China Reforms Legal Regime on Shareholder Contributions

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19 July 2024

Starting from 1 July 2024, China (for this article, China refers to the mainland China excluding Hong Kong SAR, Macau SAR and Taiwan region) has enacted the Company Law (2023 Revision) (**New Company Law**, please click here for the Chinese version), bringing significant revisions to the provisions concerning shareholder contributions to the company's registered capital. Such revisions are supported by a series of supplementary measures from the State Council and the Supreme People's Court, among other departments, to ensure effective implementation.

Time Limit for Contribution

The New Company Law sets a time limit for shareholders (in the case of a limited liability company) or promoters (in the case of a joint stock limited company) to make contributions to the subscribed registered capital as well as for subsequent capital increases for companies established on or after 1 July 2024 (**New Companies**). For companies registered before 30 June 2024 (**Existing Companies**), the State Council has issued new regulations on the registered capital management system (**New Contribution Regulations**, please click here for the Chinese version), effective from 1 July, to lay out the transitioning plan. The time limits for contributions under the New Company Law and New Contribution Regulations are summarized below.

Limited liabity companies (LLCs)

New companies: Shareholders shall pay up the subscribed registered capital within five years of the company's establishment.
Newly increased registered capital shall be paid within five years upon relevant resolution for the capital increase.

Existing companies: If the current contribution period exceeds five years from 1 July 2027, it must be adjusted by 30 June 2027 to be a period no longer than five years. No adjustment is necessary if the original period does not exceed five years from 1 July 2027.
Newly increased registered capital shall be paid within five years upon relevant resolution for the capital increase.

Joint stock limited companies (JSCs)

New companies: The promoters shall pay up the subscribed shares before the company's establishment.

Existing companies: The promoters shall pay up the outstanding subscribed shares before 30 June 2027.

According to the New Contribution Regulations, violations for failure to adjust the shareholder contribution periods or registered capital may be publicly disclosed. Non-compliant shareholders may face fines ranging from CNY 50,000 to CNY 200,000 (approx. USD 6,800 to USD 28,000), or a fine of 5% to 15% of the unpaid contribution amount. Responsible managers and individuals could face fines between CNY 10,000 and CNY 100,000 (approx. USD 1,400 to USD 14,000).

In practice, we have observed that regional company registration authorities adopt slightly different approaches on the implementation of the new rules. For instance, some regions require that companies can only change the shareholder contribution periods once before 30 June 2027, while other regions do not impose a limit on the number of changes. Another difference we've experienced is that some regional company registration authorities allow the maximum contribution period to be extended to 30 June 2032, while others take a more conservative approach to only allow the longest period to be 5 years starting from the application date of the change, albeit companies may apply for an extension again by 30 June 2027. We recommend companies that have the needs to adjust their contribution periods to engage in preliminary discussions with the local company registration authorities before making any changes.

Accelerated Maturity

Before the New **Company Law** took effect, shareholders would only be required to pay up their contributions to the companies prior to the end of the contribution term in the event of bankruptcy or insolvency. The New Company Law provides that if a company can't discharge its debts when they become due, creditors can directly ask shareholders to pay their full contributions in advance, enhancing creditor protection (**New Accelerated Maturity Rule**).

Notably, on the day the New Company Law took effect, a local court in Beijing adjudicated the first case applying the New Accelerated Maturity Rule. In this case, an employee sought to hold a shareholder of the employing company accountable for unpaid wages, challenging the timeline of the shareholder's contributions. The shareholder argued that it was entitled not to pay up the contribution until the expiration of its subscribed contribution period and that the company did not meet the conditions for bankruptcy, asserting that the accelerated maturity rule should not apply. However, the court, referencing the Judicial Interpretations of Temporal Effect (see below), ruled in favor of applying the New Company Law, determining that the shareholder was subject to the New Accelerated Maturity Rule.

Contribution in the Form of Creditor's Rights

While the principle of non-retroactivity is a cornerstone of Chinese legislation, exceptions exist. To better implement the New Company Law, the Supreme People's Court has issued judicial interpretations regarding the law's temporal effectiveness on 29 June (**Judicial Interpretations of Temporal Effect**, please click here for the Chinese version). These interpretations address the retroactive application of the New Company Law to certain events that occurred before its enactment. Specifically, regarding shareholder contributions, creditor's rights were not explicitly recognized as a method of contribution by law, leading to potential disputes when shareholders contributed to a company in such form. However, the New Company Law now explicitly acknowledges creditor's rights as a legitimate means for shareholders to contribute capital. The Judicial Interpretations of Temporal Effect clarify that, in cases of disputes over capital contribution made in the form of creditor's rights before the implementation of the New Company Law, the New Company Law shall apply, as applying the New Company Law in such instances better serves the legislative purpose of the law.

Consequently, we'd suggest relevant stakeholders also consider the applicability of these Judicial Interpretations of Temporal Effect to specific actions taken before the implementation of the New Company Law when applying the new legislation.