



Registered Capital of Foreign Invested Enterprises in China: Not as Scary as it Seems

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Introduction

Foreign investors in China who come from a common law legal jurisdiction often struggle to understand the concept of registered capital. Even those who understand the concept do not truly appreciate the manner in which it operates in China. This briefing paper provides a concise summary of the issues relating to the contribution of registered capital in foreign invested enterprises (“FIEs”) in China.

What is Registered Capital in a FIE?

Registered capital refers to the total amount of equity or capital contributions to be paid in full by the shareholders to the FIE which is registered with the governmental authorities. This should be distinguished from the shareholder’s “total investment” which refers to the projected amount of funds necessary for the FIE to attain the production or operational capacity set out in its articles of association (“AoA”).

How can Registered Capital be contributed?

The following methods are now available for contributing registered capital:

1. Except for some specific FIEs, such as insurance companies, banks or one-person limited liability companies, etc., Shareholders may contribute registered capital in installments. The Company Law allows contribution of registered capital by shareholders of a limited liability company to be made by installment as long as the first installment is not less than **15%** of the registered capital (payable within **three months** upon the issuance date of the business license) and the balance of the registered capital is contributed within **two years** upon the issuance date of the business license.
2. In addition to cash contributions, registered capital can include tangible and intangible assets that can be monetarily valued and legally transferred, such as physical objects, intellectual property right, know-how or land use right, etc.

Moreover, by stipulating that the cash contribution may not be less than 30 percent of the total registered capital, the new law essentially allows investors to contribute as much as 70 percent of the total registered capital in the form of the aforesaid non-cash assets. Such non-cash assets must be valued by appraisal organizations registered in China.

What is the minimum required Registered Capital by Law?

Under the Company Law, companies are mainly incorporated in the form of limited liability companies or joint-stock limited companies. For limited liability companies, the minimum authorized capital is lowered to RMB30, 000. For joint—stock limited companies, the minimum authorized capital requirement is RMB 5 million. One-Person Limited Liability Companies are allowed according to the new company law, and its minimum registered capital contribution shall be no less than RMB100, 000.

However, these legal requirements do not have much relevance in practice. The Ministry of Commerce has considerable discretion when approving a company and the generally requires higher levels of registered capital than the minimum legal requirements. For example, it is our experience that in practice establishment of a foreign invested commercial enterprise (“FICE”) generally needs US\$ 140,000 of registered capital to be approved by authorities.

These levels are subject to the specific business scope of the FIE. If the business scope is in a more sensitive or specific area then it is likely that a higher level of registered capital will be required. For example, to establish a foreign invested travel agency requires the minimum registered capital of RMB 4,000,000. Meanwhile, other factors may also require a higher level of registered capital. For example, if the investor wants to include “China” in the name of the FIE then the minimum registered capital will be RMB 50,000,000.

Are there any Non-Legal Factors in Relation to Registered Capital?

The level of a company’s registered capital will be relevant to the day to day operations of the company. Generally speaking, the higher level of the registered capital the easier it will be able to do business. This is because the level of the registered capital is taken into account in determining the credit-worthiness of the company. If a company has a low level of registered capital it may find it difficult to obtain bank loans and enter into commercial contracts with larger companies.

What is the Ratio of Registered Capital to Total Investment Amount?

As we said above, the registered capital needs to be actually contributed by the shareholders to the FIE. On the contrary, the total investment is only a “Number” stipulated in relevant documents like AOA. Namely the shareholders are not required to actually make such contribution to the FIE. However, since FIEs are allowed to borrow a certain level of foreign exchange loan from overseas upon the State Foreign Exchange Bureau (“SAFE”)’s approval, therefore when the FIE wants to get such loan for its business operation in future, the total investment does have a legal meaning, i.e. the maximum amount of foreign exchange loan equals the total investment minus the registered capital (the maximum level of foreign exchange loan = the total investment – the registered capital.) Beyond this level, the State Foreign Exchange Bureau (“SAFE”) will not approve such a loan.

Therefore, for the purpose of obtaining more foreign exchange loans in future, a higher level of total investment is recommended. However, there is a statutory minimum ratio between the registered capital and the total investment and you can choose the higher ratio when you calculate the total investment.

Total Investment	Ratio of Minimum Registered Capital of Total Investment)
US\$ 3,000,000 or less	70%
US\$ 3,000,001 to US\$ 10,000,000	50% or US\$ 2,100,000 whichever is higher
US\$ 10,000,001 to US\$ 30,000,000	40% or US\$ 5,000,000 (whichever is higher)
US\$ 30,000,001 or more	33.3% or US\$ 12,000,000 (whichever is higher)

Conclusion: Two year period for contribution

As is noted above, the shareholders have a two year period for payment of the registered capital. Prior to 2006 the law requires full payment of registered capital upon formation of a company. Many foreign investors are not initially aware of this timeframe and believe that the registered capital will need to be paid at the beginning. The advice that we generally give to clients is that they should determine how much it will cost them to run their business in the first two years, increase this by a small amount and this will be a safe figure for the acceptable level of registered capital. If your business will comfortably need to spend US\$500,000, then it is worth getting credit for this via your level of registered capital. The only caveat in relation to this is that you should be certain that you will be able to contribute such an amount within the first two years. If not, you may face significant penalties for not meeting the deadline prescribed by the law.

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