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Newsletter

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New Changes in China's Company Registration System (Authors: Wenyu JIN, Kaiying Wu, Fanglu LIN)

On February 19, 2014, the State Council promulgated the *Decision of the State Council on Repealing and Revising Certain Administrative Regulations*. On February 20, 2014, the State Administration for Industry and Commerce (SAIC) issued the *Decision of the SAIC on Amending Such Rules as the Implementing Rules for the Administrative Regulations of the PRC on the Registration of Enterprise Legal Persons, the Administrative Provisions on the Registration of Foreign-invested Partnership Enterprises, the Administrative Measures for the Registration of Sole Proprietorship Enterprises and the Administrative Measures for the Registration of Individually-owned Businesses and the Administrative Provisions on the Registration of the Registered Capital of Companies*. In accordance with the State Council and SAIC's new decisions, recently more than ten rules and regulations have been revised, including the *Administrative Regulations of the PRC on Company Registration*; five rules and regulations have been repealed, including the *Administrative Measures for the Registration of Debt-for-Equity Swap of Companies* promulgated by the SAIC on November 23, 2011. A list of the foregoing rules and regulations revised or repealed is attached hereto. These revisions have been effective as of March 1, 2014.

The revisions to the foregoing rules and regulations reflect changes in the *Company Law of the PRC* as revised on December 28, 2013. Below we summarize the key changes introduced by the new revisions:

Change from Paid-in Capital to Subscribed Capital

According to the newly promulgated *Administrative Provisions on the Registration of the Registered Capital of Companies*, the amount, the timing and form of capital contributions subscribed to by all the shareholders or promoters shall be stipulated in the Articles of Association of the company. Furthermore, the company shall periodically disclose the amount of capital contributions subscribed to by all the shareholders, the timing and form of capital contribution and the paid-in capital through a new enterprise credit information disclosure system.

Nevertheless, under current laws, administrative regulations and the decisions of the State Council, currently, the new system does not apply 27 industries such as banking financial institutions, securities companies, futures companies, fund management companies, insurance companies, special insurance agencies and insurance brokers, direct selling enterprises, foreign labor service cooperation enterprises, financing guarantee companies, companies limited by shares established by share offer, labor dispatch enterprises, pawnshops, insurance assets management companies and micro-financing companies .

Cancel Minimum Capital Threshold

Under the new regime, previous provisions on minimum registered capital(RMB30,000 for a limited liability company, RMB100,000 for a single shareholder limited liability company and RMB 5,000,000 for a joint stock limited company), the initial contribution proportions and the proportion of monetary contributions have been deleted. The new revisions impose no restriction on the initial contribution proportions of all shareholders (promoters) at the time of incorporation of companies, the proportion of monetary contributions, and the period to pay up contributions. Therefore, currently companies are no longer subject to minimum registered capital requirement, except for special industries as stipulated otherwise.

Clarify Administration of Registration of Capital Contribution Made with Equity and Debt-for-Equity Swap

As stipulated in the newly promulgated *Administrative Provisions on the Registration of the Registered Capital of Companies*, a shareholder or promoter may make contribution with its holdings of equity in a company set up within the territory of China, and the equity used for contribution shall have clear ownership, entail full power and functions, and be transferrable according to the law. Also, a creditor may convert the creditor's rights to which it is legally entitled in the companies established within the territory of China into company equity. Where creditor's rights are converted into company equity, the company concerned shall increase its registered capital. Simultaneously, the previous *Administrative Measures for the Registration of Capital Contributions Made with Equity* and *Administrative Measures for the Registration of Debt-for-equity Swap of Companies* shall be repealed, and the provisions in relation to the period for shareholders to pay up contributions and the maximum proportion of non-monetary contributions in the foregoing measures are no longer preserved.

Cancel Annual Inspections

There will be no annual inspections. Instead, a reporting and disclosure system is introduced. Companies and other enterprises legal person (including partnership enterprises, foreign invested partnership enterprises and sole proprietorship enterprises) shall submit the annual report for the previous year to the competent registration authority and publicize the same to the society through the enterprise credit information publicity system from January 1 through June 30 each year, and make them available to any entity and individual. Main contents of annual reports of enterprises shall include contributions of shareholders (promoters), changes in equity structure, operation of the company and changes of such officers as directors and managers of the company, with the concrete contents to be stipulated in future provisions promulgated by the State Council.

Changes in AIC Registration Items and Procedures

According to the new *Administrative Provisions on the Registration of the Registered Capital of Companies* and the revised *Administrative Regulation on Company Registration*, items for company registration no longer include the amount, time and form of contributions as subscribed and actually paid; where the first capital contribution made by a shareholder is non-monetary property, the documents proving that the formalities for transferring the property thereof have been transacted no longer need to be submitted; the verification certificate of capital contribution is no longer required when applying for the establishment of a company or alteration registration of registered capital, except for a company limited by shares established by public offering; as newly added, where a company increases its registered capital, an application for change of registration shall be filed within 30 days from the date of the resolution or decision on such change. The revised *Implementing Rules for the Administrative Regulations on the Registration of Enterprise Legal Persons* have deleted the provisions in relation to checking relevant registrable items and establishment criteria, and accordingly dilute the substantive examination of the submitted registration documents. Therefore, this reformation has simplified and made flexible the procedure of industry and commerce registration, both for establishment and alteration registration.

Changes to Registration Administration System of Foreign Invested Enterprises

The revised *Administrative Regulation on Company Registration* and the *Implementing Rules for the Law on Wholly Foreign-owned Enterprises* have respectively deleted the provisions that “the capital contribution made by shareholders of a foreign-invested limited liability company shall be contributed in full amount within 2 years as of the establishment of the company, among which, an investment company may contribute its capital in full amount within 5 years” and that “Foreign investors may contribute their capital in installments, provided that the final installment is made within three years of the date of issue of the enterprise business license. The first installment shall account for no less than 15% of the total amount of capital to be contributed by the foreign investor, and shall be contributed in full within 90 days of the date of issue of the wholly foreign-owned enterprise's business license”. The provision in the repealed *Several Provisions on the Capital Contribution by Parties to the Sino-Foreign Joint Ventures* that “Where the equity joint venture contract stipulates that capital shall be fully contributed in one go, the various joint venture parties shall pay up their contributions within 6 months since the day of issuance of the business license; where the joint venture contract stipulates that capital shall be paid up in installments, the first payment made by the various joint venture parties shall be no less than 15% of the respective capital contribution of each party and shall be paid within 3 months since the day of issuance the business license” is also no long in force. Under the new regime, a Sino-foreign equity joint venture, a Sino-foreign cooperative joint venture or a wholly foreign-owned enterprise may stipulate the total investment amount, subscribed capital contribution and time of capital contribution in its Article of Association. Where a foreign investor makes its capital contribution with certain industrial

property or proprietary technology, the previous limitation that the amount at which such property or technology is valued shall not exceed 20% of the registered capital of the wholly foreign-owned enterprise concerned is repealed as well.

Further, the reformation fully implements electronic business licenses, and an electronic business license which has industrial and commercial registration information shall have the same legal force as a paper business license.

Schedule 1: List of Recently Revised and Repealed Rules and Regulations

Status	No.	Name
Revised	1	Implementing Rules for the Administrative Regulations of the PRC on the Registration of Legal Person Enterprises
	2	Administrative Provisions on the Registration of Foreign-invested Partnership Enterprises
	3	Administrative Measures for the Registration of Sole Proprietary Enterprises
	4	Administrative Regulations of the PRC on Company Registration
	5	Administrative Regulations of the PRC on the Registration of Enterprise Legal Persons
	6	Implementing Regulations of the Law of the PRC on Sino-Foreign Equity Joint Ventures
	7	Implementing Rules of the Law of the PRC on Sino-Foreign Cooperative Joint Ventures
	8	Implementing Rules of the Law of the PRC on Wholly Foreign-owned Enterprises
	9	Administrative Measures of the PRC for the Registration of Partnership Enterprises
	10	Administrative Measures of the Registration of Individual Businesses
	11	The Regulations on Individual Businesses
	12	Administrative Regulations of the PRC on the Registration of Specialized Farmers' Cooperatives
Repealed	1	Several Provisions on the Capital Contribution by Parties to the Sino-Foreign Equity Joint Ventures (approved by the State Council on December 30, 1987, jointly promulgated by the Ministry of Foreign Trade and Economic Cooperation and the State Administration for Industry and Commerce (hereinafter referred to as the "SAIC") on January 1, 1988 and effective as of March 1, 1988)
	2	Supplementary Provisions to the Several Provisions on the Capital Contribution by Parties to the Sino-Foreign Equity Joint Ventures (approved by the State Council on September 2, 1997 and jointly promulgated by the Ministry of Foreign Trade and Economic Cooperation and the SAIC on September 29, 1997)
	3	Administrative Measures for the Registration of Capital Contributions Made with Equity (promulgated by the SAIC on January 14, 2009 and effective as of March 1, 2009)
	4	Administrative Measures for the Registration of Debt-for-Equity Swap of Companies (promulgated by the SAIC on November 23, 2011 and effective as of January 1, 2012)
	5	Administrative Provisions on the Registration of the Registered Capital of Companies ¹ (promulgated by the SAIC on December 27, 2005 and effective as of January 1, 2006)

¹ According to the Order of the SAIC No.64 dated on February 20, 2014 (Administrative Provisions on the Registration of the Registered Capital of Companies), the former Administrative Provisions on the Registration of the Registered Capital of Companies promulgated by the SAIC on December 27, 2005 shall be repealed, and the new one shall come into effect as of March 1, 2014.

Schedule 2: Industries Temporarily Not Implementing the New Registration System

No.	Industry	Legal Basis
1	Companies limited by shares established by share offer	Company Law of the PRC
2	Commercial banks	Law of the PRC on Commercial Banks
3	Foreign-invested banks	Administrative Regulations of the PRC on Foreign-invested Banks
4	Financial asset management companies	Regulations on Financial Asset Management Companies
5	Trust companies	Law of the PRC on Banking Supervision and Administration
6	Finance companies	Law of the PRC on Banking Supervision and Administration
7	Financial leasing companies	Law of the PRC on Banking Supervision and Administration
8	Auto finance companies	Law of the PRC on Banking Supervision and Administration
9	Consumer finance companies	Law of the PRC on Banking Supervision and Administration
10	Currency brokerage companies	Law of the PRC on Banking Supervision and Administration
11	Village and town banks	Law of the PRC on Banking Supervision and Administration
12	Loan companies	Law of the PRC on Banking Supervision and Administration
13	Rural credit cooperatives	Law of the PRC on Banking Supervision and Administration
14	Rural fund mutual assistance cooperatives	Law of the PRC on Banking Supervision and Administration
15	Securities companies	Securities Law of the PRC
16	Futures companies	Administrative Regulations on Futures Trading
17	Fund management companies	Law of the PRC on Securities Investment Funds
18	Insurance companies	Insurance Law of the PRC
19	Specialized insurance agencies and insurance brokerage firms	Insurance Law of the PRC
20	Foreign-invested insurance companies	Administrative Regulations of the PRC on Foreign-invested Insurance Companies
21	Direct selling enterprises	Administrative Regulations on Direct Selling
22	Foreign labor service cooperation enterprises	Administrative Regulations on Foreign Labor Service Cooperation
23	Financing guarantee companies	Interim Administrative Measures for Financing Guarantee Companies
24	Labor dispatch enterprises	Decision of the 28th Executive Meeting of the State Council dated October 25, 2013
25	Pawnshops	Decision of the 28th Executive Meeting of the State Council dated October 25, 2013
26	Insurance assets management companies	Decision of the 28th Executive Meeting of the State Council dated October 25, 2013
27	Micro-financing companies	Decision of the 28th Executive Meeting of the State Council dated October 25, 2013

Legal Updates

1. MOFCOM Will Publish Punishments on Concentrations That Fail to be Notified (Authors: Joyce LI, Haoze LI)

On March 21, 2014, the Ministry of Commerce of the People's Republic of China (“**MOFCOM**”) released that it would publish on its official website punishments on concentrations which are filed with and investigated by the MOFCOM after May 1, 2014 for failure to fulfill merger control notification obligations. In addition, the MOFCOM also provided a hot line (8610-65198998) for receiving tip-offs from public for suspected violations. In this commentary, we will briefly discuss types of cases subject to anti-monopoly notification, thresholds for notification, punishments for non-compliance and our observations.

Types of Cases subject to Anti-monopoly Notification; Thresholds for Notification

Pursuant to the *Anti-monopoly Law of the People's Republic of China* (the “**AML**”) and relevant regulations and rules, if undertakings involved in a “concentration” meet certain “turnover thresholds”, the transaction shall be notified with the MOFCOM for merger control review.

A “concentration” is (i) a merger of undertakings (including amalgamation of undertakings into a new undertaking or absorbing by one undertaking of other undertaking(s)); (ii) one or more undertakings gaining control over other undertaking(s) through acquiring equity or assets (including establishment of joint ventures, acquisition of equity or assets); or (iii) one or more undertakings gaining control or the power to exercise decisive influence on other undertaking(s) by contracts or any other means.

The “turnover thresholds” are met if (i) the combined aggregate worldwide turnover of all the undertakings concerned for the last financial year exceeds RMB 10 billion with at least two undertakings concerned each having an aggregate turnover of more than RMB 400 million within China (for the purpose of calculation of the turnover, excluding Hong Kong, Macau and Taiwan) for the last financial year; or (ii) the combined aggregate turnover of all the undertakings concerned within China for the last financial year exceeds RMB 2 billion with at least two undertakings concerned each having an aggregate turnover of more than RMB 400 million within China for the last financial year.

However, the definition of “control” remains unclear under the current Chinese anti-monopoly laws and regulations. Pursuant to our understanding of practice adopted by the Chinese regulators, in addition to acquisition of 50% or more of equity or assets of another undertaking, “control” will also be conferred when an undertaking gains the power to decide another undertaking’s management and business operation without owning 50% or more equity or assets of the latter.

Punishments for Failure to Notify

Pursuant to the AML and the *Interim Measures for Investigation and Handling of Failure to Notify Concentrations of Undertakings in Accordance with Laws*, the MOFCOM has the authority to investigate and punish concentrations that fulfill the criteria for notification but are not notified with the MOFCOM. The punishments that may be imposed by the MOFCOM include ordering the undertakings to restore to pre-concentration status through termination of the concentration, disposing of shares or assets within specified time limit, transfer of business within specified time limit and other necessary measures, as well as a fine up to RMB500,000.

Our Observations

Since the promulgation of the AML, the MOFCOM has already investigated and penalized some companies for failure to fulfil their notification obligations and quite a few of such cases were originated from tip-offs. However, up to now, the MOFCOM has never published detailed information (including the identity of companies involved) and punishments for the investigated cases. The MOFCOM's plan to publish punishments and set-up of a hot line reflect its determination to enhancing investigations of and punishments on violations, which will in turn urge companies to honor their notification obligations under China's anti-monopoly laws and regulations.

2. Deadline for Registration of Private Fund Managers Approaching (Author: James WANG, Evan ZHANG, Karina LUO)

On March 5, the Asset Management Association of China (the "**AMAC**") promulgated on its official website the Q&As on Relevant Issues concerning the Registration of Private Investment Fund Managers and Filing of Private Funds (Part I) (the "**Q&As**"). It provides answers to some frequently asked questions regarding the implementation of the *Measures for the Registration of Private Investment Fund Managers and Filing of Private Investment Funds (for Trial Implementation)* (the "**Measures**") which was promulgated by the AMAC on January 17, 2014. The AMAC indicated in the Q&As that private investment fund managers ("**Fund Managers**") that have been established shall apply for registration ("**Registration**") and make filings for the private investment funds ("**Private Funds**") under their management ("**Filing**") through the Registration and Filing system ("**System**") of the AMAC before April 30, 2014. On March 7, in light of this matter, the China Securities Regulatory Commission (the "**CSRC**") expressed its support of the AMAC's requirement for registration in its weekly press conference and indicated that all types of Fund Managers and Private Funds are required to perform Registration and Filing formalities with the AMAC and those who fail to do so may not engage in the management activities of Private Funds. The CSRC also indicated that it will take regulatory actions against Fund Managers failing to complete the Registration before April 30, 2014.

According to the data released by the CSRC, by February 26, 2014, 499 firms had registered in the System, of which 457 had started to fill out online application forms and 130 had already completed the forms and applied for Registration. On March 13, 2014, the AMAC organized a training session for the Registration and Filing, during which the AMAC drew the attention of Fund Managers and their advisors to several key issues, which are hereby summarized below for your reference:

Time Requirement

The Registration is the basis of the System. Fund Managers of all types are required to complete the Registration in the System as well as the Filing of the Private Funds under their management before April 30, 2014. For existing Fund Managers that do not have any Private Fund under management as they are still in the process of fundraising or are preparing for fundraising, the AMAC requires them to complete the Registration first and then make a Filing for Private Funds under their management within 20 business days upon the completion of their fundraising.

Delivery of Written Undertaking and Membership Application Form

Upon completion of the Registration, the Fund Managers shall mail a duly signed and/or chopped written undertaking (“**Undertaking**”) to the AMAC to the effect that all information provided for Registration is true, accurate and complete and free from any misrepresentation. In addition, Fund Managers that are not yet members to the AMAC at the time of application for Registration shall apply for membership first at the beginning of the Registration. Thus, for those Fund Managers, in addition to the Undertaking, they shall also mail a duly signed and/or chopped Application Form of Membership to the AMAC.

Confidentiality and Information Disclosure

Given the particularity of the private investment industry and the requirement for confidentiality of information, the AMAC only publicizes limited information of Fund Managers and Private Funds. For a Fund Manager, only its name, registered address, time of establishment, nature of enterprise, name and resume of the legal representative/executive partner (designated representative), names of the other members of the senior management, and number of qualified professional staff and other basic information will be publicized. As for a Private Fund, the AMAC will only publicize its name, currency, time of establishment, time of filing, fund type, operation status, name of the Fund Manager, type of management, name of custodian, main area of investment and other basic information.

Registration/Filing with National Development and Reform Commission and Registration/Filing with AMAC

Venture capital enterprises and venture capital management enterprises that have already

registered/filed with the National Development and Reform Commission or their local counterparts are still required to complete the Registration/Filing in the System as the registrations/filings in the two systems are independent from each other and serve different purposes.

As April 30 is approaching, we recommend that all types of Fund Managers give serious thoughts to and consult their legal counsel on the Registration and Filing as soon as possible. We will also keep close contact with the AMAC and continue to keep you informed of the latest updates on the Registration/Filing.

Important Announcement

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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