

China New Company Law 2024: Five-Year Capital Rule and What Foreign Investors Must Know

Dan Young Business Consultancy — www.danyoungcpa.com
Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Registered Capital: The Five-Year Clock	1
Board Structures for Smaller Companies	1
Expanded Fiduciary Duties	1
Capital Reduction: New Protections for Creditors	2
Profit Distribution and Tax	2
Practical Takeaways	2

China's revised Company Law took effect in July 2024. It's the biggest overhaul in 30 years, and it affects every WFOE—existing and new. Here's what matters for foreign investors.

Registered Capital: The Five-Year Clock

The headline change: shareholders must fully pay up their subscribed registered capital within five years of company establishment. No more indefinitely deferred capital contributions.

For existing companies, there's a transition period. If your WFOE's articles of association currently allow a longer or indefinite timeline, you'll eventually need to amend it. The exact transition rules are still being rolled out by local AMRs, but the direction is clear: capital commitments need teeth.

What this means in practice: when you set up a new WFOE, don't subscribe to a registered capital figure you can't actually fund within five years. We've seen companies register ¥10 million in capital for prestige, then struggle to inject it. Under the new law, that strategy has a hard deadline.

Board Structures for Smaller Companies

The new law introduces flexibility for smaller companies. A limited liability company with a small number of shareholders can dispense with a board of directors and appoint a single executive director instead. Similarly, a small company can skip the supervisory board and appoint a single supervisor—or, if all shareholders agree, dispense with the supervisor entirely.

For single-shareholder WFOEs (which most are), this simplifies governance considerably. One director, no supervisor, quarterly shareholder decisions in writing. That's the new minimum viable structure.

Expanded Fiduciary Duties

Directors and senior management now face more explicit duties of loyalty and diligence. The law spells out what these mean: a duty to avoid conflicts of interest, a duty to report self-dealing, a duty not to usurp corporate opportunities.

More importantly, the law introduces personal liability for directors who cause damage to third parties through intentional acts or gross negligence. If your China director signs off on a transaction that harms a creditor, they could be personally on the hook. This isn't theoretical—the provision is designed to be enforceable.

Capital Reduction: New Protections for Creditors

If your WFOE wants to reduce its registered capital, the new law requires a more transparent creditor notification process. Creditors have the right to demand early repayment or collateral within a set period after being notified of the reduction. This applies to both domestic and foreign creditors.

For foreign investors considering restructuring their China operations, this changes the timeline. Capital reduction used to be a relatively quiet administrative process. Now it involves a mandatory waiting period for creditor claims.

Profit Distribution and Tax

The law clarifies that profit distribution must occur within six months of the shareholder resolution approving it. No more open-ended delays after the board votes to distribute dividends. This is good news for foreign investors waiting to repatriate profits.

Practical Takeaways

If you're setting up a new WFOE: subscribe to realistic capital, complete the contribution within five years, and document every step. If you're running an existing WFOE: review your articles of association for capital contribution timelines. If you have a board structure that's more complex than it needs to be, there may be opportunities to streamline.

The five-year capital rule, in particular, changes the math on China subsidiary budgeting. What used to be a paper commitment is now a real cash flow obligation.