

2014 AMENDMENTS TO THE PRC COMPANY LAW & THEIR LEGAL IMPLICATIONS

by editorial staff writer.

The new amendments to the PRC Company Law (hereinafter referred to as the “2014 Revision”), passed by the National People’s Congress on 28 December 2013, came into operation on 1 March 2014. This is the third major revision to the PRC Company Law since its promulgation in 1994. The 2014 Revision substituted “paid up capital” registration with “subscribed capital” registration. It also abolished the minimum amount requirement on the registered capital for any incorporation of a company in the PRC.

Before the 2014 Revision, the shareholders/promoters of a company must contribute the full amount of the subscribed capital within 2 years from the date of corporation. The time limit for the shareholders of an investing company would be 5 years. For one-person limited liability company, the shareholders would contribute the capital on a one-off basis. The 2014 Revision removed such time-frame for capital contributions. At the same time, the “paid-up capital” will be no longer shown on the Business License of a company. Further, the capital verification report issued by a qualified accounting firm is no longer required to be provided at the time of incorporation of a company.

For example, if the registered capital of a company was RMB 1 million, in compliance with the PRC Company Law before the 2014 Revision, the first amount of RMB 200,000 must be paid at the time of incorporation the company, and the remaining RMB 800,000 must be contributed within 2 years from the date of the incorporation of the company. At the time of filing such paid-up capital with the State Administration of Industry and Commerce or its branches in different places (hereinafter referred to as “AIC”)and the paid-up capital verification report must be submitted .

But now, with the coming effect of the 2014 Revision, the shareholders have the complete freedom to decide, without mandatory requirement on the timeframe, in the contribution of the RMB 1 million.

The 2014 Revision also removed the minimum amount requirements on the registered capital, namely, at least RMB 30,000 for a limited liability company, RMB 100,000 for a one-person limited liability company, and RMB 5 million for a joint stock company. The requirements on specific percentage for the first contribution and the specific proportion for the monetary contribution have also been removed.

Hence, the threshold for company incorporation is more flexible and this greatly stimulate the small-medium-scaled investors to establish their own business entities more actively. Under this regime, it is possible to set up a company with a one dollar registered capital in the PRC.

Investors need to note the following under the 2014 Revision:

1. As it is so easy to incorporate a company with little capital requirement, the investors may not pay much attention to the reputation and credit of the company. Further, a company needs adequate capital to for its operational activities especially at the beginning of incorporation.
2. According to the 2014 Revision, shareholders/promoters can agree on the amount of the subscribed capital, the method of contribution and the timeframe of contribution. All these issues have to be contained and evidenced in the Articles of Association, which are contractually binding on the shareholders and promoters. An investor is not wise to subscribe capital that is beyond his capability. He will assume liability to the company to the extent of his subscribed capital contribution. The more he subscribes the capital contribution, the heavier the liability will be on his shoulders.
3. It is expressly provided by the 2014 Revision that if laws, regulations, or State Council's orders state otherwise with respect to the paid-up

capital or the minimum requirements of registered capital, such laws, regulations, or State Council's orders will prevail. Companies in certain industries are still subject to mandatory requirements and limitation on the paid-in capital and minimum amount of registered capital, such as securities, funds, trust, commercial banks, financial leasing and management, insurance, foreign-invested investment companies, culture industry, construction, pawn, tourism, transportation, telecommunication, labor dispatch, and so on.

Following the enactment of the 2014 Revision, there are changes in some laws and regulations in pace with the new Company Law, as well as some new policies of the administrative departments to clarify and simplify the relevant approval or registration procedures. We will provide some examples of changes in the laws and regulations relating to foreign invested enterprises and new policies introduced by the AIC.

Same as the previous revisions, the 2014 Revision provides that "limited liability companies and companies limited by shares with foreign investment will be governed by this law; if the laws of foreign investment have different provisions, the laws of foreign investment shall prevail."

In February 2014, State council introduced "*Decisions of State Council on Abolishment and modification of Some Administrative Regulations (2014)*", abolishing two administrative regulations relating to the capital contribution for equity joint ventures, and modifying another eight administrative regulations.

The modifications to the administrative regulations relating to wholly foreign owned enterprises, equity joint ventures and contractual joint ventures (jointly referred to "FIEs", namely foreign invested enterprises) have removed the limitations on the timeframe for capital contribution and the proportion of monetary contribution, the necessity of submitting capital verification report, and the requirement that "the registered capital should match the business scale", and have added that

the amount of subscribed capital and the method of contribution should be included in the Articles. So far, there is no difference between the regulations relating to the registered capital for FIEs and for domestic companies.

Along with the introduction of the 2014 Revision, a series of regulations and rules are introduced or modified by the SAIC. For example, the *Regulations on Administration of Registration of Company's Registered Capital* came into force as of 1 March 2014. At the same time, the AIC in different places also carries out new policies for the company registration regime. Take commercial registration reform by Guangzhou AIC as an example.

Since from the end of 2013, Guangzhou AIC has begun to introduce and implement the reform, contents including: separation of approval items from the AIC registration (that means, the approval for some items is no longer the pre requisite for the AIC registration), registration regime for subscribed capital instead of paid-in capital, annual filing regime, black list for the “abnormal commercial entities”, public information platform, and promotion of on-line registration services. The contents of the commercial registration reform by Guangzhou AIC are mainly based on the new Company Law and the newly promulgated or revised supporting laws and regulations. Guangzhou AIC takes a further step aiming at building a more transparent and convenient environment with more integrity and more freedom. The reform of Guangzhou AIC (also of other AICs) will with no doubt contributes to the forming of a freer and more creative commercial world in China.