

## China Promulgates its New Foreign Investment Law

On 15 March 2019, the National People's Congress of the People's Republic of China ("PRC") promulgated the new PRC Foreign Investment Law ("FIL"). When the new 2019 FIL comes into force on **1 January 2020**, it will repeal the PRC Wholly Foreign Owned Enterprise Law, PRC Sino-foreign Equity Joint Venture Law and PRC Sino-foreign Contractual Joint Venture Law (which are currently the laws applicable to foreign investments in PRC).

This Update sets out a short summary of the salient terms of the new FIL.

### Definition of "Foreign Investment" and "FIE"

Under the new FIL, "foreign investment" means any direct and indirect investment in the PRC (which excludes Hong Kong, Taiwan and Macau for FIL purpose) by foreign individuals, enterprises, or other entities. This includes:

- incorporation of a foreign invested enterprise ("FIE") in PRC by foreign investor(s) alone or together with other investors;
- acquisition of shares, equity, share of assets of a PRC company or other similar interest;
- investment in greenfield projects in the PRC by a foreign investor or together with other investors; and
- other forms of foreign investment as prescribed by the State Council, administrative rules and regulations.

Under the new FIL, an "FIE" will mean an enterprise registered in the PRC in accordance with PRC law with all or part of its equity interest being owned by a foreign investor. It will capture

the existing Wholly Foreign Owned Enterprise, Sino-foreign Equity Joint Venture and Sino-foreign Contractual Joint Venture but will not make a distinction between them any longer.

### Negative List and Equal Treatment

The PRC government imposes certain restrictions on foreign investment in some industries and areas as prescribed by the negative list. The latest version of the negative list is the Negative List for Foreign Direct Investment Industry (2018 version) promulgated by the Ministry of Commerce and National Development and Reform Commission on 28 June 2018. This negative list has restrictions on 48 industries which are either "restricted" or "prohibited" for foreign investment purpose.

Subject to the negative list, FIEs will be treated equally with PRC domestic companies and foreign investors will be treated equally for investments in the PRC without any discrimination.

### Protection to Foreign Investment

The new FIL further clarifies and reiterates the following points:

- There will generally be no requisitions of an FIE or its assets. In cases of requisitions in the public interest, fair and reasonable compensation will be offered and the whole process will be conducted in accordance with due legal process.
- All equity investments, profits, capital gains, asset disposal proceeds, IPR license royalties, liquidation proceeds etc may be repatriated out of PRC without

restrictions whether in RMB or foreign currency.

- The government will protect the intellectual property rights (“IPRs”) of the FIEs and foreign investors and will not force the transfer of IPRs. All IPR transfers can be commercially negotiated between the relevant parties.
- FIEs may participate in government procurement exercises and will be offered equal and fair treatment for products manufactured or services provided in the PRC.
- FIEs are allowed to list their shares or issue bonds in the PRC.
- The corporate governance structure and corporate form of FIEs will be in accordance with PRC Company Law and/or PRC Partnership Law.

## Transitional Arrangement

The new FIL provides a 5 year transitional arrangement for the existing FIEs which are currently in the form of Wholly Foreign Owned Enterprise, Sino-foreign Equity Joint Venture and Sino-foreign Contractual Joint Venture to maintain its existing corporate form.

## What is to be expected?

The new FIL streamlines the laws applicable to foreign investments by replacing the existing PRC Wholly Foreign Owned Enterprise Law, PRC Sino-foreign Equity Joint Venture Law and PRC Sino-foreign Contractual Joint Venture Law. However, the new FIL is short on details and it is widely expected that detailed implementation rules and regulations will be promulgated by the State Council before 1 January 2020.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



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