



EXPERIENCE SHARING

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LATE PAYMENT FOR CAPITAL CONTRIBUTION

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The capital contribution term is regulated by law on enterprises. However, do companies know about the capital contribution term and do they get fined if the shareholders or company members are late with their contributing payment?

Company X is a joint stock company established and operated in accordance with the Vietnamese laws by three shareholders, one of them is a foreigner called Mr. A. In 2017, when Company X was set up, Mr. A owned 50% of capital shares of Company X, the other 50% of the capital shares was owned by two Vietnamese partners. However, after setting up the company, Mr. A did not contribute fully but only $\frac{1}{4}$ of his capital shares to the company. Company X then operated its business. After one year of operation, Mr. A decided not to invest more in Company X and he would like to transfer his contributed capital shares to one of the Vietnamese partner. Consequently, after the restructuring, Company X shall have only two Vietnamese partners as the company member.



According to the current Law on Enterprise No. 68/2014/QH13 issued by the National Assembly of Vietnam dated November 26th 2014, Article 112.1 requires shareholders of a joint stock company have their obligations of paying for their owned capital shares within 90 days from the date of the Enterprise Registration Certificate (the “ERC”) issuance. In case shareholders fail to pay fully their owned capital shares, they shall have the right to vote receive dividends, and other rights limited only to the amount of the paid shares; but they must not transfer the call option of the unpaid shares to another person as prescribed by Article 112.3.b. Moreover, the company shall register an adjustment to charter capital to be the total par value of shares which have been fully paid for and change of founding shareholders within 30 days from the deadline for making full payment for the shares registered.

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Consequently, Mr. A shall be fined an amount of VND30,000,000 to VND40,000,000 for failure to satisfy conditions for investment by capital contribution as provided by Article 13.5.b of Decree No. 50/2016/ND-CP issued by the Vietnamese Government dated June 01st 2016 on penalties for administrative violations against regulations on planning and investment. Apart from the investigation and penalty by the Department of Planning and Investment, the procedures for Company X to finish its restructure shall take longer than usual due to the complexity of the case.

In general, it should be noted for foreign investors that although they do not have to complete their payment before the ERC issuance and no competent authorities shall chase after foreign investors payment, completing the capital shares payment obligation on time will avoid potential risks for investor during their investment in Vietnam.

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