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MOFCOM lifted minimum registered capital for foreign invested companies in China

On Oct 28 2015, China's Ministry of Commerce ("MOFCOM") released "Decisions on Revising Certain Regulations and Regulated Documents" (MOFCOM 2015 Order No.2) (hereinafter "the decisions")¹ which took immediate effect. The decisions sorted out and clarified certain regulations to further push the reform of registered capital registration system in China. We will be introducing some noteworthy regulation changes to the foreign investment regime in this report.

I Background

Before the promulgation of the amended China's Company Law in Dec 2013, companies registered in China including foreign invested enterprises (hereinafter "FIEs") are subject to the paid-in capital registration system, under which the registered capital must be higher than a certain minimum set forth by laws and regulations and must be paid up within a certain time period. The amendment to China's Company Law which came into effect on Mar 1st 2014 relaxed the capital contribution and verification requirements for companies establishing in China. However, as FIEs are also regulated under special laws and regulations in addition to the China's Company Law, it remained uncertain to what extent the new registered capital regime under the China's Company Law would be applicable to FIEs.

Therefore on 17 June 2014, MOFCOM published the Notice of Improvements on Foreign Investment Examination Management (hereinafter "the Notice")² which introduced the capital subscription system into the registration of FIEs by eliminating the examination and approval of registered capital and capital contribution for most of FIEs. Based on the Notice, requirements on the ratio of initial capital contributions have been abolished, meaning that eligible FIEs can complete the business registration process without having to inject any initial capital upon startup. Meanwhile, company shareholders would be able to decide on the amount, method and deadline for capital subscriptions at their own discretion.

To further facilitate the capital registration reform in practice and promote the transformation of government functions, MOFCOM announced the decisions recently to increase clarity and avoid ambiguity of provisions in certain regulations concerning foreign investment in China.

II Highlight

1. Registered capital relaxation in certain industries

The respective minimum capital requirements for below industries have been abolished:

- Foreign invested venture capital firms;
- FIEs engaging in auction business;
- Foreign invested financial leasing companies;

¹ <http://www.mofcom.gov.cn/article/b/c/201511/20151101152451.shtml>

² <http://www.mofcom.gov.cn/article/b/f/201406/20140600637866.shtml>

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- Foreign invested freight forwarding agency enterprises;
- Foreign invested logistics enterprises.

2.FIEs limited by shares

- The minimum registered capital requirement of RMB 30 million and the minimum ratio of 25% foreign shareholding in FIEs limited by shares has been abolished;
- The requirement that promoters need to pay in a lump sum the total value of subscription of the shares within 90 days after issuance of the foreign investment approval has also been abolished;
- Where the company is established by means of promotion, the promoters are not required to make full payment for shares subscribed before the election for the board of directors and the board of supervisors;
- No requirement for full payment of the capital shares subscribed for the promoters before the procedure of relevant alteration of registration.

3.Domestic investment by FIEs

- No requirement for full payment of registered capital for domestic investment by FIEs;
- Provision of “the aggregate amount of domestic investment of a FIE shall not exceed 50% of its net assets, however, excluding any amount of increase as a result of capitalization of profits received from an investee company after investment” has been abolished;
- A capital verification report issued by a statutory capital verification agency, certifying that the registered capital has been fully paid is no longer required.

4.Establishment of investment companies by foreign investors

- Such a company shall be in the form of a limited liability company or a company limited by shares;
- The minimum registered capital requirement of USD 30 million has been abolished. But, the requirements on the total assets of the direct foreign investor and on its existing investment scale in China, as well as its actual capital contribution in its existing FIEs in China so far remain unchanged. It is worthy to note that the investment company still shall invest at least USD 30 million to the newly established FIE(s). Also, the respective minimum registered capital requirements for being recognized as national regional headquarter, e.g. being no less than USD 100 million, remain so far unchanged.
- The 5-year limit for full capital contribution has been abolished.
- A capital verification report is no longer required as one of the documents to be provided when applying for establishing an investment company by foreign investors. However, for an application for national regional headquarters status such report is still required.

5.Merger and splitting of FIEs

- Provision on “Companies shall not be merged or split before they pay their capital in full amount, provide conditions for cooperation and actually start production and operation in accordance with the companies’ contract and the articles of association. Where the investors have already paid the capital, provided the conditions for cooperation, the companies may merge with Chinese domestic-funded enterprises” are abolished.
- A capital verification report provided by authorized Chinese institutions for examination and approval is no longer required;

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6. Equity contribution of FIEs

- Equity now is allowed to be used for capital contribution if the registered capital of the equity enterprise has not been paid in full. The allowed equity also includes that of a FIE which fails to participate in, according to relevant provisions, or fails to pass the joint annual inspection in the previous year.
- The maximum 70% ratio of the total amount of capital contributions made with equity and other non-monetary property by all shareholders of an investee enterprise has been abolished.

III Comment

The decisions focused on lifting restrictions on registered capital requirement, deadline for capital subscriptions and initial capital contribution ratio for qualified FIEs, further simplified the administrative approval and registration procedures. This will provide more feasibility for FIEs in China and stimulate domestic investment. We are expecting more relaxation measures from different governmental authorities to promote investment opportunities for foreign investors in the future.

The interpretation and actual implementation of the development on the decisions announced by MOFCOM should be worthy of attention. The up-to-date information will be provided continuously by our bank.

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