



世民律師事務所 SHIMIN LAW OFFICES

## NEWSLETTER

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### **The Comparison of 12 Amended Articles of New Company Law**

The Decision of the Standing Committee of the National People's Congress on Amending Seven Laws including the Marine Environment Protection Law of the People's Republic of China was adopted at the 6th session of the Standing Committee of the Twelfth National People's Congress of the People's Republic of China on December 28, 2013. The decision includes twelve amendments to the current company law. The amendments will come into force on March 1, 2014.

The amendments loosen the requirements on registered capital of limited liability company and company limited by shares. The main points include deletion of "paid-in capital" in paragraph 2 of Article 7, which means paid-in capital is no longer one of the items recorded in business license; deletion of paragraph 3 of Article 27 providing "the aggregate amount of monetary capital contributions by all the shareholders shall not be less than 30 percent of the registered capital in the case of a limited liability company."; deletion of Article 29 "The capital contributions made by shareholders shall be subject to the capital verification of a lawfully-established capital verification agency and the issuance of certification thereby." Please refer to the following list for details:

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Amendments	Former Provisions
<p>1. In paragraph 2 of Article 7, “paid-in capital” is deleted.</p>	<p>Article 7 Company registration authorities shall issue business licenses of companies to the companies established under the law. The date of issuance of the business license for a company shall be the date of establishment of the company.</p> <p>The business license of a company shall state therein such matters as the name, domicile, registered capital, paid-in capital, business scope, and the name of the legal representative, etc. of the company.</p> <p>Where any of the matters stated the business license of a company is changed, the company shall go through the formalities for change of registration accordance with the law, and the relevant company registration authority shall issue a new business license to replace the old one.</p>
<p>2. Item 2 of Article 23 is amended to read as: “(2) The amount of capital contributions subscribed for by all its shareholders is in compliance with the company’s articles of association.”</p>	<p>Article 23 To establish a limited liability company, the following conditions shall be satisfied:</p> <ul style="list-style-type: none"> <li>(1) The number of shareholders meets the quorum;</li> <li>(2) The amount of capital contributions paid by the shareholders reaches the statutory minimum amount of capital;</li> <li>(3) The shareholders jointly formulate the company's articles of association;</li> <li>(4) The company has a name, and its organizational structure meets the requirement for a limited liability company; and</li> <li>(5) The company has a domicile.</li> </ul>
<p>3. Article 26 is amended to read as: “The registered capital of a limited liability company shall be the amount of capital contributions subscribed for by all its shareholders as registered with the company registration authority.</p> <p>“Where any law or administrative regulation or any decision of the State Council provides otherwise for the paid-in registered capital or the minimum amount of registered capital of a limited liability company, such provisions shall prevail.”</p>	<p>Article 26 The registered capital of a limited liability company shall be the total amount of capital contributions subscribed for by all the shareholders as registered with the relevant company registration authority. The aggregate amount of the first capital contribution made by all the shareholders of the company shall not be less than 20 percent of the registered capital, nor shall it be less than the statutory minimum amount of the registered capital. The remaining capital contributions shall be paid up in full by the shareholders within two years from the date of establishment of the</p>



	<p>e company, or may be paid up in full within five years in the case of an investment company.</p> <p>The minimum amount of the registered capital of a limited liability company shall be RMB 30,000, unless a higher minimum amount of the registered capital of a limited liability company is specified in laws or administrative regulations.</p>
<p>4. Paragraph 3 of Article 27 is deleted.</p>	<p>Article 27 A shareholder may make capital contributions in the form of monetary funds, or alternatively may make capital contributions with such valued non-monetary property as physical items, intellectual property rights, and land-use rights that may be valued in monetary terms and may be transferred in accordance with the law, excluding the property that shall not be used for capital contributions as specified in laws and administrative regulations.</p> <p>The non-monetary property that is used for capital contributions shall be valued and verified, and shall not be over-valued or under-valued. The provisions on the valuation of such property as prescribed by laws or administrative regulations shall prevail.</p> <p>The aggregate amount of monetary capital contributions by all the shareholders shall not be less than 30 percent of the registered capital in the case of a limited liability company.</p>
<p>5. Article 29 is deleted.</p>	<p>Article 29 The capital contributions made by shareholders shall be subject to the capital verification of a lawfully-established capital verification agency and the issuance of certification thereby.</p>
<p>6. Article 30 is renumbered as Article 29 and amended to read as: “After the amount of capital contributions stated in the company’s articles of association has been fully subscribed for, the representative designated or the agent authorized by all the shareholders shall submit a company registration application, the company’s articles of association, and other documents to the company registration authority to apply for incorporation registration.”</p>	<p>Article 30 After the first capital contribution made by a shareholder has been verified by a lawfully-established capital verification agency, a representative designated, or an agent jointly entrusted, by all the shareholders shall apply with the relevant company registration authority for establishment registration by submitting a written application for company registration, the company's articles of association, the capital verification certification and other documents.</p>
<p>7. In paragraph 3 of Article 33, “and the amounts of their respective capital contributions” is deleted.</p>	<p>Article 33 A limited liability company shall prepare and make available a shareholder register, with the following items specified therein:</p>

	<p>(1) Names and domiciles of the shareholders;</p> <p>(2) Amount of capital contributions made by each of the shareholders; and</p> <p>(3) Serial number of each capital contribution certificate.</p> <p>The shareholders who are recorded in the shareholder register may exercise the shareholder's rights on the strength of the shareholder register.</p> <p>A company shall register the names of the shareholders and the amount of their respective capital contributions with the relevant company registration authority. In the case of change of any registered item, the formalities for change of registration shall be completed. A company that fails to go through the formalities for registration or change of registration shall not set up a defense against any third party.</p>
<p>8. Paragraph 1 of Article 59 is deleted.</p>	<p>Article 59 The minimum amount of the registered capital of a one-person limited liability company shall be RMB 100,000. The shareholder shall pay up the capital contribution specified in the articles of association in one lump sum.</p> <p>One natural person can only establish one one-person limited liability company which is prohibited from investing in the establishment of another one-person limited liability company.</p>
<p>9. Article 77 is renumbered as Article 76, and item (2) thereof is amended to read as: “(2) The capital stock subscribed for by all its promoters or the paid-in capital stock raised is in compliance with the company’s articles of association.”</p>	<p>Article 77 To establish a company limited by shares, the following conditions shall be satisfied:</p> <p>(1) The number of promoters meets the statutory quorum;</p> <p>(2) The share capital subscribed for and raised by the promoters reaches the statutory minimum amount of capital;</p> <p>(3) The issuance of shares and the preparatory work are in compliance with the law;</p> <p>(4) The company's articles of association is formulated by the promoters, or is adopted at the inaugural meeting if the company is established by means of stock flotation;</p> <p>(5) The company has a name, and has established an organization structure that conforms to the requirements on a company limited by shares; and</p>



(6) The company has a domicile.

10. Article 81 is renumbered as Article 80, and paragraph 1 thereof is amended to read as: “Where a company limited by shares is formed by promotion, its registered capital shall be the capital stock subscribed for by all its promoters as registered with the company registration authority. Before all its promoters have fully paid for their subscriptions, the company may not offer shares to other investors.”

Paragraph 3 is amended to read as: “Where any law or administrative regulation or any decision of the State Council provides otherwise for the paid-in registered capital or the minimum amount of registered capital of a company limited by shares, such provisions shall prevail.”

**Article 81** Where a company limited by shares is formed by promotion, its registered capital thereof shall be the capital stock subscribed for by all its promoters as registered with the company registration authority. The aggregate amount of the first capital contribution made by all the promoters shall not be less than 20 percent of the registered capital, and the remaining capital contribution shall be paid up in full by the promoters within two years from the date of establishment of the company, or may be paid up in full within five years in the case of an investment company. Before capital contribution is fully paid up, offering shares to others for subscription shall be prohibited.

Where a company limited by shares is established through stock floatation, the registered capital thereof shall be the actual total paid-up share capital registered at the relevant company registration authority.

The minimum amount of the registered capital of a company limited by shares shall be RMB 5 million. A higher minimum amount of the registered capital of a company limited by shares as prescribed in laws or administrative regulations shall prevail.

11. Article 84 is renumbered as Article 83, and paragraph 1 thereof is amended to read as: “Where a company limited by shares is formed by promotion, the promoters shall, in writing, fully subscribe for their respective shares as stated in the company bylaws, and pay for their subscriptions in accordance with the company’s articles of association. If capital contribution is made with non-monetary assets, the procedures for assignment of property rights shall be fulfilled in accordance with the law.”

Paragraph 3 is amended to read as: “After the promoters have fully subscribed for the capital contributions stated in the company bylaws, they shall elect the members of the board of directors and the board of supervisors, and the board of directors shall submit the company’s articles of association and other documents set out by laws and administrative regulations to the company registration authority to apply for incorporation registration.”

**Article 84** Where a company limited by shares is formed by promotion, the promoters shall subscribe for, in writing, the full amount of the shares to be subscribed for under the company’s articles of association. The full amount of capital contribution shall be paid up immediately in the case of a lump-sum payment; or the first installment of capital contribution shall be made immediately in the case of payment by installments. Where capital contribution is made with non-monetary property, the promoter concerned shall go through the formalities for transfer of its property rights in accordance with the law.

In the event of a promoter’s failure to make capital contributions in accordance with the preceding Paragraph, the promoter shall bear the liabilities for breach of contract pursuant to the promoters’ agreement.

After the payment of the first capital contributions by the promoters, a board of directors and a board of supervisors shall be elected. The board of directors shall apply with the relevant company registration authority for establishment registration by submitting the company’s articles of association, the capital verification certificate

	issued by a lawfully-established capital verification agency, and other documents specified by laws and administrative regulations.
12. Paragraph 3 of Article 178 is deleted.	<p>Article 178 Where it is necessary for a company to reduce its registered capital, it shall prepare the balance sheet and a list of property.</p> <p>The company shall notify its creditors within ten days after the resolution on the reduction of the registered capital is made, and shall publish an announcement in newspapers within 30 days. The creditors shall, within 30 days upon receipt of the written notice, or in the case of the failure to receive the written notice, within 45 days after the public announcement, be entitled to request the company to repay the debts or provide the corresponding guaranty.</p> <p>The registered capital of the company after the reduction shall not be less than the statutory minimum amount.</p>

In regard to the purpose of the amendment of Company Law, as the official with the State Administration of Industry and Commerce expressed on December 29, the amendments of Company Law lower the threshold of establishment of companies, reduce investors' burden, and facilitate the access of companies further. We notice that while the amendment of Company Law deletes the former RMB 30,000 minimum threshold of register capital for limited liability company and RMB 100,000 for one-person liability company, Paragraph 2 Article 26 stipulates that "Where any law or administrative regulation or any decision of the State Council provides otherwise for the paid-in registered capital or the minimum amount of registered capital of a limited liability company, such provisions shall prevail." Therefore whether the minimum threshold of register capital of limited liability companies will still exist depends on whether relevant authorities will set the minimum threshold of register capital in others laws or administrative regulations later on.

Besides, all of "foreign investment enterprise laws" (i.e. Sino-foreign Joint Venture Enterprise Law, Sino-foreign Cooperative Enterprise Law, Wholly Foreign Investment Enterprise Law) set detailed provisions on ratio, forms and period of capital contribution and capital verification for the company establishment and modification. After the amendments to the Company Law was promulgated, it would be a matter of concern as to how to reconcile the provisions between the Company law and "foreign investment enterprise laws". It is reported that the amendments of Sino-foreign Joint Venture Enterprise Law, Sino-foreign Cooperative Enterprise Law, Wholly Foreign Investment Enterprise Law have also been listed in the legislation plan of the Standing Committee of the Twelfth National People's Congress of the People's Republic of China's, so we envision

that after the amendments, the foreign investment enterprise laws will correspond with the direction of the commercial registration system reform and the amendments of the Company Law.

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