
Update on Shareholder Liability in Regard of Subscribed Capital in a China Company

Description

We should have written this post earlier.

On this blog, in old posts, we mentioned the shareholder liability in regard of their subscribed capital contribution:

[Can company's creditors go after shareholders who have not paid up subscribed capital?](#)

[Registered capital, the greater, the better? Not really!](#)

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Sample Business License of a China Company with Registered Capital

The main point is that a creditor of a company may go after the company's shareholders who have subscribed to the company's registered capital but have not paid it up to the extent of the amount of such unpaid capital.

The rule was initially provided in an interpretation by China Supreme Court of China Company Law back in 2010. Over the years, courts have found it unfair to shareholders who are said to enjoy the time benefits of deferring the payment of the subscribed capital, esp when the company may still have other assets available to repay its debts.

registered capital of the company is RMB 5 million, and Tom has subscribed 20%, i.e. RMB 1 million. But Tom has never paid a penny to the company as his contribution of his subscribed registered capital. If the company is ordered by court to pay RMB 1.5 million to a creditor, then in the enforcement proceeding, the creditor can add Tom as a party subject to the enforcement proceeding, and if approved by the enforcement court, Tom will be ordered to pay RMB 1 million to the creditor.

Lastly, there is the issue of how to add and substitute shareholders to pay corporate debts in court enforcement proceeding. The 2016 Supreme Court interpretation addresses this as well. If the fact of failure on the part of shareholders to pay up their subscribed registered capital is firmly established and no dispute over it, the court may directly decide to add and substitute such shareholders to pay the corporate debts. However if there is serious dispute in proving the failure, then the court may organize a hearing to decide on the issue within 60 days. The shareholder may institute a separate legal action to challenge the attempt of the enforcement court to catch him for paying the corporate debts. So the road for corporate creditors to pursue the liabilities of the corporate shareholders in regard of their liability to pay up subscribed registered capital may prove to be bumpy.

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