

China Insight



## 3 Years' Transition Period for Adjustment of Capital Contribution of Existing Companies

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On 29 December 2023, the Standing Committee of the National People's Congress of the People's Republic of China (the "**PRC**") adopted and promulgated a substantive revision of the *PRC Company Law*, which entered into effect on 1 July 2024 (the "**2024 Company Law**").

The 2024 Company Law constitutes a major update and introduces multiple changes compared to the previous version of the *PRC Company Law*. The previous version had first been promulgated on 29 December 1993 and entered into effect on 1 July 1994, and had last been amended with effect of 26 October 2018 (the "**2018 Company Law**"). The new 2024 Company Law, inter alia, provides for changes regarding corporate governance, the responsibilities of shareholders and key personnel of companies as well as regarding capital contributions.

Under PRC law, until 2014, the shareholders of a limited liability company ("**LLC**") were required to contribute the full amount of the LLC's registered capital within 2 years as of the establishment of the LLC. This had then been further relaxed, and under the 2018 Company Law, the shareholders of a LLC could freely decide on the capital contribution schedule in the LLC's Articles of Association. Under the 2018 Company Law regime, the capital contribution schedule could generally extend to the whole lifetime of a LLC.

However, this has now changed again under the 2024 Company Law, which re-introduces a maximum capital contribution period. According to the 2024 Company Law, the shareholders of a LLC must fully contribute their respective portion to the registered capital in accordance with the LLC's Articles of Association within 5 years from the establishment of the LLC. For a company limited by shares, the promoters shall already make full capital contribution before the establishment of the company. These provisions on capital contribution apply to all companies established on or after 1 July 2024. For companies already existing at that time, Article 266 of the 2024 Company Law provides that these companies "*shall gradually adjust*" to the above contribution period, and that if "*the contribution period or amounts are significantly abnormal, the company registration authority may, in accordance with the law, require timely adjustments*". It is further provided that the State Council will provide for specific implementation measures in this regard.

Based on the above, on 1 July 2024, the State Counsel promulgated the *Provisions of the State Council on Implementation of the Registered Capital Registration Administration System under the Company Law of the People's Republic of China* (the "**Provisions**"), which entered into effect on the same day of its promulgation, i.e. on 1 July 2024.

Prior to the official version of the Provisions, a draft version of the Provisions had been released on 6 February 2024 for public comments. The content and the wording of the final Provisions have changed considerably compared to the former draft version. However, despite these changes, the actual transition period for the adjustment of the capital contribution period for existing companies remains the same in both documents.

Below please find a summary of the major contents of the Provisions:

1. The Provisions provide for a transition period of 3 years for existing companies to adjust their remaining capital contribution period:
  - (1) If an existing LLC has a remaining capital contribution period until later than 30 June 2032, i.e. five years from 1 July 2027, the contribution period shall be amended by and before 30 June 2027, and the end date of the amended contribution period shall be no later than 30 June 2032.
  - (2) Promoters of any existing company limited by shares shall already make full capital contribution before 30 June 2027.
  - (3) In case an existing company's production and operation involve State interests or major public interests, subject to the opinion and consent from competent authorities, the original contribution period may remain unchanged.
2. The Provisions are silent on the contribution period for newly subscribed registered capital of existing companies after 1 July 2024. The former draft version of the Provisions provided clear stipulations on this issue. I.e. for LLCs, 5 years after its subscription; for companies limited by shares, before registration of the change of the registered capital. The reason for the deletion of these stipulations in the final Provisions is unclear so far. It is to be seen whether there will be further guidance on this issue or whether the same rationale as under the draft version will be used in practice for newly subscribed registered capital after 1 July 2024. According to the information currently available, we assume that the latter will be the case, and that the time limit for LLCs to contribute newly subscribed registered capital will likely be 5 years after the subscription.
3. If the contribution period or registered capital are significantly abnormal, the company registration authority may make a judgment based on the company's business scope, operation status, the contribution ability of the shareholder(s), the scale of assets, etc. For companies which are deemed to violate the principles of authenticity and reasonableness, the company registration authority may request a timely adjustment in accordance with the law.
4. In case a company adjusts its subscribed and paid-in capital contribution, the contribution method, contribution period, or (for companies limited by shares) the numbers of shares subscribed by the promoters, etc., it shall, within 20 working days after the relevant information is available, make a public disclosure through the National Enterprise Credit Information Publicity System (<http://www.gsxt.gov.cn>), and shall ensure that the published information is true, accurate and complete.
5. If a company fails to adjust the contribution period and registered capital in accordance with the Provisions, the company registration authority shall order it to make corrections. In case the company fails to make corrections within a prescribed period, the company registration authority shall make special notes in the National Enterprise Credit Information Publicity System and disclose it to the public.
6. For companies whose capital contribution period and registered capital are not in line with the Provisions and are not able to be adjusted due to special reasons, the company registration authority shall manage it separately, make special notes in the National Enterprise Credit Information Publicity System and disclose it to the public. The above special reasons refer to cases where the business license of the company has been revoked, the company has been ordered to be closed or cancelled,

or the company has been included in the abnormal operation list because it cannot be reached at its domicile and business premises.

7. For companies whose business license had been revoked or which had been ordered to be closed or cancelled, if they do not apply for the company de-registration within 3 years thereafter, the company registration authority may make a public announcement through the National Enterprise Credit Information Publicity System with an announcement period of no less than 60 days. If no objections are made after expiration of the announce period, the company registration authority may de-register the company and make special notes in the National Enterprise Credit Information Publicity System.

Clearly, the most important and practically relevant stipulation of the Provisions is the one on the transition period given to existing companies to adjust their capital contribution periods. Other stipulations of the Provisions, e.g. on making public disclosure through the National Enterprise Credit Information Publicity System and on the de-registration of "zombie" companies, have less practical impact.

All existing companies which were established before 1 July 2024 should now carefully check their Articles of Association and what capital contribution periods are stated therein as well as the current capital contribution status. If required, adjustments to the capital contribution periods as stated in the Articles of Association should be made before 30 June 2027. If an adjustment is required, the Articles of Association of the company must be amended, and such an amendment must be recorded with the competent registration authority, i.e. the competent Market Supervision Administration. We are happy to assist in this.

Article 11 of the Provisions further states that the Market Supervision Administration department of the State Council shall, formulate specific implementation measures on registered capital registration administration, in accordance with the Provisions. We expect that such measures will provide more detailed and practical guidance for both, companies and competent authorities on how to handle relevant registration issues.

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