

China Legal Briefing* 237

January 2014



* CHINA LEGAL BRIEFING is a regularly issued collection of Chinese law related news gathered from various media and news services, edited by WENFEI ATTORNEYS-AT-LAW LTD. distributed to its clients and CHINA LEGAL BRIEFING subscribers.

WENFEI ATTORNEYS-AT-LAW LTD. does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide advice.

1. **Widely Anticipated PRC Company Law Amendments Soon Coming into Effect**
2. **New Laws Anticipated within the Term of the New People's Congress (2013 to 2018)**

1. Widely Anticipated PRC Company Law Amendments Soon Coming into Effect

On 28 December 2013, the Standing Committee of the National People's Congress released the latest Amendments to the PRC Company Law ("the Amendments"), which are expected to come into force on 1 March 2014.

The Amendments, being one of the major reforms since the enactment of PRC Company Law in 1993, did not come as a surprise, because they echo the reform goals set out in the 3rd Plenary Session of the 18th Central Committee of the Communist Party of China, while also serving as an expected sequence of the establishment of the Shanghai Pilot Free-Trade Zone and its approval-free policy on foreign invested companies.

The Amendments, with 12 specific changes to the existing Company Law articles, focus on the following three aspects in general:

1. The statutory requirement on minimum registered capital has been removed.
2. The statutory requirement for capital contribution schedule has been removed.
3. The registration procedure with the AIC has been simplified.

The following chart shows in further detail how the key reform points as mentioned above are reflected in each of the most representative changes included in the Amendments.

Reform Key Point I: The statutory requirement on minimum registered capital has been removed.		
Article	Original Provision	Amendment
Article 23 Section 2	The amount of capital contributions paid by the shareholders reaches the statutory minimum amount of the registered capital	The amount of capital contributions paid by the shareholders corresponds with the AoA of the company.
Article 26 Section 2	The minimum amount of registered capital of a limited liability company shall be RMB 30'000.	Removed.
Article 59	The minimum amount of registered capital of a one-person limited liability company shall be RMB 100'000. The shareholder shall, in a lump sum, pay the capital contributions as specified in the bylaws.	Removed.
Article 77 Section 2	The capital stock subscribed by the promoters and raised by solicitations reaches the minimum amount of the statutory capital	The capital stock subscribed by the promoters and raised by solicitations corresponds with the AoA of the company.
Article 81 Section 3	The minimum amount of the registered capital of a joint stock limited company shall be RMB 5 million.	Removed.
Article 178 Section 3	The registered capital of the company after reducing its registered capital shall not be lower than the minimum amount required by laws.	Removed.

<p>Comments: the above changes indicate that:</p> <p>(1) The minimum amount of registered capital will no longer be statutorily prescribed; it will instead be at the discretion and subject to the agreement of the shareholders as be described in the AoA of the company.</p> <p>(2) The respective statutory minimum registered capital for a limited liability company and a joint stock limited company are relieved accordingly.</p>		
<p>Reform Key Point II: The statutory requirement for capital contribution schedule has been removed.</p>		
Article	Original Provision	Amendment
Article 26 Section 1	The amount of the initial capital contributions made by all shareholders shall be no less than 20% of the registered capital, nor less than the statutory minimum amount of registered capital, the margin shall be paid off by the shareholders within 2 years from the day when the company is established; for an investment company, it may be paid off within 5 years.	Removed.
Article 27 Section 3	The amount of the capital contributions in cash paid by all the shareholders shall be no less than 30% of the registered capital of the limited liability company.	Removed
Article 59	The minimum amount of registered capital of a one-person limited liability company shall be RMB 100'000. The shareholder shall, in a lump sum, pay the capital contributions as specified in the bylaws.	Removed.
Article 81 Section 1	The minimum amount of initial capital contributions to be made by all promoters shall be not less than 20% of the total registered capital, the remaining amount shall be paid by the promoters within 2 years from the day when the company is established, while for an investment company, the remaining amount may be paid within 5 years.	Removed.
<p>Comments: In addition to the minimum amount of registered capital, the payment schedule of the registered capital, in particular how much shall be paid initially, how soon it shall be paid in full and how much cash shall be contributed etc. are also no longer statutorily required, but instead will be at the discretion and subject to the agreement of the shareholders.</p>		
<p>Reform Key Point III: The registration procedure with the AIC has been simplified.</p>		

Article	Original Provision	Amendment
Article 7 Section 2	The company business license shall state the name, domicile, registered capital, paid-in capital, business scope, legal representative, etc. 1.	The company business license shall state the name, domicile, registered capital, paid-in capital , business scope, legal representative etc.
Article 29	The capital contributions made by the shareholders shall be verified by a lawfully established capital verification institution and the institute shall issue a certification to prove the contribution.	Removed.
Article 30	After the initial capital contributions made by the shareholders have been verified by a lawfully established capital verification institution, the representative designated by all the shareholders or the agent entrusted by all the shareholders shall apply for establishment registration (...) to the company registration authority.	After the shareholders have paid in the capital prescribed by the AoA of the company, the representative designated by all the shareholders or the agent entrusted by all the shareholders shall apply for establishment registration (...) to the company registration authority.
Article 33 Section 3	A company shall register each shareholder's name and its amount of capital contributions in the company registration authority.	A company shall register each shareholder's name and its amount of capital contributions in the company registration authority.
<p>Comments: the company registration authority, i.e. AICs, are no longer responsible for listing the paid-in capital of each company on the business license and therefore are accordingly relieved from reviewing the capital verification report submitted by the company. On the other hand, this would also relieve the companies from the cost of entrusting a verification institution to issue such report for registration purposes. Such simplified registration process is expected to lower the cost of the company as well as to expedite the registration process.</p> <p>What needs to be noted is that the simplified registration process only applies to limited liability companies, but not joint stock limited companies.</p>		

As of 1 March 2014, the Amendments will become effective and thus applicable to all companies in China, including domestic companies and foreign-invested companies (“FIEs”). As FIEs are also subject to other legislations specifically enacted to regulate FIEs in China, we are expecting more regulations from the competent authorities to further specify as to how the Amendments will correlate and integrate with the already effective FIE legislations.

2. New Laws Anticipated within the Term of the New People’s Congress (2013 to 2018)

Ever since the inauguration of the new Chinese Chairman –Xi Jinping, especially since the plenary session of 18th Central Committee of the Communist Party of China, the word “Reform” has been a keyword of the administration’s mission and consequently has grasped the attention of many, nationally and internationally. The Standing Committee of the People’s Congress of China (“SCPC”), as PRC’s highest Legislature, will be institution mainly responsible for the implementation of the promised reform goals.

At the end of the year 2013, the SCPC released the Legislation Schedule of the Standing Committee of the 12th People’s Congress (the “Legislation Schedule”) to further specify its legislative agenda for the term from 2013 to 2018.

The Legislation Schedule includes the laws and regulations intended to either be enacted or amended by the SCPC, and such laws are further classified into 3 categories according to their level of importance and urgency. Amongst all the laws at hand, the following could be more relevant and thus have a more substantial impact on foreign investors in China:

Category I: legislative bills that are expected to be deliberated before 2018

Name of the Law	Status
1. Trademark Law Amendment	Passed.
2. Patent Law Amendment	To be drafted and submitted for deliberation.
3. Copyright Law Amendment	To be drafted and submitted for deliberation.
4. Consumer Protection Law Amendent	Passed.
5. Securities Law Amendment	To be drafted and submitted for deliberation.
6. Food Safety Law Amendment	To be drafted and submitted for deliberation.
7. Drug Administration Law Amendment	To be drafted and submitted for deliberation.
8. Land Administration Law Amendment	In deliberation.
9. Environmental Protection Law Amendment	In deliberation.
10. Water Pollution Prevention and Administration Law Amendment	To be drafted and submitted for deliberation.
11. Air Pollution Prevention and Administration Law Amendment	To be drafted and submitted for deliberation.
12. Soil Pollution Prevention and Administration Law	To be drafted and submitted for deliberation.
13. Value Added Tax Law and other tax laws	To be drafted and submitted for deliberation.
14. Tax Collection and Administration Law Amendment	To be drafted and submitted for deliberation.
15. Asset Appraisal Law	In deliberation.
16. Commercial Advertisement Law Amendment	To be drafted and submitted for deliberation.
17. Safe Production Law Amendment	To be drafted and submitted for deliberation.

18. Administrative Litigation Law Amendment	To be drafted and submitted for deliberation.
---	---

Category II: legislative bills that need to be urgently drafted and submitted for deliberation

19. Commercial Banking Law Amendment	To be drafted and submitted for deliberation.
20. Equity Joint-Venture Law Amendment	To be drafted and submitted for deliberation.
21. WFOE Law Amendment	To be drafted and submitted for deliberation.
22. Cooperative Joint-Venture Law Amendment	To be drafted and submitted for deliberation.
23. Anti Unfair Competition Law	To be drafted and submitted for deliberation.

Category III: areas that lack any legislation will require further hearings for preparation

Such areas include: Industrial and Commercial Associations, Social Credibility, Aerospace Industry, International Legal Assistance in Criminal Matters, Administrative Due Process, and Internet Safety etc.

Based on the above listed laws intended to be deliberated by the SCPC, it is apparent that the new laws and amendments mainly focus on the following 4 areas:

- a. Intellectual property rights (items 1 to 3)
- b. Environmental protection (items 8 to 12)
- c. Tax administration (items 13 to 15)
- d. Foreign investment (items 20 to 23)

Therefore, foreign investors, in particular those relying on intellectual property rights in China, those active in heavy industrial manufacturing or in the new-energy sector, are all likely to be affected by the some of the upcoming legislative projects. Whether these reforms will make China a more favorable place for foreign investment in practice will have to be determined in the time to come.

© Wenfei, Beijing, January 2014

Check the China Legal Briefing archives on: <http://www.wenfei.com/publications.html>

Obtain your personal subscription from: china@wenfei.com