



漢坤律師事務所  
HAN KUN LAW OFFICES

# Newsletter

China Practice

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## Legal Updates

1. New Amendments to the PRC Company Law
2. Shanghai FTZ New Rules on Further Opening up of Value-added Telecom Services

## Legal Updates

### **1. New Amendments to the PRC Company Law (Authors: Wenyu JIN, Kaiying WU, Fanglu LIN)**

On December 12, 2013, the 6th meeting of Standing Committee of the 12th Session of China's National People's Congress adopted the *Decision of the Standing Committee of the National People's Congress on Amending the Marine Environmental Protection Law of the People's Republic of China and other Six Laws*, among which, amendments with respect to the current *Company Law of the People's Republic of China* (the "Amendment to Company Law", or the "Amendment" ) are included. The Amendment will become effective on March 1, 2014.

Below is a brief summary of key points of the Amendment and its impacts in practice:

#### **Main Amendments and Impacts on Company Registration Procedures**

##### **(a) Changes to the Capital Registration System**

The Amendment deletes the provisions that the amount of the first capital contribution made by all shareholders (promoters) shall not be less than 20% of its registered capital and the capital contribution shall be paid within 2 years from the date of incorporation of the company (5 years for holding companies). In accordance with the Amendment, shareholders (promoters) may autonomously agree on the amount, form and period of the investment, which should be recorded in the articles of association, and be implemented by the shareholders (promoters) accordingly, unless any provisions of laws, administrative regulations or decisions of the State Council provide otherwise.

The Amendment changes the current paid-in capital registration system to subscription capital registration system. Shareholders can make capital contribution according to the period and form prescribed by the articles of association, which endows the subscription documents among shareholders with stronger legal effect. The new amendments remove the proportion of the first capital contribution, which simplifies the registration procedures for establishment and capital increase to a company. A company does not need to go through the capital verification procedures before obtaining its business license. In the case of capital increase, the company will no longer need to pay 20% of the increased capital prior to the registration of alteration.

##### **(b) No Minimum Amount for Registered Capital**

The Amendment have deleted the requirement on the minimum amount of the registered capital, which is 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 amount of registered

capital of all kinds of companies will be subject to their articles of association, unless otherwise required by other laws, administrative regulations, or the State Council's decisions.

In addition, the Amendment sets no limitation on the proportion of the first capital contribution made by shareholders and the proportion of monetary contribution for the establishment of a company. The deletion of the restriction on minimum proportion of monetary contribution allows the investors to invest intellectual property rights without paying any certain amount of cash as before.

### **(c) Simplify Registration Process and Application Documents**

According to the Amendment, the amount of shareholders' subscribed capital and the paid-up capital of a limited liability company will no longer be a part of the registration items. The business license will not show the paid-up capital, and will state the company name, domicile, registered capital, business scope, legal representative, etc. Upon the capital contribution being made by shareholders, there will be no mandatory requirement for capital verification, and verification report is no longer needed for establishment registration.

### **Transition**

As the basic law for the operation of the whole economy, the issuance and previous amendments of the Company Law have a significant impact on the investors, companies and the market. From 1999 to 2005, all amendments of the Company Law are accompanied by appropriate modification and adjustments of judicial interpretations, implementation regulations or other corresponding provisions.

According to the Amendment, the current commercial registration procedures will undergo significant changes, and the *Regulations of the People's Republic of China on Registration Administration of Companies* as well as other provisions related to company registration will be gradually modified in subsequent. SAIC has announced its intention to revise its company registration regulations to align with the Amendment, effective from March 1, 2014. In accordance with the basic principles of non-retroactivity except in special circumstances, companies established before March 1, 2014 shall fulfill their obligations in accordance with provisions of the currently effective Company Law on the proportion of the first capital contribution, the proportion of monetary contribution, the form and period of the investment as well as the capital registration system.

For example, the currently effective Company Law stipulates that 'the aggregate amount of the first capital contribution made by all the shareholders shall not be less than 20% of the registered capital, nor shall it be less than the statutory minimum amount of the registered capital. The remaining capital contributions shall be paid up in full within 2 years, or within 5 years in the case of a holding company. For companies established before March 1, 2014 which will reach the statutory 2 year (or 5 year) investment period prior to that date, the shareholders with capital contribution obligations shall pay as scheduled. However, as to the situation of extending the 2 year (or 5 year) period

across March 1, 2014, there are not any instructions stipulated in these amendments, nor does any explanations issued by related authorities. In principle, shareholders shall still make the capital contribution in accordance with the provisions of effective laws and articles of association at the time of company establishment. However, in practice, it remains possible that investors are allowed to extend or shorten the 2 year (or 5 year) period through amending the articles of association, after the implementation of the new Company Law on March 1, 2014.

### **Impacts of the Amendment on FIE Establishment**

The Amendment makes the modification of FIE related laws (e.g., the *PRC Sino-Foreign Equity Joint Venture Enterprise Law*, the *PRC Sino-Foreign Cooperative Joint Venture Enterprise Law*, the *PRC Wholly Foreign-Owned Enterprise Law* and their implementation regulations) become a new focus. By reviewing the development of relevant laws and regulations on foreign investment, it can be found that the modification processes of the FIE related laws and regulations and the Company Law are always not synchronized. After the implementation of the Company Law in 2006, the regulations on the establishment of FIEs and domestic companies presented a gradual uniform trend. It is expected that the Amendment may also lead to changes in the FIE related laws and regulations.

The impact of the amendments on the establishment of FIEs is subject to circulars and explanations from competent authorities, in respect of the proportion and term of the first capital contribution, the total amount of the investment, the registration of the registered capital and paid-up capital, capital verification process. For example, after the Company Law entering into force on January 1, 2006, the SAIC, the Ministry of Commerce, General Administration of Customs and the State Administration of Foreign Exchange jointly issued the *Notice on the Implementation Opinions on Certain Issues Concerning the Application of Laws on the Administration of Company Approval and Registration Related to Foreign Investment* on April 24, 2006, to stipulate the FIE related issues applicable to the Company Law in 2006. Therefore, before the introduction of relevant explanatory policy documents to amend currently effective laws and regulations on foreign investment, the establishment of FIEs shall still follow the existing laws and regulations on foreign investment.

Although relevant guidance on the application of the Amendment has not been issued, it can be predicted to a certain extent that the regulations on the amount of companies' registered capital, form and period of the investment as well as other FIE related issues will be more flexible.

The Amendment further lowers the threshold of company establishment and will play an important role in encouraging entrepreneurship and improving the economic vitality. However, how the Amendment will retroactively apply to companies established before its effectiveness also remains unknown and requires clarification from authorities. We will keep a close eye on these policy changes and update you of the same.

## **2. Shanghai FTZ New Rules on Further Opening up of Value-added Telecom Services (Authors: Kelvin GAO, Irene CAI, Huanhao HE)**

On January 6th, 2014, deciding to further open up value-added telecom services in the China (Shanghai) Pilot Free Trade Zone (the “**Shanghai FTZ**”), the Ministry of Industry and Information Technology and the People’s Government of Shanghai Municipality jointly promulgated the *Opinions on Further Opening up Value-added Telecom Services in China (Shanghai) Pilot Free Trade Zone* (the “**Opinions**”).

### **Further Opening Up of Seven Types of Value-added Telecom Services**

According to the Opinions, seven types of value-added telecom services will be further opened up in the Shanghai FTZ as follows:

- (i) Foreign investors may hold more than 50% equity interests in apps store services (which is covered by the catalogue of information services) and store-and-forward services, while according to a previous opening up commitment made to the WTO, the equity interests held by foreign investors in such businesses were restricted to 50%. The Opinions does not identify any cap of the equity interests held by foreign investors in such businesses.
- (ii) The equity interests held by foreign investors in operational electronic commerce (which is covered by the catalogue of online data processing and transaction processing services) is opened up to no more than 55%; and
- (iii) Four types of services are newly opened up to foreign investors:(a) call center services, (b) domestic multi-party communication services, (c) Internet access services provided for online users, and (d)domestic Internet protocol virtual private network services. The equity interests held by foreign investors in item (a), (b) and (c) may exceed 50% without limitation, while the equity interests held by foreign investors in item (d) shall not exceed 50%. Details of the types and catalogues of value-added telecom services are provided in the attached Schedule.

In summary, in the Shanghai FTZ, foreign investors may: (i) establish a wholly foreign owned enterprise to provide the following value-added telecom services: (a) apps store services (which is covered by the catalogue of information services), (b) store-and-forward services, (c) call center services, (d) domestic multi-party communications services, and (e) Internet access services provided for online users; and (ii) establish a Sino-foreign joint venture company to provide the following value-added telecom services: (x) operational electronic commerce (which is covered by the catalogue of online data processing and transaction processing services, and the equity interests in which held by foreign investors shall not exceed 55%) and (y) domestic Internet protocol virtual private network services (the equity interests in which held by foreign investors shall not exceed 50%).

## **Facilities and Scope of Services**

The Opinions imposes requirements on the facilities and scope of services of enterprises engaging in the opened up value-added telecom services. Specifically, the registered address and service facilities of the enterprise applying for the engagement in the aforesaid value-added telecom services shall be located in the Shanghai FTZ. In addition, the Internet access services provided for online users may only be provided to users within the Shanghai FTZ, while the other services may be provided to the nation.

## **Protective Measures**

The Opinions further requires that, in order to facilitate the implementation of the pilot policies, protective measures should be made for the formulation of detailed rules, creation of environment, improvement of services, and enhancement of administration. The relevant provisions of the *Administrative Provisions on Foreign-Invested Telecom Enterprises* (Order of the State Council No. 534) shall be suspended from implementation within the Shanghai PTZ. Relevant authorities will also accelerate the formulation of pilot administrative measures, adjust relevant administration systems, simplify relevant approval procedures and shorten approval timelines. We will follow up with subsequent detailed rules.

### Schedule

Business Sectors	Detailed Explanation	Restrictions on the Equity Interests Held by Foreign Investors in the Shanghai FTZ
<b>Information Services</b>	<p><b>Definition:</b> the voice information services (telephone information services) or on-line information and data retrieval, and other information services directly provided for endusers through fixed networks, mobile networks or the Internet, and other public communication networks, by means of information gathering, development, and processing as well as the establishment of information platform.</p> <p><b>Main Types:</b> content services, entertainment/games, business information and positioning information services. The oriented users of the information services may be subscribers of fixed line communication networks, subscribers of mobile communication networks, Internet users or users of other data transmission networks.</p>	Equity interests held by foreign investors shall not exceed 50% except that the equity interests held by foreign investors in apps store services is unrestricted.
<b>Store-and-Forward Services</b>	<p><b>Definition:</b> the services in which information is sent for users by using the store-and-forward mechanism.</p> <p><b>Main Types:</b> Voicemail, X.400 e-mail, facsimile store-and-forward, and etc.</p>	Equity interests held by foreign investors may exceed 50%.
<b>Call Center Services</b>	<p><b>Definition:</b> the services in which the operators, as engaged by enterprises or public institutions, use the call center system connected to the public telephone network or the Internet and the database technology, establish the information database through information gathering, processing and storage, and provide users with the business consultancy, information consultancy and data inquiry services of the relevant enterprises or public institutions via fixed line network, mobile network or the Internet and other public communications networks. The call center services also include the leasing services of call center systems and operators' seats.</p> <p>Users may access the system and visit the database of the system by means of fixed line telephones, facsimiles, mobile communication terminals, computer terminals, and etc., and obtain the information consultation services of the relevant enterprise or public institution be means of voice, facsimile, e-mail, short message, and etc.</p>	Equity interests held by foreign investors may exceed 50%.
<b>Domestic Multi-Party Communications Services</b>	<p><b>Definition:</b> the real-time interactive or on-demand voice and image communication services realized between two or more domestic points through the communication networks.</p> <p><b>Main Types:</b> domestic multi-party telephone services, domestic visual telephone conference services and domestic Internet conference television and image services.</p>	Equity interests held by foreign investors may exceed 50%.
<b>Internet Access Services Provided for Online Users</b>	<p><b>Definition:</b> The internet access services refer to the services of accessing the Internet provided for various kinds of users through establishing a business node by accessing servers and corresponding software and hardware resources, and connecting the service nodes with the Internet backbone network via the public telecommunication infrastructure facilities. Users may use the public telephone networks or other means of access to connect to the service nodes and access the Internet through such node.</p> <p>There are mainly two applications in the Internet access services. One is the Internet access service provided for the Internet Content Provider (ICP) service operators and those who engage in information content provision, online trading, and online applications through the Internet; and the other is the Internet access service provided for common Internet users and those who need to access the Internet to obtain relevant services.</p>	Equity interests held by foreign investors may exceed 50%.

Business Sectors	Detailed Explanation	Restrictions on the Equity Interests Held by Foreign Investors in the Shanghai FTZ
<b>Domestic Internet Protocol Virtual Private Network Services</b>	<b>Definition:</b> i.e., the IP-VPN services, referring to the services that the operators use their own or hired public Internet network resources and adopt the TCP/IP protocol to customize the Internet closed user group network to domestic users. The IP-VPN shall be constructed mainly by means of IP tunnels and other TCP/IP-based technologies, and provide a certain degree of security and confidentiality. Encrypted transparent packet transmission can be realized in the private network.	Equity interests held by foreign investors shall not exceed 50%.
<b>Online Data Processing and Transaction Processing Services</b>	<b>Definition:</b> the on-line data processing and transaction/affair processing services provided for users through communication networks, by means of various kinds of data and transaction/affair processing application platforms connected with the communication networks. <b>Main Types:</b> transaction processing services, electronic data interchange services and network/electronic equipment data processing services.	Equity interests held by foreign investors shall not exceed 50% except that the equity interests held by foreign investors in operational electronic commerce shall not exceed 55%.

*Note: The above schedule mainly refers to the Circular on the Readjustment of the Classified Catalogue of Telecom Services (Xin Bu Dian [2003] No. 73) promulgated by the former Ministry of Information Industry and came into effect as of April 1, 2003.*

## **Important Announcement**

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