

# client alert

CORPORATE | CHINA |

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## AMENDMENT TO PRC COMPANY LAW

On 28 December 2013, the Standing Committee of National People's Congress released the *Amendment to the PRC Company Law* (the "**Amendment**"), which will go into effect on 1 March 2014. The Amendment revises the paid-in capital registration system, cancels the minimum registered capital requirement, and simplifies the administrative procedures for establishing a company.

The Amendment echoes the State Council's *Institutional Reform and Functional Transformation Plan* issued last March, which sets out the principles for reforming Chinese company law system. It also called for a simplification of company registration procedures.

Even before the Amendment was released, many local-level authorities had already begun revising company registration rules. With further economic reforms implemented by the central government, we anticipate more implementing regulations from the State Administration for Industry and Commerce ("**SAIC**") and its local counterparts ("**Local AIC**") on company registration to move reforms forward.

### KEY POINTS OF THE AMENDMENT

Compared to the current *Company Law*<sup>1</sup>, the Amendment makes three major changes:

#### 1. Capital Registration System

Item	Current <i>Company Law</i>	Amendment
<b>Capital Contribution Schedule</b>	<p><u>Limited liability company</u>: must be paid up within 2 years of date of establishment (5 years for holding company)</p> <p><u>Single-shareholder limited liability company</u>: must be paid up in one lump sum upon the issuance of business license<sup>2</sup>.</p> <p><u>Company limited by shares</u>: must be paid within 2 years of date of establishment (5 years for holding company)</p>	<p>No statutory schedule for capital contribution.</p> <p>Shareholder(s) may agree on the schedule in the company's articles of association the amount of capital, form(s) of contribution, and schedule for contribution.</p>
<b>Business Licence</b>	<p>Shareholders must make their initial contribution (at least 20% of the registered capital) before they can apply for a business licence.</p>	<p>Requirement removed.</p>

<sup>1</sup> Promulgated in 1999 and revised in 2005.

<sup>2</sup> Different rule applies to foreign-invested single shareholder limited liability companies. Shareholders of such company may pay up the registered capital within 6 months after the company obtains its business licence.

## 2. Minimum Capital Requirements

Item	Current <i>Company Law</i>	Amendment
<b>Minimum Registered Capital</b>	<p><u>Limited liability company</u>: RMB 30,000</p> <p><u>Single-shareholder limited liability company</u>: RMB 100,000</p> <p><u>Company limited by shares</u>: RMB 5,000,000</p>	No minimum capital requirement unless provided otherwise by other laws or administrative regulations. Shareholders/promoters may decide the amount of capital to subscribe.
<b>Minimum Initial Contribution (% of registered capital)</b>	<p><u>Limited liability company</u>: 20%</p> <p><u>Single-shareholder limited liability company</u>: 100%</p> <p><u>Company limited by shares</u>: 20%</p>	No requirement.
<b>Minimum Ratio of Cash Contributions</b>	<p><u>Limited liability company</u>: 30% of registered capital</p>	No limit.

## 3. Registration Requirements

Item	Current <i>Company Law</i>	Amendment
<b>Paid-In Registered Capital</b>	<p><u>Limited liability company</u>: must register paid-in capital with Local AIC after each instalment.</p> <p><u>Single-shareholder limited liability company</u>: must register paid-in capital with Local AIC</p> <p><u>Company limited by shares</u>: must register paid-in capital with Local AIC after each instalment</p>	Requirement removed.
<b>Capital Verification</b>	<p><u>Limited liability company</u>: required</p> <p><u>Single-shareholder limited liability company</u>: required</p> <p><u>Company limited by shares</u>: required</p>	Requirement removed.

## IMPACT ON FOREIGN-INVESTED COMPANIES

As of 1 March 2014, the provisions of the Amendment will apply to all companies established in China, including domestic companies and foreign-invested companies (“FIEs”).

However, in addition to the *Company Law*, FIEs are subject to special laws and regulations, including those applicable to Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures and wholly foreign-owned enterprises (the “FIE Laws”).

The FIE Laws are in line with the current *Company Law* in regards to the above paid-in capital registration, mandatory capital contribution schedule and capital verification requirements. However, after the Amendment goes into effect, those specific provisions will become invalid as

they would be inconsistent with the Amendment. In practice, authorities will still need to issue guidance on how to make the procedural adjustments.

In addition, how the Amendment will retroactively apply to companies established before its effectiveness also remains unknown. For instance, if an existing FIE has a capital contribution deadline after the Amendment goes into effect, can its shareholders revise its articles of association to extend the contribution schedule? The feasibility of this plan and others will require clarification from authorities.

SAIC has announced its intention to revise its company registration rules before March 2014 to implement the new provisions of the Amendment.

## CONCLUSION

To spur investment and new economic growth, the Chinese government has proposed a series of significant reforms to limit the administrative burden on businesses. The promulgation of the Amendment officially establishes the key changes to the company registration system and unifies procedures nationwide. Local AICs will gradually release their own new rules on procedural adjustments to move the reform forward.

We will continue to follow the developments as the Amendment takes effect. We of course will keep you updated as SAIC and local authorities issue guidance and clarify how the Amendment will be implemented. In the meantime, please feel to contact us if you have any questions regarding this or any other issue.

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