China Business Registration Reform

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On February 7, 2014, the State Council issued Notice on Reform Plans of Registration Policies of Registered Capital, GuoFa [2014] No. 7 (the “Notice”) providing guidelines on business registration reforms of companies in China. The objective of the reform is to relax the administration on market entry and optimize the business investment environment.

The reform mainly embraces the following areas:

1. Relaxation of capital contribution requirements

Under the current system, there are specific requirements about the timeline and amount of registered capital that needs to be injected to the company. For example, shareholder should make initial capital contribution of at least 15% of the registered capital within three months of issuance of company's business license and the remaining registered capital within two years of issuance of company's business license. Whereas the new system allows the shareholder to decide on its own the means of capital contribution i.e. in cash, intellectual property, land, building or other intangibles, and the timeline and amount of capital contribution. Such information only needs to be recorded in the Article of Association of the company, and the company and its shareholder remain ultimately responsible for the
truthfulness and lawfulness of the information provided. Such information will also be made available to the public online.

Under the current system, each capital contribution of the shareholder must be verified by a qualified CPA firm who will issue a capital verification report verifying the amount of registered capital contributed by the shareholder, and each such contribution must be registered with the administration of industry and commerce. The Notice abolishes the requirement to submit capital verification report for company business registration as well as the paid-in capital registration for each capital injection.

2. **Lifting minimum registered capital requirement**

The Notice removes the minimum registered capital requirements for the company. Under the current regime, companies are subject to the following minimum registered capital rules: limited liability company (RMB 30,000), one person limited liability company (RMB 100,000) and joint stock company (RMB 5,000,000). The Notice also abolishes the restriction on cash contribution which requires cash contribution to constitute at least 30% of company’s registered capital.

However, certain types of companies are excluded from this reform and will be subject to their own specific registered capital rules. Such companies include financial institution, securities company, futures brokerage company, insurance company, fund management company, insurance brokerage firm, direct sales company, financing company, staffing company, foreign labor service cooperation company, joint stock company established by public share offer, pawn shop, insurance assets management company and micro credit company.

3. **Annual inspection reform**

The current annual inspection system will be replaced by an annual report publication system. Under the annual report publication system, company will within the prescribed time period submit to the administration of industry and commerce its annual report online and such report can be accessed by any individual or entity. The annual report should include information such as capital contribution information and asset information. The company will remain responsible for the truthfulness and lawfulness of the information provided online and the administration of industry and commerce will conduct random audit on the company and if company is found to have provided false information or concealed information, it will be subject to penalty. Any company failing to perform annual reporting obligation for three years will be blacklisted.

4. **Other reforms**

The Notice states there will be less restrictions on company’s business address registration yet without providing much detail. It awaits to be seen what specific reform is anticipated in this area.

According to the Notice, an administration of industry and commerce digital certificate management system will be established and the system will allow the
business license application, reviewing, announcement and issuance to be processed online.

Lastly the Notice calls for the enhancement company credit system. Company failing to submit its annual report within the prescribed time period or company which cannot be reached at its registered business address will be in the “irregular business operation namelist” and announced to the public online. Legal representative or responsible person of those companies who have been blacklisted will not be able to serve management role in other companies, and foreign investor in violation of PRC laws and regulations and any individual in effective control of such foreign investor will be subject to close scrutiny of or restriction on its future investment into China.

The Notice marks a significant move towards the free market, but how it will impact the business registration process of foreign invested enterprise remains unclear. At least from our recent communications with the administration of industry and commerce in some major cities, the business registration process of foreign investment enterprise stays the same and there is no indication that any reform is forthcoming. We will closely monitor the development in this area and keep you up to date of the latest change.

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