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公司实务

## 新公司法实施前，公司如何安排减资

Reduction of Registered Capital – An Essential Move before the New PRC Company Law Comes into Force

### 前言

2023年新修订的《中华人民共和国公司法》（下称“新公司法”）将于2024年7月1日起正式实施。按照新法规定，有限责任公司的注册资本应在公司成立之日起五年内实缴完毕。在认缴期限缩短的立法背景下，公司股东最初设定的认缴注册资本金额可能与公司现有发展规划产生冲突，因此有必要对现有注册资本金额作出必要调整，特别是针对注册资本数额虚高的公司。因此，如何合法减资，已成为许多公司亟待解决的重要问题。

The newly revised Company Law of the People's Republic of China in 2023 (the “new Company Law”) will come into force on July 1, 2024. According to the new Company Law, the registered capital of a limited liability company shall be paid up within five years from the date of establishment of the company. With the shortened contribution period, the amount of subscribed registered capital initially determined by the shareholders may conflict with the existing business development of the company. Therefore, it is necessary to adjust the amount of the registered capital, in particular for those with an inflated amount of subscribed capital. So the reduction of registered capital in a legal way is an important step to be taken for many companies.

### I. 合法减资的必要

#### Why Capital Reduction is Essential?

根据新公司法，如果公司不能清偿到期债务，已到期债权的债权人有权要求尚未实缴出资的股东提前缴纳出资。如果公司注册资本数额较大且尚未实缴完毕的，股东将面临较大的债务风险，即债权人可起诉股东，要求股东在尚未实缴出资范围内对公司债务承担补充赔偿责任。

Under the new Company Law, in the event a company is unable to settle its due debt, the creditor has the right to request the shareholder who has not contributed the registered capital to inject the capital in advance, which will be used for debt payment. Under such circumstances, the shareholders may face the risk that the creditor may sue the

shareholders and request them to take supplementary liability in relation to the company's debt to the extent of capital the shareholders have not contributed.

在此情况下，为避免发生股东责任，在法律允许范围内减少注册资本对保护股东利益有重大意义。

Therefore, to avoid the occurrence of shareholder liability, it is vital to protect the interest of the shareholders by reducing the registered capital.

## II. 公司如何调整注册资本出资期限? Contribution Period for Registered Capital

在确定减资之前，我们需要先了解一下新公司法下有关出资期限的最新规定：

Prior to the capital reduction, we need to first of all understand the contribution period in relation to registered capital under the new Company Law:

- a) 针对拟在新公司法实施后（即 2024 年 7 月 1 日之后）新设的有限责任公司，股东应自公司成立之日起 5 年内缴足注册资本。

If a limited liability company that is intended to be established after the implementation of the new Company Law (i.e., established after July 1, 2024), the registered capital of the company shall be paid in within five years from the date of establishment of the company.

- b) 针对新公司法施行前已经设立的公司（即 2024 年 7 月 1 日前设立的，下称“存量公司”），国家市场监督管理总局已出台关于注册资本登记管理制度的相关细则（尚未正式生效），明确为其预留 3 年的过渡期：

For companies already established before the implementation of the new Company Law (i.e., established before July 1, 2024, hereinafter referred to as "Existing Companies"), SAMR has issued relevant rules on the registration management system over registered capital (which have not yet officially come into effect), and expressly reserves a 3-year transition period for such companies:

- 股东认缴出资期限超过 5 年的存量有限责任公司，应当于新公司法施行之后 3 年过渡期内，即自 2024 年 7 月 1 日至 2027 年 6 月 30 日，将剩余出资期限调整至 5 年内。即存量有限责任公司最长可有“3 + 5”年的出资期限。

For Existing Companies with a contribution period exceeding 5 years, the remaining contribution period of Existing Companies shall be adjusted to less than 5 years within the 3-year transition period (from July 1, 2024 to June 30, 2027) after the implementation of the new Company Law. That means Existing Companies may have a maximum contribution period of "3 + 5" years following the implementation of the new Company Law.

- 如根据公司章程规定，存量有限责任公司自 2027 年 7 月 1 日起剩余出资期限不足五

年的，则无需调整出资期限。

However, according to the Article of Association of Existing Companies, if the remaining contribution period is less than five years calculated from July 1, 2027, then no adjustment to the contribution period is required.

### III. 如何安排合法的减资程序?

#### Required Process for Capital Reduction

根据新公司法的规定，如公司安排减资，需遵循如下流程：

In accordance with the new Company Law, the following process shall be followed in terms of capital reduction:

- a) 由董事会制定公司减资方案，明确原注册资本数额、减资的注册资本数额、所采用的减资方式、减资对象、减资后股权结构、债权人利益安排等内容

The board of directors of the company shall make a plan for capital reduction, specifying the amount of original registered capital, the amount of registered capital to be reduced, the method of capital reduction to be adopted, the shareholders involved in the capital reduction, the shareholder structure after capital reduction, and the measures to be taken to protect the interest of the creditors, etc.

- b) 由股东会就减资事宜作出决议，内容包括但不限于减少注册资本的数额、各股东的具体减资数额、有关修改章程的事项、股东出资及其比例的变化等

The shareholders' meeting shall make a resolution on the capital reduction, including but not limited to the amount of reduced registered capital, the specific amount of capital reduction of each shareholder, matters relating to amendment of the AOA, and changes in shareholders' capital contributions and their ratios, etc.

- c) 编制资产负债表及财产清单，以使股东和债权人了解公司偿债能力以及当前的财务和资产状况

Preparing balance sheets and inventories of property of the company in order to informing shareholders and creditors of the solvency of the company and its current financial and asset status

- d) 通知债权人并进行公告，按照债权人的要求清偿债务或提供担保

Notifying the creditors of the company and making public announcement, and settling debts or providing guarantees as requested by the creditors

- e) 与减资的股东签订减资协议，以明确减资的相关安排

Entering into a capital reduction agreement with the shareholders to clarify the relevant arrangements for the capital reduction

- f) 修改公司章程并办理工商变更登记

Amending the AOA and carrying out change of registration at AMG

g) 向原税务登记机关申报办理变更税务登记

Reporting to the tax authority for such change and carrying out required change procedure in tax registration

IV. 违法减资的法律后果

Consequence in case of Illegal Capital Reduction

实践中违法减资的情形包括未事先依法通知债权人、减资决议表决比例不合法、办理减资登记中提交虚假说明材料等。

Illegal capital reduction includes circumstances such as failure in notifying the creditors about the capital reduction in advance, illegal voting ratio in relation to the shareholder's resolution on capital reduction, submission of false material to the registration authority etc.

在上述违法情形中,我们需重点说明因未通知债权人而导致违法减资的情况。根据法律要求,公司减资需通知已知债权人,并根据债权人要求提前清偿债务或提供担保。如公司未依法履行通知程序,将剥夺债权人要求提前清偿债务或提供担保的权利。在此情况下,由于违法减资造成公司对外清偿能力减弱,债权人有权要求股东在减资范围内对公司未能清偿的债务承担补充赔偿责任。

Among the above circumstances, we would like to focus on analyzing illegal capital reduction caused due to failure in notifying the creditors. According to the requirement of the law, the company is obliged to notify the creditors of the fact of capital reduction, and settle debts in advance or provide guarantees as requested by the creditors. If the company fails in giving such notice, the creditors may lose their right to requests for debt settlement in advance or provision of guarantees. Under such circumstances, due to the fact the company's external solvency is weakened which is caused by illegal capital reduction, the creditors have the right to demand the shareholders take supplementary liability for the unsettled company debt to the extent of the reduced registered capital.

如果公司减资程序符合法律规定,而债权人在收到通知时未及时要求清偿债务或提供担保的,其在事后又提出要求股东在减资范围内对公司未能清偿债务承担补偿赔偿责任的,通常不会获得人民法院的支持。

However, if the company follows the process of capital reduction strictly according to the law, while the creditors fail to request for debt settlement in advance or provision of guarantees in a timely manner, the creditors are not allowed to request for supplementary liability for unsettled company debt against the shareholders at a later time.

因此,对于有减资需求的企业,应高度重视各项减资环节的合规性,严格按照法律规定办理减资,避免因非法减资给公司或股东造成不良后果。

Therefore, for companies in need of capital reduction, they should attach great importance to the compliance relating to various steps of capital reduction, and handle the capital reduction strictly in accordance with the law, so as to avoid any negative consequence to the company and the shareholders.

**如您对本文有任何问题，请联系：**

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