

CHINA AMENDS ITS COMPANY LAW TO RELAX THE REQUIREMENTS FOR SETTING UP A COMPANY IN CHINA

On 28 December 2013, the Standing Committee of the National People's Congress of the PRC adopted the Decision on Amendment to the Company Law of the PRC ("**Decision**"). The current PRC Company Law ("**Company Law**") was adopted on 29 December 1993 (effective from 1 July 1994) and was revised on 25 December 1999 and 28 August 2004. The amendments will become effective from 1 March 2014. In brief, the Decision effects the following changes to the Company Law:

- Removal of existing requirements as to the contribution timeline of registered capital;
- Removal of existing requirements as to the minimum amount of registered capital;
- Removal of existing requirements as to the minimum percentage of cash contributions; and
- Simplification of company registration matters and the documents to be submitted for registration.

The Decision is significant for foreign invested enterprises ("**FIE**") as, where the laws and regulations governing FIEs ("**FIE Laws**") are silent on a particular matter and it is dealt with under the Company Law, the Company Law will apply.

The amendments by the Decision to the Company Law are set out in greater detail below. We will keep you updated on any further developments in this area.

Removal of Existing Requirements as to the Contribution Timeline of Registered Capital

Provisions on contribution timeline that no longer apply

According to the Decision, unless otherwise provided in specific laws, regulations, and rules of the State Council, the following provisions of the Company Law will no longer apply to PRC companies:

- That the shareholder(s) of a company must fully pay up their subscribed registered capital within two years from the incorporation of company;
- That in the case of an investment holding company, the subscribed registered capital may be fully paid up within five years from the incorporation of the company; and
- That the shareholder of one-person limited company must pay up the subscribed registered capital in one lump sum in full.

Shareholders may agree on these matters

Instead, the shareholders of a company may determine for themselves the subscription of registered capital, contribution manner (i.e., in cash or in kind), and term, etc. in the articles of association of the company.

Removal of Existing Requirements as to the Minimum Amount of Registered Capital

No minimum registered capital

The Company Law will no longer stipulate a minimum registered capital for a limited liability company, a one-person limited company, or a company limited by shares. A minimum registered capital may still be required by the laws, regulations, and rules dealing with the following matters:

- Securities companies;
- Commercial banks;
- Insurance companies; and
- International freight agency companies.

No requirements on contribution by instalments

As there is no minimum amount of registered capital required, requirements as to contribution by instalments will also be removed. However, the shareholders will be liable to the company to the extent of their respective subscribed registered capital.

Removal of Existing Requirements as to a Minimum Percentage of Cash Contribution

No minimum paid up capital required

There will no longer be any requirements mandating that a company has a minimum paid up capital or that a minimum percentage of a company's capital must be in cash contributions. Currently, the Company Law requires a minimum cash contribution of 30% of the total registered capital of a company.

Simplification of Registration Matters and Documents to be Submitted for Registration

Registration and verification of capital not needed

The paid up registered capital and the subscribed registered capital will no longer need to be registered, and the relevant provisions on paid up registered capital will be removed from the Company Law. In addition, the capital verification report will no longer be required for registration of a company, and the contributions of shareholders will not be registered by State Administration for Industry and Commerce (i.e., the company registration authority).

Effect of the Change on FIEs

Company Law applies if FIE Laws are silent

FIEs are governed and regulated under the FIE Laws, and these prevail over the Company Law. For example, the shareholders of an FIE are required to pay up at least 15% of the subscribed registered capital within three months of the issuance of its

business license. However, where the FIE Laws are silent on a particular point, the Company Law will apply. For example, the FIE Laws are silent on the minimum registered capital for an FIE. Accordingly, following the Company Law amendments, FIEs will no longer be required to have a minimum registered capital.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:

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