



## Recent Changes in the Registered Capital System in China

On December 28, 2013, the Standing Committee of the National People's Congress passed certain amendments to the PRC Company Law, effective as of March 1, 2014. These amendments have relaxed certain registered capital requirements for domestic and foreign companies in China.

In connection with implementing the amendments, several related administrative regulations have been amended or newly promulgated, such as the *Regulations on Registration Administration of Companies* and the *Administrative Provisions on the Registration of the Registered Capital of Companies*. Further, the State Council has amended the following three regulations governing foreign invested enterprises ("FIEs") to ensure that the new registered capital requirements apply to all FIEs as well: (i) the *Implementing Rules for the Wholly Foreign-owned Enterprises Law* (the "Implementing Rules on WFOE Law"), (ii) the *Implementing Rules for the Chinese-Foreign Cooperative Joint Venture Law*, and (iii) the *Implementing Rules for the Chinese-Foreign Equity Joint Venture Law*. These regulatory changes also became effective as of March 1, 2014.

The major changes in the registered capital system applicable to all FIEs in China are as follows:

### Certain Registered Capital Requirements Have Been Eliminated

In general, minimum registered capital for establishing an enterprise in China is no longer required under the amended PRC Company Law, unless laws, administrative regulations, or the decisions of the State Council provide otherwise. Further, the amendments to the Implementing Rules on WFOE Law deleted the requirement that "the amount of registered capital of an FIE shall match the company's operational scale," meaning that it is the foreign investor of an FIE, rather than the approving authority, that has the discretion in determining the amount of registered capital for its operation in China based on business needs.

The 20 percent initial capital contribution (or 15 percent for WFOEs) has been eliminated, and the 30 percent minimum cash contribution is no longer required. In addition, the amendments to the Implementing Rules on WFOE Law eliminated the 20 percent cap for in-kind capital contribution with industrial property rights and proprietary technology.

## “Capital Paid-In System” Replaced by “Capital Subscription System”

Before implementation of the new registered capital system, domestic and foreign investors were required to contribute or pay up the first installment of registered capital within 90 days and the remainder within two years from the date of incorporation. Starting from March 1, 2014, an investor has the sole discretion in determining, as provided in the Articles of Association, the amount, form, and contribution schedule of the company’s registered capital. Accordingly, companies are no longer required to engage an accounting firm to verify mandatory capital contribution and register (subject to public disclosure) the paid-in capital amount with the company registration authority.

However, companies should disclose the amount, form, and contribution schedule as well as the paid-in capital amount via a public disclosure system. The State Administration of Industry and Commerce (“SAIC”) has set up the National Enterprises Credit Information Publication System (<http://gsxt.saic.gov.cn/>) (the “Public System”), through which anyone can check the shareholding and capital contribution information of all companies incorporated in China. Therefore, although the PRC government no longer mandates paid-in capital of a company under the current PRC law, the company should still carefully plan its capital injection into its China entity, because the capital contribution information will be publicly available and will be used as one of the major criteria by third parties to determine the company’s creditworthiness.

Please note that pursuant to the *Notice of the State Council on Printing and Distributing the Reform Plan for the Registered Capital Registration System* (the “Registered Capital Reform Notice”), those types of companies listed in Appendix I attached hereto are still subject to the “capital paid-in system,” meaning that their investors still must contribute mandatory registered capital pursuant to applicable laws and regulations.

## Annual Inspection Replaced by Annual Reporting

Pursuant to the Registered Capital Reform Notice, the annual inspection system has been replaced by an annual reporting system, where companies are required to submit annual reports including information on the company’s paid-in capital. The SAIC or its local branches will conduct random review of the contents of a company’s public reports and will impose administrative penalties on those companies that are found to have concealed information or provided false information in their annual reports. Further, companies that fail to publicize their annual reports could be listed in the “List of Enterprises with Abnormal Business Operations” or the “black list” on the Public System.

On February 14, 2014, the SAIC published the *Notice on Ceasing the Annual Inspection of Enterprises*, confirming the revocation of the annual inspection system of companies in China. However, as of the date of this *Commentary*, the SAIC has not yet published detailed rules for the implementation of the annual reporting requirements and relevant procedure.

## Conclusion

The recent changes in the registered capital system in China provide foreign investors of FIEs with additional flexibility in capitalizing their investment projects in China. However, in view of the new public disclosure system, foreign investors should still be prudent in planning their capital investments in China, given the potential implications on corporate creditworthiness and standing in China.

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## Appendix I: Industries Not Eligible for the System of Registering Subscribed Registered Capital for the Time Being

	Name	Legal Authority
1	Companies limited by shares established by public offering	Company Law of the People's Republic of China
2	Commercial banks	Law of the People's Republic of China on Commercial Banks
3	Foreign-funded banks	Regulations of the People's Republic of China on the Administration of Foreign-funded Banks
4	Financial asset management companies	Regulations on Financial Asset Management Companies
5	Trust companies	Law of the People's Republic of China on Banking Supervision and Administration
6	Finance companies	Law of the People's Republic of China on Banking Supervision and Administration
7	Financial leasing companies	Law of the People's Republic of China on Banking Supervision and Administration
8	Auto finance companies	Law of the People's Republic of China on Banking Supervision and Administration
9	Consumer finance companies	Law of the People's Republic of China on Banking Supervision and Administration
10	Currency brokerage companies	Law of the People's Republic of China on Banking Supervision and Administration
11	Village and township banks	Law of the People's Republic of China on Banking Supervision and Administration
12	Loan companies	Law of the People's Republic of China on Banking Supervision and Administration
13	Rural credit cooperative	Law of the People's Republic of China on Banking Supervision and Administration
14	Rural fund mutual assistance cooperatives	Law of the People's Republic of China on Banking Supervision and Administration

**Appendix I: Industries Not Eligible for the System of Registering Subscribed Registered Capital for the Time Being *(continued)***

15	Securities companies	Securities Law of the People's Republic of China
16	Futures companies	Regulations on the Administration of Futures Trading
17	Fund management companies	Law of the People's Republic of China on Securities Investment Funds
18	Insurance companies	Insurance Law of the People's Republic of China
19	Specialized insurance agencies and insurance brokerage firms	Insurance Law of the People's Republic of China
20	Foreign-invested insurance companies	Regulations of the People's Republic of China on the Administration of Foreign-invested Insurance Companies
21	Direct sales companies	Regulations on the Administration of Direct Sales
22	Foreign labor services cooperative enterprises	Regulations on the Administration of Foreign Labor Services Cooperation
23	Financing guarantee companies	Interim Administrative Measures for Financing Guarantee Companies
24	Labor dispatching enterprises	Decision of the 28th Executive Meeting of the State Council on October 25, 2013
25	Pawn shops	Decision of the 28th Executive Meeting of the State Council on October 25, 2013
26	Insurance asset management companies	Decision of the 28th Executive Meeting of the State Council on October 25, 2013
27	Small-amount loan companies	Decision of the 28th Executive Meeting of the State Council on October 25, 2013