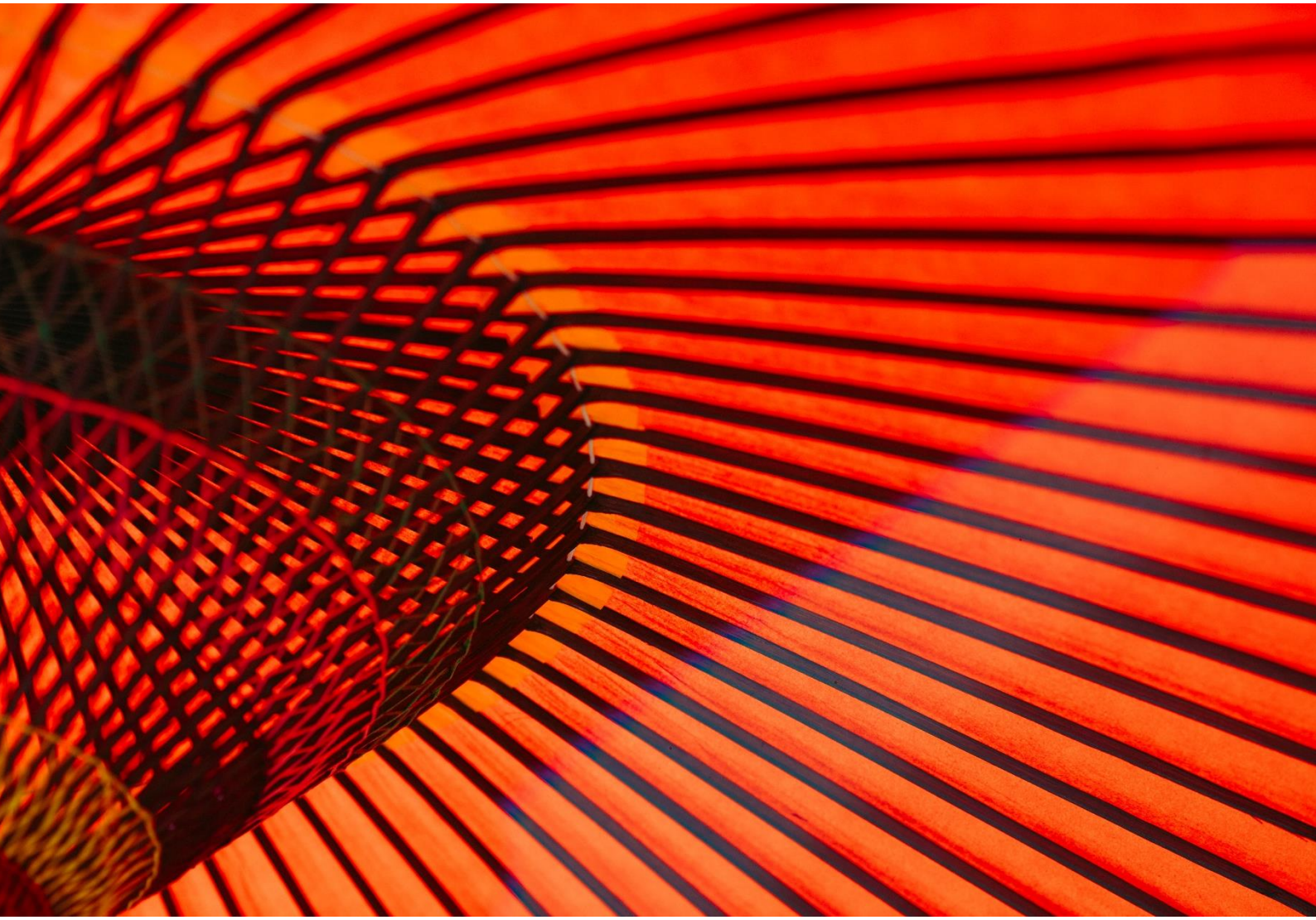


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## **INSIGHT**

*Key takeaways of China's New Company Law (Part 1):  
Changes related to the Companies' Capital Contribution*



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## Introduction

*In this three-part update, we provide key takeaways and insights regarding China's New Company Law. Part 2 will follow covering Changes to the Public information obligations and Shareholders Rights and Protections.*

The *Company Law of the People's Republic of China* (the "Company Law") was firstly enacted on December 29, 1993 – quite recently when compared to many other jurisdictions. 30 years of development later, and with several amendments and revisions throughout the years, on December 29, 2023, it was published the most recent version of the Company Law, which will come into force on July 1, 2024 ("2023 Company Law").<sup>1</sup>

In comparison with the latest version, the most recent amendments have made significant changes in many areas, some of them effective retroactively.

Considering the date it was published and the final date it will come into force, all companies in China, including Liability Limited Company ("LLC") and Joint-Stock Limited Company ("JSC") - foreign-invested and purely domestic ones - as well as those foreign companies considering entering the Chinese market, are advised to examine the new developments and, where necessary, adjust until the end of June 2024.

For some cases of foreign-invested companies already incorporated, this is particularly relevant, as the five-year grace period to fully adjust to China's Company Law, which began with a new Foreign

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<sup>1</sup> Note: the provisions indicated in this alert are the provisions of the 2023 Company Law

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Investment Law of the People's Republic of China that took effect as of 1 January 2020, will also expire on 31 December 2024.

Even though more than 200 provisions have been added and amended in this 2023 Company Law, including over 100 substantive amendments, this alert focuses only on providing a brief overview of some of the most significant changes now introduced, and that we consider to be particularly relevant for foreign investment in China. In addition, as the vast majority of foreign-invested companies in China take the form of LLCs, our alert focuses mainly on this company form.

## **Reintroduction of time limit for Capital Contribution.**

The registered capital is the total amount of capital contributions subscribed by all shareholders as registered before the company registration authority in China. Deciding on the amount of the registered capital is very important when incorporating a Chinese company. It is one of the core issues when operating a company in China and should be carefully considered.

Under the original Company Law, of 1993, the registered capital of a limited liability company was required to be paid in full upon establishment of the company. In 2005, the timeline for capital contribution was extended to 2 years, and the initial capital contribution was reduced to 20% of the registered capital. In 2013, no specific limitations with regards to the initial capital contribution amount and capital contribution period were stipulated, instead, it can be freely decided by the shareholders (given this removal it has been common for shareholders to often opt for rather high amounts for their registered capitals and setting long timelines for their capital contributions, such as 30 or 40 years following the establishment of the company).

The 2023 Company Law now establishes a term of maximum of 5 years for capital contribution. In other words, the shareholders must fully pay up the registered capital within the period indicated in the company's articles of association, which should not exceed 5 years after the establishment of an LLC (Article 47).

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In addition, the laws, administrative regulations and the decisions by the State Council may even stipulate special provisions regarding the period of shareholders' contributions, potentially leaving space for setting up even shorter subscription periods, for key industry sectors.

Where a company that has been registered and established prior to the commencement of the 2023 Company Law (1 July, 2024) has determined a statutory contribution period exceeding the maximum (namely 5 years), it shall, unless otherwise provided by law, administrative regulation or the State Council, gradually adjust the capital contribution to a period within the 5 years period. The company registration authority may require the company to make adjustment in a timely manner in case of an obvious non-compliance (Article 266).

## **Tighter compliance rules during the Capital Contribution Period**

Any shareholder who fails to pay his capital contribution in full and timely, shall, under the 2023 Company Law and in addition to paying it in full to the company, be liable for the losses caused to the company (article 49).

After the establishment of an LLC, the board of directors is required to verify the capital contributions of the shareholders and, if it is found that any shareholder has not paid the capital contributions in accordance with the company's articles of association, in full and on time, the board of directors shall send a written notice to the shareholder to call for the capital contributions. The directors shall also be liable for any loss caused to the company as a result of failing to fulfill the above obligations in a timely manner. The shareholders may also lose their equity interest corresponding to the unpaid registered capital, if applicable (Articles 51 and 52).

Finally, if a shareholder fails to make his/her capital contribution as specified in the company's articles of association, or if the actual value of the non-monetary property effectively contributed to the company is significantly less than the amount of the capital contribution subscribed to, the other shareholders at the time of the company

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establishment, if any, shall be jointly and severally liable with the shareholder who failed to make the capital contribution, to the extent of the shortfall in the corresponding capital contribution (article 50).

The above obligations and payment liabilities may also be shared by or transferred between transferor and transferee, in the event of transfer of equity interests during the capital contribution period, under specific circumstances (article 88).

## **Equity and creditor's rights as a form of capital contribution**

Previously, there were already judicial interpretations or department rules indicating that equity and creditor's rights could be used as forms of capital contribution - usually under certain specific conditions.

Under the new revision 2023 Company Law, it is now formally established and explicitly clarified that equity and creditor's rights are legitimate forms of non-monetary capital contribution of a company's registered capital (article 48).

### **DISCLAIMER:**

*The content of this alert is for information purposes only and does not constitute legal advice or legal reliance in any continuing sense. Should you have any inquiries, please feel free to contact us.*

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