NEWSLETTER ASIA

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China

Company Law

On March 1st, 2014, new “Company Law" has come into force. For the foreign investor who plans to invest in China, what are the new stipulations to pay attention to?

Subscribed Capital replaces Paid-up Capital

Under the previous Company Law, the initial capital contribution made upon the establishment of a company had to be no less than 20% of the registered capital for a limited liability company and the investors had to paid up all the capital contribution as the amount of the registered capital within two years (five years for investment companies).

The new Company Law provides that the registered capital is the capital subscribed by the investors that shall determine by themselves the amount and the schedule of capital contribution, unless otherwise required by law.

Minimum registered capital is abolished

Except if required by a particular law or regulation, a minimum registered capital of RMB 100,000 (RMB 30,000 in case of several investors) is no longer required for a limited liability company. Without a minimum registered capital requirement, a capital verification report is no longer necessary with regard to establishment of companies. Moreover, the amount of registered capital paid in by each shareholder will no longer be recorded on the business license.

Minimum Capital Contribution in cash is abolished

Under the previous Company Law, the capital contribution in cash shall not be less than 30% of the registered capital for a limited liability company. The new Company Law removes this requirement. A shareholder may contribute capital in cash, in kind or using intellectual property rights, land use rights or other non-financial assets the value of which may be assessed in financial terms and ownership of which may be transferred in accordance with law.

India

Regulatory alert: Notification of 183 sections of the Companies Act and Rules

On 27 March 2014, the Ministry of Corporate Affairs ("**MCA**") notified 183 sections of the Companies Act, 2013 ("**Act**"). These provisions, along with 100 sections notified by the MCA last September, became effective on 1 April 2014. Sections relating to the National Financial Reporting Authority, the National Company Law Tribunal along with those related to investor protection, winding up of companies, sick companies, among others, are still to be notified.

On 27 and 28 March 2014, the MCA notified Rules for 11 chapters of the Act.

Link to the MCA notification:

http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification26March2014.PDF and to the Rules: http://www.mca.gov.in/MinistryV2/companiesact.html

Corporate social responsibility: Shift from corporate philanthropy to mandatory contribution

On 1 April 2014 came into effect Section 135 and Schedule VII relating to Corporate Social Responsibility ("**CSR**") under the Companies Act, 2013 along with the Companies (Corporate Social Responsibility Policy) Rules, 2014.

These provisions mandate prescribed companies to spend 2% of their average net profit on CSR activities. India is one of the first (not to say the first) countries to operate a shift from voluntary corporate philanthropy to mandatory contribution.

The above CSR provisions apply to Indian companies or foreign companies registered in India meeting some specific thresholds ((i) turnover of Rs. 10 billion (c. Euro 120 million) or more; or (ii) or net worth of Rs. 5 billion (c. Euro 60 million) or more; or (iii) net profit of Rs. 50 million (c. Euro 600,000)). Eligible companies will have to constitute a CSR committee of the board in charge of formulating a CSR policy (CSR Policy), recommending the amount of expenditures to be incurred on the activities referred to in the CSR Policy and monitoring the CSR Policy of the company.

Schedule VII to the Companies Act, 2013 provides for an exhaustive list of CSR activities to be undertaken. The Companies (Corporate Social Responsibility Policy) Rules, 2014 specify the ways eligible companies will be able to discharge their CSR obligations.

Although Section 135 fails to provide for specific sanction in the event eligible companies fail to contribute 2% of their net profit to CSR activities, Section 134 prescribes that the board of directors will be in charge of specifying the reasons for such non spending. Specific sanctions in case of failure to specify the reasons for not spending the amount in the annual report would apply to the board of directors.

Singapore

Employment law amendments: Better coverage for a greater number of workers

On 1 April 2014 take effect the Employment, Parental Leave and Other Measures Act which modify the Employment Act Chapter 91. This reform aims to preserve a balance between a better protection for more workers and the need to keep enterprises competitive.

More provisions of the Employment Act (EA), including sick leave benefits and protection against unfair dismissal, are extended to Professionals, Managers and Executives (PMEs) earning less than $4,500.

The provisions in the EA governing working hours, which typically cover lower wage workers (up to $2.000), are now extended to cover workers earning up to $2,500. Those are now able to claim overtime pay, calculation for overtime rates will be capped at $2,250 to help businesses manage costs. A 25% cap will be imposed on deductions to employees' salaries for accommodation, amenities and service paid for by the employer. Other deductions are not affected by this cap, but the total amount of all deductions must not exceed 50% of the salary.

Directors of company or partners may now be held personally accountable for EA offences. The penalties for failure to comply have been raised: a fine of between $3,000 and $15,000 and/or 6 months' jail for the first offence, a fine of between $6,000 and $30,000 and/or 12 months' jail for the second offence.

Vietnam

Decree 218 on Corporate Income Tax (CIT)

Decree 218 guiding the implementation of the amended CIT law is effective since 1 January 2014 and includes some notable changes.

- CIT rate reduced

The standard CIT rate is reduced from 25% to 22% in 2014, and further reduced to 20% from 2016 except for enterprises with total revenues of less that VND 20 billion (approximately USD 1 million) which will enjoy the 20% rate from 2014.

- CIT incentives
  - Large manufacturing projects are eligible for CIT incentives if the projects meet one of the following criteria:
    - Having minimum investment capital of VND 6,000 billion, disbursed within 3 years after getting the license, and having a minimum revenue of VND 10,000 billion per year for at least 3 years after the first year of generating revenue; or
    - Having minimum investment capital of VND 6,000 billion, disbursed within 3 years after getting the license, and using minimum 3,000 headcount for at least 3 years after the first year of generating revenue.
  - New investment projects in industrial zone (excluding industrial zones in cities Type 1 ie Ho Chi Minh City, Hanoi, Da Nang …) are now entitled to incentives.

- Business expansion projects are now entitle to CIT incentives if criteria related to additional fixed assets or designed capacity are met.

Japan (by **Iwata Godo** law firm)

Tax Laws: Several tax reforms are being implemented in 2014. The revisions to the tax laws do not introduce significant changes for corporate taxpayers but tend to focus on high income individuals. Everyone is waiting to see the impact of the consumption tax hike on the Japanese economy and "Abenomics": the will be increased to 8 percent. from 5 percent. as of 1 April 2014 (and to 10 percent. on 1 October 2015).

Project Finance and new developments concerning PFI/PPP: The 2012 introduction of a feed-in tariff for electricity generated from renewable energy sources and the prospects of future liberalisation of the electricity market should continue to stimulate project activity. Foreign investors eye PFI and other infrastructure projects as the Abe Government seeks to open the market (prospective projects include Sendai Airport, the Kansai and Osaka International Airports, highways, sewage systems and other public utility facilities). The 2020 Tokyo Olympics are expected to generate significant construction and transportation infrastructure projects. New legislation - supplemented by guidelines clarifying bidding procedures - allows for government-owned airport concessions. The PFI Promotion Corporation of Japan was established at the end of 2013 to fund infrastructure projects with about JPY20 billion at its disposal.

Money Lending: Amendments to the money lending regulations facilitating inter-company loans will be effective as of 1 April 2014. The Money Lending Business Law ("MLBL") and subordinate regulations regulate money lending business in Japan (to the extent not governed by the Banking Business Law). Under the MLBL, any person conducting a money lending business has to be registered with the competent authorities and comply with onerous rules and codes of conduct in general. Although the MLBL is intended to protect the interest of persons seeking funds, it does not expressly exclude lending and borrowing activities within the same group.

Several years ago, the Japanese Financial Services Agency had published its interpretation of the MLBL to bring about some welcome relaxation by excluding the registration requirement in case of lending and borrowing between a parent company and its subsidiary (in which it holds more than 50% of the voting rights). However, this relaxation was not fully satisfactory from the perspective of many foreign groups as other inter-company transactions not exempted by the FSA guidance were still caught (loans between sister companies in general or between a parent and its related company in which it does not have a majority) and that could be a real problem (or rather a compliance dilemma…) especially against the background of sophisticated cash management and cash pooling arrangements. As a result of these amendments, (1) lending between entities belonging to a same group of entities (as the detailed expression is defined in the amendments based on the concept of "substantial control") is outside the scope of the MLBL and exempt from the MLBL requirements and (2) lending to a JV company by a shareholder holding at least 20% of the voting rights is also exempt (subject to the consent of all JV shareholders) if the lender is not registered as a money lending business operator.

Financial Instruments and Exchange Law of Japan ("FIEL"), Enforcement Order and Cabinet Ordinance on securities transaction restrictions: changes regarding insider trading rules effective from 1 April 2014. Without getting into the detail of the changes, the reform will impact and redefine a number of concepts and definitions used in the FIEL and subordinate regulations, introduces new prohibitions which include restrictions on information conveyance and the solicitation of transactions,

widens inclusions or exemptions, increases administrative monetary fines (*kacho-kin*) imposed on investment management business operators and gives regulators discretion to publish the names of individual offenders involved in insider trading.

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