

Discussion on the Company's Registered Capital

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Abstract

In the context of the capital subscription system, whether "significantly insufficient capital" should be used as a reason for the denial of legal personality requires a new interpretation and understanding of relevant judicial requirements. In view of the lack of a criterion for judging "significantly insufficient capital" after the cancellation of the minimum registered capital limit, and the denial of the company's independent personality based solely on this matter is contrary to the company's autonomy and risk conceit spirit, and the "significantly insufficient personality denial" is gradually declining in judicial practice, Therefore, "significant capital shortage" should no longer be used as a reason for the denial of legal personality, and the limited liability of shareholders should not be influenced by the amount of registered capital. I also think that there are certain flaws in the company's registered capital regulations. If this problem is not resolved in time, it will inevitably affect economic development and bring instability to society. This article attempts to start with the three systems of registered capital, combining with my country's actual situation, to find the flaws in the provisions of registered capital in my country's "Company Law", and to propose measures to solve the problem to ensure the orderly progress of economic development.

Keywords

Registered Capital; Company Law; Significant Capital; Legal Capital System.

1. Introduction

Since Germany promulgated the world's first "Company Law" at the end of the 19th century, countries in the world have successively enacted their own "Company Laws." On December 29, 1993, the Fifth Meeting of the Standing Committee of the Eighth National People's Congress passed my country's first "Company Law", which has since been revised five times. The current implementation is the "Company Law" revised on October 26, 2018.

After more than 27 years of practice, especially in recent years, people have found that the creditworthiness of newly established companies is getting lower and lower, and some "little lai" and even "zhong lai" have emerged one after another. Although there are many reasons for these "Xiao Lai" and "Zhong Lai", it is one of the main reasons that companies can be set up at will without the limitation of registered capital. Therefore, the issue of the company's registered capital has attracted more and more attention. I also think that there are certain flaws in the company's registered capital regulations. If this problem is not resolved in time, it will inevitably affect economic development and bring instability to society. This article attempts to start with the three systems of registered capital, combining with my country's actual situation, to find out the flaws in the provisions of registered capital in my country's "Company Law", and to propose measures to solve the problems to ensure the orderly progress of economic development[1-3].

2. Explanation of Terms Related to Registered Capital

The legal capital system implemented in my country's first "Company Law" promulgated in 1993 has gradually changed since then. By 2013, the revised "Company Law" was transformed into the current eclectic authorized capital system. Legal capital system, authorized capital system and compromise authorized capital system are the rules adopted by various countries in the world to establish companies. In order to analyze the flaws in the registered capital of my country's "Company Law", it is necessary to explain the legal capital system, authorized capital system and compromise authorized capital system.

2.1. Legal Capital System

The statutory capital system means that the registered capital as determined by the company's articles of association must be higher than or equal to the statutory minimum capital standard. Before the establishment of the company, shareholders can subscribe in full at one time, and shareholders can pay in full at one time, or in accordance with the time limit stipulated by law. Proportionally complete the first payment, enabling the company to meet the statutory conditions to establish a capital system.

The purpose of this capital system is to prevent the establishment of a shell company, so that the company has the minimum assets to assume responsibility when it is established. Civil law countries generally implement a legal capital system.

The statutory capital system can be divided into strict statutory capital system and reformed statutory capital system. The standard is whether to allow the company's capital to be paid in installments.

The legal capital system was pioneered by France and later adopted by other civil law countries. The core of the statutory capital system is the principle of capital determination, and its essence is that the company is established in accordance with the full issuance and full payment of the charter capital.

When my country's "Company Law" was promulgated, it followed the legal capital system of the civil law system. From the promulgation in 1993 to the third revision in 2005, the company law of our country has very specific regulations on the minimum amount of legal capital for companies, not only taking into account the differences of different types of companies, but also making different regulations for companies in different industries. Among them, after the third amendment in 2005, it is stipulated that the minimum registered capital of a limited liability company is; ① RMB 30,000 for a general limited liability company (Article 26 of the Company Law); ② RMB 100,000 for a one-person limited liability company (Article 59 of the Company Law) Article). The requirements for a company limited by shares are: the minimum registered capital of a company limited by shares is RMB 5 million. (Article 59 of the Company Law); RMB 30 million for listed companies. (Securities Law Article 50)

It is stipulated that shareholders should pay in full the amount of capital contribution each subscribed in the company's articles of association, otherwise the company cannot be established.

On October 28, 2013, the 28th executive meeting of the State Council passed the "Registration Reform Plan for Registered Capital", which abolished the minimum registered capital standards of 30,000 yuan for limited companies, 100,000 yuan for one-person companies, and 5 million yuan for joint-stock companies, and Complete the payment requirements within two years.

2.2. Authorized Capital System

Authorized capital system is a legal requirement that a joint-stock company in Western countries can establish a company after subscribing and paying a certain percentage of its legal capital. The original company laws of some western countries stipulate that when a company

is founded, it must subscribe and pay enough legal capital to hold an inaugural meeting. But in practice, the result of doing so often makes the company unable to establish itself for a long time. Later, the United States first implemented the method of establishing a company as long as a part of the capital was handed over after subscribing to the full shares. Germany stipulates that half of the total is handed in, and the other half is authorized to the board of directors to gradually hand over the full after its establishment. The old Chinese and Japanese company laws stipulated that a company could be established after paying a quarter of it.

According to the requirements of the authorized capital system, first of all, the company's articles of association must specify both the registered capital of the company and the share capital issued for the first time before the establishment of the company. Secondly, under the authorized capital system, registered capital, issued capital, paid-in capital, and authorized capital exist at the same time, but they are all different. Finally, the promoters only need to subscribe and pay in full the number of shares to be issued for the first time as stipulated in the articles of association, and the company can be formally established. Objectively speaking, the authorized capital system is not perfect. Like the legal capital system, it also has obvious advantages and disadvantages. The legislative intent of the authorized capital system is mainly to stimulate people's enthusiasm for investment and simplify the procedures of company establishment, which more reflects the value of "personal standard".

2.3. Compromise Authorized Capital System

The compromised authorized capital system means that when a company is established, the total capital must be stated in the articles of association, and only a portion of the capital needs to be issued and subscribed. The company can be established. The unissued part is authorized to the board of directors to issue as needed, but the authorized issue shall not be Exceed a certain percentage of the company's capital.

The compromise authorized capital system stipulates the proportion of shares issued when the company is established, and restricts the number of shares issued by the authorized board of directors, and stipulates the proportion and time limit of the issued shares. This system is based on the authorized capital system and incorporates the requirements of the statutory capital system. Its core is the authorized capital system.

Some civil law countries and regions that originally implemented a legal capital system, such as Japan and my country's Taiwan region, implemented a compromised authorized capital system. The Japanese Commercial Code stipulates that the total number of shares issued when a company is established shall not be less than 1/4 of the total number of company shares. According to Article 156 of the "Company Law" in Taiwan, the total number of shares shall be issued in multiples, but the shares to be issued for the first time shall not be less than 1/4 of the total number of shares[4-6].

3. Several Amendments to the Registered Capital of My Country's Company Law

3.1. The first "Company Law" Promulgated on December 29, 1993 Made Clear Provisions on the Registered Capital of Limited Liability Companies and Joint Stock Limited Companies.

3.1.1. Provisions on the registered capital of a limited liability company

Article 23. The registered capital of a limited liability company is the amount of capital contribution actually paid by all shareholders registered with the company registration authority.

The registered capital of a limited liability company shall not be less than the following minimum amounts:

- (1) RMB 500,000 for a company mainly engaged in production and operation;
- (2) RMB 500,000 for companies mainly engaged in the wholesale of goods;
- (3) RMB 300,000 for companies mainly engaged in commercial retailing;
- (4) RMB 100,000 for technology development, consulting, and service companies.

3.1.2. Provisions on the registered capital of a joint-stock limited liability company

Article 78. The registered capital of a company limited by shares shall be the total amount of paid-in share capital registered with the company registration authority.

The minimum registered capital of a company limited by shares is 10 million yuan.

3.2. The Company Law Amended on December 25, 1999 did not Change the Registered Capital

3.3. The Company Law Amended on August 28, 2004 Still has no Changes to the Registered Capital

3.4. The Company Law Revised on October 27, 2005 Revised the Minimum Amount of Registered Capital for Limited Liability Companies to RMB 30,000 and One-person Limited Liability Company to RMB 100,000; the Minimum Amount of Registered Capital for Joint Stock Limited Companies was Revised to RMB 500 Ten Thousand Yuan

3.5. The Company Law Amended on December 28, 2013 Removed the Limit on Registered Capital

3.6. The Company Law Revised on October 26, 2018 Provides for Share Repurchase, which Makes the Company's Behavior more and more Standardized

4. The Company's Registered Capital should Implement the Principle of "Differential Treatment"

After more than 20 years of restructuring, Chinese enterprises have all been transformed into companies. Since the fourth revision of the Company Law on December 28, 2013, it marked that the company's registered capital in my country's Company Law has changed from the original statutory capital system to a compromised authorized capital system. This kind of change, with the operation of the economy, can clearly be found that it is becoming less and less suitable for my country's national conditions. From the above, the revised minimum limit of the company's registered capital is getting lower and lower, so that the minimum limit was cancelled on October 26, 2013. On the surface, it has greatly lowered the threshold for citizens to start a business, and a company can be established at any time. However, it is actually very unfavorable to the development of the company. It will inevitably encourage people's speculation and profit-seeking psychology, which will greatly reduce social credit.

4.1. A Company must Ensure Normal Operations and at Least have Assets of more than 100,000 Yuan.

Assume that three employees in a company rent an office for at least RMB 3,000 per month; a car with an annual depreciation of RMB 120,000 plus operating expenses is at least RMB 3,000 per month; the employee's salary and social security costs are at least RMB 30,000 per month; Office expenses such as facilities are at least 4,000 yuan per month. This is the basic operating

cost of 40,000 yuan. Coupled with the purchase of raw materials and other current assets, the fixed assets and current assets totaling 60,000 yuan when the company was established are slightly tight.

4.2. The Company must Safeguard the Rights and Interests of Creditors, which is the Basic Obligation of Every Company

We are an ancient country with more than 5,000 years of civilization. "Repaying debts and paying off" is justified and the basic criterion for being a man. Our company, although "maximizing benefits" is the ultimate goal of the enterprise, it must also be "good management", with the motto of "integrity, responsibility, and everyone", and truly put creditors in the highest position and protect creditors. Rights. To achieve this goal, it is far from impossible without a certain registered capital.

4.3. A limited Liability Company shall Implement a Legal Capital System, and a Limited Liability Company may Implement a Compromise Authorized Capital System

Since the 1990s, our country has implemented "corporatization". Almost overnight, all enterprises in our country have become companies. Most of them are limited liability companies. It is understandable that limited liability companies do not have a high threshold, because in order to facilitate citizens to start their own businesses and promote economic development, it is understandable that the state lowers the minimum amount of registered capital. However, it is not advisable to cancel the minimum limit and implement the current compromised authorized capital system.

The company limited by shares is different. A company limited by shares generally prepares for listing and makes it a listed company. In order to ensure the steady operation of the securities market, the threshold for the establishment of a company limited by shares-the registered capital should be very high.

In order to ensure the normal operation of the economy and ensure that the social and economic order follows a good trajectory, both limited liability companies and joint stock limited companies should implement a legal capital system, so that the stable operation of the social and economic order can be ensured. Otherwise, various undesirable consequences will occur. Such as: increasing people's desire for profit; gradually losing the basic principle of honesty; easy to breed various behaviors that hurt others and self-interest; easy to breed all kinds of "little, middle, and even old". The end result will be a low social atmosphere and the absence of basic moral standards. Everyone wants to "everyone for me", making the excellent tradition of "for all people" to be in vain.

4.4. Chinese Enterprises should Show "A Hundred Flowers Bloom"

Since the 1990s, my country's enterprises have become "all-in-one" companies. In my opinion, this "uniformity" situation does not conform to the objective laws of economic development. If this is the case, the term "enterprise" can be deleted from our country's nouns. Obviously, this will not work.

Then, we must implement the policy of "letting a hundred flowers bloom" and cannot be unified. For example, intermediary agencies such as accounting firms and law firms should be partnership enterprises[7-9].

5. Conclusion

In summary, we can see that the registered capital of Chinese companies should implement a legal capital system. In daily life, between people, companies and companies should establish a good foundation of integrity, establish the fine tradition of "I am everyone", put the stability of

the social and economic order in the first place, and protect the creditors. Legitimate rights and interests have achieved rapid social and economic development.

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