capital within 2 years following formation 5. Repeal the annual joint examination requirement
8	<i>Supplementary Provisions on the Establishment of Investment Companies by Foreign Investors</i> , 2006	1. Repeal the SAFE capital-account approval and tax certificate requirements when making capital contributions using RMB profits 2. Repeal the USD 30 million minimum capital contribution requirement and the requirement to make contributions within five years of formation
9	<i>Administrative Measures Concerning Foreign Investment in the Leasing Sector</i> , 2005	Repeal the USD 10 million minimum registered capital requirement
10	<i>Interim Provisions on Equity Contributions Involving Foreign-Invested Enterprises</i> , 2012	1. Repeal the full capital contribution and annual joint examination passage requirements before contributing equity to an FIE 2. Repeal the 70% limitation for equity contributions and other non-cash contributions 3. Repeal the annual joint examination requirement in the case of equity contributions

Impact on Foreign Investments: Nice Cleanup and to be Continued

The Reform Plan explicitly stipulates that all companies are to adopt the subscribed capital regime, except for those in certain ineligible industries. All companies are also to be relieved of the minimum registered capital requirement, except as otherwise stipulated under law, administrative regulation, or as directed by the State Counsel. Despite these developments, however, the reforms have yet to take full effect due to various administrative regulations and rules that have been left in place. While Decree No. 648 has abolished two administrative regulations specifically relating to FIE capital contributions, and has revised the implementing regulations for FIE-related laws, provisions concerning minimum registered capital, contribution schedules and similar provisions are still prevalent in rules of lower force. The Revising Decision has repealed capital-related requirements and restrictions at the administrative rule level and has cleared obstacles within the legal framework for capital reforms.

From the Company Law Amendment until the recent issuance of the Revising Decision, it is encouraging to see that the regulatory landscape in China is changing to one which is likely more familiar to foreign investors. Foreign investors are expected to enjoy greater flexibility in structuring capitalizations in ways similar to those that they are accustomed to in other jurisdictions. However, the legacy registered capital requirements still await further action. For example, under the current rule concerning M&A activities by foreign investors, foreign investors are still required to follow the statutory contribution timeline when acquiring new capital of a non-FIE company or when forming a new FIE based on assets acquired domestically. While in certain locations such as Beijing, these requirements are not enforced with the understanding of reform in this regard, other local authorities still follow the letter of the rules. We expect these requirements to be repealed in the near future.

The Revising Decision was promulgated by MOFCOM with the consent of other governmental departments, including SAIC, SAFE, CSRC, the State Administration of Taxation, etc., representing a concerted effort towards realizing the Company Law reform initiatives. However, as mentioned above, there continue to be unresolved issues related to the registered capital registration system. We expect to see legislative action soon to address these outstanding questions.

● **Important Announcement**

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