

境内注册公司股权出资

Capital injection by equity stock of domestically incorporated companies

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国家工商行政管理总局日前公布了《股权出资登记管理办法》，自 2009 年 3 月 1 日起实施。工商总局企业注册局负责人 2 日就这一办法的有关情况回答了记者的提问。

A few days ago the State Administration of Industry and Commerce (the SAIC) announced the “Administrative Measure for the Registration of Capital Contribution by Equity Stock” (the Administrative Measure) effective as from 1st March 2009. The responsible official replied to questions raised by the media reporter on 2nd February 2009.

问：股权出资对促进投资和企业发展有什么积极作用？

Q: What positive role does the use of stock in capital injection/contribution have played in promoting investment and the development of enterprises?

答：股权是一种重要的财产权，是公司股东按投入公司的资本额所拥有的参与公司重大决策、享受财产利益并可依法转让的权利。

A: Stock equity is an important property right. It is the legal right for the stock contributor to participate in the major decision making of the Company to the extent of the equity brought in, to receive returns on investment and transfer of the equity interest in accordance with the law.

允许投资人以股权出资，一是能够丰富股权权能，通过激活股东已往投入到公司所形成资产，增加股权利用的渠道，同时降低转让的交易成本，有效调动投资人的积极性，促进投资；二是通过资本链条的纽带作用，可以在维系投资人对原有公司和产业的影响力控制力的同时，实现投资向新的领域和产业转移，为企业优化产业结构，重组兼并，扩大规模，做大做强服务；三是通过促进投资创业可以带动就业，减轻社会就业压力，实现经济稳定增长。

The provision of capital contribution by equity stock can firstly enhance the utilization of the assets as represented by the brought-in capital, increase the ways for using stock capital, reduce the transaction costs in equity transfer, and motivate investors. Secondly, it can facilitate the movement of capital to new market and industry sectors, optimization of industrial structures, mergers, acquisitions and economy of scale. Thirdly, it brings along more employment opportunity as a result of more investment, eases the social pressure arising from unemployment and achieves

steady economic growth.

为应对国际金融危机引发的严峻经济形势，保持经济平稳较快发展，党中央、国务院出台了一系列重大政策措施。工商总局积极落实中央和国务院的部署，研究制定了若干实施意见。其中，加快出台这一办法，充分发挥股权出资在促进投资等方面的重要作用就是重要举措之一。

To cope with the economic slowdown resulting from international financial crises, maintain a steady development of the economy, the Central Committee of the Chinese Communist Party and the PRC State Council formulate a number of economic policies. Against such background, the SAIC studied certain proposed policies, and among others, sped up the formulation of this Administrative Measure to strengthen the role that the use of stock as capital contribution plays in promoting more investment.

问：制定这一办法的依据是什么？

Q: What are the legal bases for the Administrative Measure?

答：公司法规定，“股东可以用货币出资，也可以用实物、知识产权、土地使用权等可以用货币估价并可以依法转让的非货币财产作价出资”。

A: The PRC Company Law provides that “stockholder can contribute capital by cash, by tangible assets, intellectual property rights, land use rights, and non-monetary assets that are valued in dollar terms and transferrable in accordance with the law”.

《公司登记管理条例》进一步规定，“股东以货币、实物、知识产权、土地使用权以外的其他财产出资的，其登记办法由国家工商行政管理总局会同国务院有关部门规定”。

The Regulation for the Registration of Companies” also provides that “where stockholders inject the capital that does not take the form of cash, tangible assets, IP rights, land use rights, and other properties, the SAIC and the relevant ministries under the State Council have the authority to prescribe the registration procedure.

上述规定在原则上认可股权可以作为出资方式的同时，也赋予了工商总局制定这一办法的职权。

The above legal authority specifies the legal rules for use of stock as capital contribution, and delegates the authority to SAIC to formulate the administrative measure for it.

问：办法的起草过程如何？

Q: What are the processes for making the legal rules for Administrative Measures?

答：工商总局对制定这一办法高度重视，早在 2006 年底，就开始部署和陆续批准上海、江苏、浙江、重庆、成都、山东和广东等地工商机关开展股权出资登记试点，摸索经验；2008 年初成立了专门的起草小组，正式启动了办法的起

草工作。

A: At the end of 2006, the SAIC already approved the pilot scheme for the use of equity stock in capital contribution in Shanghai, Jiangsu, Zhejiang, Chongqing, Chengdu, Shandong and Guangdong. After obtaining experiences, the SAIC set up a task force to kick start the drafting of the administrative measure.

起草过程中，工商总局广泛征求了国务院有关部门、有关行业协会、有关专家、试点省市工商局及其他省级工商局的意见，征求了有关企业和基层工商机关的意见，并通过互联网向社会公众征求了意见。在广泛征求意见的基础上，认真研究，几易其稿，形成了日前公布的办法。

During the drafting process, the SAIC invited comments and gathered the opinions from the ministries under the State Council, trade associations, experts, the offices of the SAIC at the provincial level and below, and gather the public opinion through the Internet. The administrative measures were announced a couple of days ago after consultation and a series of revisions.

问：办法关于出资股权有哪些限制？

Q: Are there any restrictions imposed on the use of equity stock in capital contribution?

答：根据公司法关于出资财产应当可以用货币估价并可依法转让的规定，办法规定，用作出资的股权应当权属清楚、权能完整、依法可以转让。为提高其操作性，同时在一定程度上防范风险。

A: According to the PRC Company Law, the property used for capital contribution purpose should be valued in monetary terms and transferrable in accordance with the law. The property used for capital contribution purpose should have clear legal title, be free from encumbrances and transferrable in accordance with the law. At the same time, some provisions are in place to enhance the operability and guard against the risks involved.

办法还对禁止用以出资的股权进行了列举，规定具有下列情形的股权不得用作出资：股权公司的注册资本尚未缴足；已被设立质权；已被依法冻结；股权公司章程约定不得转让；法律、行政法规或者国务院决定规定，股权公司股东转让股权应当报经批准而未经批准；法律、行政法规或者国务院决定规定不得转让的其他情形。

The following equity stocks are prohibited from being used in capital contribution: stocks in the company the capital of which has not been fully paid up, stocks that have been pledged, stocks that have been frozen under the law, stock in the Company the article of association of which restricts any stock transfers, stock of the company whose equity capital cannot be transferred in the absence of approval from the administrative authority in accordance with the law or regulations and rules, and the stocks that are banned from being transferred under the law or regulations and decrees as promulgated by the State Council

问：为什么办法对股权出资实际缴纳期限做出严格规定？

Q: Why is it that the administrative measure imposes a strict timeframe for the stock capital contribution?

答：办法规定，公司设立时，投资人以股权出资的，自被投资公司成立之日起一年内，投资人应当实际缴纳，被投资公司应当办理实收资本变更登记；公司增加注册资本时，投资人以股权出资的，应当在被投资公司申请办理增加注册资本变更登记前实际缴纳。

A: The Administrative Measure provides that the promoters of the new company must bring in the equity stock within one year and that the company should complete the procedure for the registration of paid up capital. Where the Company increases the registered capital, the investors should bring in the stock capital before the company submits application to increase the amount of the registered capital.

与公司法的一般性规定相比，办法的规定较为严格，主要考虑是为了缩短投资人在实际缴纳出资前同时作为股权公司和被投资公司股东的期限，减少投资人滥用双重股东身份，利用同一股权进行多家公司投资的风险。

The administrative measure is stricter than general provisions under the PRC Company Law. It is aimed at shortening the period in which the investors should have a dual stockholder capacity both in the investing company and the invested company, and reducing the risks and uncertainty during the period.

问：股权出资在提交登记材料方面有什么新规定？

Q: what documents are required for purposes of registration for stock capital contribution?

答：办法规定，股权出资在提交材料方面，总体上适用《公司登记管理条例》和工商总局有关企业登记提交材料的规定。

A: The Administrative Measure refers to the same documentation as is laid down under the Regulation for the Administration of Company Registration.

此外，考虑到股权关联方较多、法律风险较大的特点，办法规定，被投资公司以股权认缴出资申请办理登记时，还应当提交股权认缴出资股东签署的股权认缴出资承诺书及股权公司营业执照复印件。

In addition, there may be many parties involved in stock capital contribution. It is provided under the administrative measures that the investor should give a written undertaking to contribute the stock capital and produce a copy of the business license for the Company of which he is the stockholder.