

## China's New Company Registration Regime.

In recent months, China's central government has unveiled a range of initiatives to reduce the regulatory burden of businesses and provide greater autonomy in investment decision-making. The reform of China's registered capital regime, first proposed in the Central Committee of the Communist Party's Third Plenum in November 2013, is a key part of these initiatives.

Amendments to the *PRC Company Law* in December 2013 formally introduced the new capital regime and the State Council has now published its reform plan which provides further details. In introducing a reformed public filing regime, the plan paves the way for more harmonised and transparent company registration. [Read more...](#)

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## Company law amendments: overview and implications

The State Council's plan builds on the December 2013 decision of the National People's Congress, amending the *PRC Company Law* with effect from 1 March 2014.

Below we summarise the key changes introduced:

### From “paid-in capital” to “subscribed capital”

The current paid-in capital registration system, which requires companies to file details of both their registered capital and paid-in capital with the State Administration for Industry and Commerce or its relevant branch (the “AIC”), are abolished, greatly simplifying the company registration process.

A company's registered capital continues to be the amount of capital that is contracted to be subscribed for by its shareholders as set out in the articles of association, as before, and which will also set out the timing of the subscriptions as agreed between the shareholders. However, as paid-in capital is no longer required to be registered with the AIC, the requirement to file an accountant's report verifying payment of the capital with the AIC has been removed.

### No more registered capital thresholds

The amendments also remove the minimum capital threshold. Therefore, the previous minimum registered capital requirements (RMB30,000 for a limited liability company, RMB100,000 for a one-member limited liability company and RMB5,000,000 for a company limited by shares) are abolished. Shareholders no longer need to be concerned with having funding in place at the time of incorporation.

### Form and timing of capital contribution – at your choice

In addition to the relaxation of capital requirements, the amendments also allow shareholders to freely choose the form and timing of their capital contribution:

- In terms of form of contribution, the requirement that no less than 30% of the registered capital of a limited liability company be cash no longer applies, giving shareholders more freedom in using non-cash assets as capital, although restrictions on the types of assets contributed as capital still remain.
- In terms of timeframe for making capital contributions, there is no deadline within which the full contribution must be made, with removal of the two-year requirement.

### What will not be changed

All these amendments are welcome moves. However, not everything is changing and so it is worth keeping in mind that:

- the new regime will not change shareholders' civil liability in relation to capital contributions. The amount of capital paid, and the form in

which it is paid, will be reflected in the company's annual AIC report (see below). A shareholder who fails to contribute capital in accordance with the articles of association will continue to be liable for that amount to the company and fellow shareholders, as well as to creditors if the company is unable to satisfy its debts.

- the financial sector, as well as other specific industry sectors, are not within the scope of the new regime, as they fall within the jurisdiction of the respective industry regulators, with different policy concerns applying to the manner in which they are regulated.<sup>1</sup> Industry specific minimum registered capital requirements therefore continue to apply.

## Public disclosure of company information

The State Council has, as an accompanying step to the legislative reform, introduced a nationwide database of corporate information in order to assist the public in evaluating a company's creditworthiness. More information will be made available to the public that was not previously available, under the old system of corporate registration, on a no names basis. The new focus on post-registration supervision, and move away from an annual inspection system, relaxes the current filing requirements and creates a more business friendly environment where the role of administrative discretion is reduced. The uniform disclosure standards should also increase transparency in how companies are regulated and their accountability for providing accurate and timely information.

### No more annual inspection, more transparency

As previously mentioned, under the new regime, shareholders will be able to agree among themselves the amount of capital to be subscribed, form of capital contribution and timeline for making the contribution. These details are required to be recorded in the company's articles of association, and will be captured in the nationwide corporate information database as new companies are established.

The State Council's reform plan specifies that the enterprise annual inspection system, which involves an annual process of renewing AIC's seal on a company's business licence following the filing of various documents by the company, is being replaced with a new annual reporting system. Whilst the new details to be filed are awaited in the form of further rules, it seems that, at a minimum, the details of shareholders' capital contributions and the assets of the company must be included in an annual report, to be filed by the end of June each year with the AIC and which will be publicly accessible through the new nationwide corporate information database. The burden of complying with the current annual review procedures should be reduced.

### The corporate "blacklist"

Under the new regime, if a company fails to publish its annual AIC report by a specified time, the relevant AIC in the locality of the company's registration

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<sup>1</sup> See Appendix 1 for a list of the sectors to which the subscribed capital regime does not apply.

will publicly categorise the company as an “abnormal business operation”. The company can apply to have its name removed from this list once it has complied with its annual reporting obligations for at least three years from the time of breach. However, if a company is in breach for more than three years, its name will stay in that category permanently and the company will be “blacklisted”.

The consequences of being blacklisted can be severe, affecting all aspects of an enterprise’s operation. For instance, a company may face restrictions in its own business operations, and its shareholders will be monitored by the regulatory authorities and may be restrained from making further investments in China. Its legal representative may also face potential administrative penalties.

### **Next steps**

The State Council’s reform plan is a further step in implementing the *PRC Company Law* revisions. It is expected to be followed by China’s other government authorities developing further new rules and reviewing and amending their existing procedures, many of which are based on the previous requirements of minimum capital contribution and filing of the accountant’s verification of capital contribution with the AIC. Given that the revisions to the PRC Company Law come into effect on 1 March 2014, we anticipate that there will be further implementing rules published shortly.

## Appendix 1

### List of industries to which the new regime does not apply:

Banking financial institutions

Securities companies

Futures companies

Fund management companies

Insurance companies, professional insurance intermediary institutions and insurance brokers

Direct sales enterprises

Foreign labour cooperation enterprises

Financing guarantee companies

Joint stock companies that are established by means of share offer

Labour despatch enterprises

Pawn shops

Insurance asset management companies

Micro-financing companies

## References

Decisions on Certain Key Issues in the All-Round Deepening of Reform 中共中央关于全面深化改革若干问题的规定

Decisions on Amending Seven Laws 全国人大常委会关于修改《海洋环境保护法》等七部法律的决定

State Council Proposal to Reform the Registered Capital Registration System 国务院关于印发注册资本登记制度改革方案的通知

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