
Provisional Rules on Enterprise Information Disclosure and Their Implications

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China's State Council approved the Provisional Rules on Enterprise Information Disclosure (企业信息披露暂行条例) (the Disclosure Rules) on July 23, 2014, which take effect on October 1, 2014.¹ The Disclosure Rules apply to all companies registered in the People's Republic of China, including foreign invested enterprises (FIEs), and are part of a larger process under China's new leadership to accomplish three broad goals: (i) foster economic growth by reducing unnecessary burdens on companies and giving them greater flexibility; (ii) reduce reliance on the static concept of registered capital (capital paid in or committed to be paid in) as a measure of company creditworthiness; and (iii) collect and release to the public more information about companies so the market, rather than officials, can determine who succeeds and who fails.

The amendment of the Company Law last year started the process, especially by liberalizing registered capital contribution scheduling requirements. Then, earlier this year, the State Council issued the Plan on the Reform of the Registered Capital Registration System (国务院关于印发注册资本登记制度改革方案的通知) (Reform Plan).² Some of the major changes include: (i) elimination of minimum registered capital requirements (except for companies in certain regulated industries); (ii) replacement of "paid-in capital" by "subscribed capital" (i.e., elimination of mandatory requirements on timing of capital contributions, capital verification procedure and ratio between capital contributions in cash vs. non-cash assets, which will now be solely determined by the company's shareholders); and (iii) replacement of annual inspections by annual reports. The Reform Plan generally places responsibility for compliance on the companies and their legal representatives and responsible persons.³ Companies that fail to comply may be "blacklisted," which will subject such companies to restrictions with respect to their future business activities.

The Disclosure Rules detail the Reform Plan and will be administered by the State Administration for Industry and Commerce (SAIC) in its capacity of company registrar. To enable the public or the market to better evaluate a company's creditworthiness, the Disclosure Rules require government agencies and the companies themselves to submit certain information to the publicly available Enterprise Credit and Information Disclosure System for public disclosure on a real-time basis. Such information consists of registration information, registration of ownership change, mobile assets mortgages and pledges, equity pledges, administrative penalties, and other

information as may be required by law within SAIC's domain.⁴ Such information is required to be disclosed within 20 days after it is available.

In addition, companies, including FIEs, are required to submit annual reports for public disclosure (annual reports for the preceding year must be submitted by June 30 of the following year), which replaces the annual inspection system. The annual report must be in Chinese and include such information as contact information, liquidity status, equity investments and formation of entities, subscribed capital, timing and method of capital contributions as agreed by the shareholders, ownership changes and company website. Disclosure of detailed financial information is no longer mandatory and companies can now decide whether to include such detailed financial information as work force, total assets and liabilities, pledges and guarantees, shareholders equity, operating revenue, profits, and taxes paid. In the past, companies were required to submit their audited financial statements during the annual inspection.

The purpose of the Disclosure Rules is to enable the public to gain a better understanding of companies with which they may deal or in which they may choose to invest while enhancing the protection of proprietary business information of non-public companies. Companies and others will be able to submit requests for the correction of erroneous information.

Under the Disclosure Rules, enterprises with abnormal operational activity or serious violations of law will be listed in the operational abnormality list which will be published on the Enterprise Credit and Information Disclosure System. Such measures as credit restrictions, government procurement restrictions or bars, and restricted eligibility to bid on projects and purchases of state-owned land may be imposed on enterprises that fail to release their information within designated periods or engage in fraudulent concealment.⁵

To cope with the new disclosure system, SAIC released five related rules on August 27, 2014, namely the Provisional Rules on Enterprise Information Disclosure Spot Checks, Provisional Rules on the Administration of the Operational Abnormality List, Provisional Rules on the Annual Reports of Individually-Owned Businesses, Provisional Rules on the Annual Reports of Specialized Farmers' Cooperatives and Provisional Rules on the Disclosure of Information related to Administrative Penalties.

These rules were all issued while the government was cracking down on unauthorized access to and disclosure of sensitive company information by journalists and others, detaining and prosecuting some. The Disclosure Rules show that the government recognizes the need for more disclosure in the interest of economic reform, but wants to control and constrain that flow.

¹See Provisional Rules on Enterprise Information Disclosure adopted by the State Council on July 23, 2014, and effective as of Oct. 1, 2014, *available at* news.xinhuanet.com/2014-08/23/c_1112198556.htm.

²See Reform Plan on the Registration Regime of Company Registered Capital issued by the State Council on Feb. 7, 2014, *available at* www.saic.gov.cn/zcfg/xzfggfxwj/xxb/201402/t20140219_141923.html.

³ The “legal representative” is a natural person appointed to act on the company’s behalf. The General Principles of Civil Law define the role as the “responsible person who performs the duties and powers on behalf of a legal person in accordance with the law or the constituent documents of the legal person.” Under the Company Law, all businesses established in China must have a legal representative. “Responsible person” refers to those individuals with direct responsibility for conduct, compliance in this instance.

⁴See Article 6 of the Disclosure Rules.

⁵See Articles 17, 18 of the Disclosure Rules.

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