



# 《新外商投资法英文解析》 | China Passes

## New Foreign Investment Law

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《新外商投资法英文解析》

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2019年3月15日，全国人大通过了新的外商投资法。万商天勤上海办公室合伙人董亮和国际法律顾问石明轩博士对本次新修订的法律进行了详尽的法律分析，并在新的投资法律框架下为跨国企业用户提出了实用性的建议。本文已经被国际知名法律咨询机构律商联讯全文登载。

April 16, 2019

Foreign investment; cross-border transactions

China's new Foreign Investment Law (**2019 FIL**) changes how foreign investment is regulated in China. The National People's Congress (**NPC**) of the People's Republic of China (**PRC**) passed this new law on March 15, 2019. It had been published in draft form (**2018 Draft Law**) on December 26, 2018, and it will take effect on January 1, 2020.<sup>1</sup>

The Chinese authorities rarely finalize a draft law this quickly. The 2019 FIL was passed only three months after the 2018 Draft Law was published.<sup>2</sup> The 2019 FIL promises to further open China's market to foreign investment and protect the rights of foreign investors. The Chinese government might also be responding to pressure applied by United States negotiators during recent trade talks.

Four years ago, an earlier Draft Foreign Investment Law (**2015 Draft Law**) was published for public comment. This draft law contained about four times as many provisions as the 2019 FIL, and it contained many details needed to implement the law, but it was never enacted. Because of its brevity, the 2019 FIL can be considered a guideline that will require substantial implementing legislation.

In any event, the 2019 FIL has added some provisions to the 2018 Draft Law and has revised others. This V&T Alert is an overview of the major revisions made to the 2018 Draft Law and it examines many facets of the new regulatory regime.

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<sup>1</sup> The terms "PRC" and "China" are used interchangeably in this client alert and neither includes Hong Kong, Macau, or Taiwan.

<sup>2</sup> A V&T client alert regarding the 2018 Draft Law is available at: <http://www.vtlaw.cn/ueditor/php/upload/file/20190111/1547199925360037.pdf>.

## General provisions

### 1. Goal

The stated goal of the 2019 FIL is to create a stable, transparent, and predictable environment for foreign investment in China by fundamentally changing how foreign-invested enterprises (**FIE**) are regulated. A main purpose of previous foreign investment legislation was to regulate foreign investments, but the 2019 FIL reduces regulations and streamlines government approval formalities. The new law also calls for the establishment of a comprehensive “investment service system” whose purpose is to assist foreign entities that invest in China by providing information about laws, regulations, policies, and investment project information.

Many foreign business organizations say that although the 2019 FIL is a step in the right direction, it is incomplete. The American Chamber of Commerce in China, for example, issued an official statement that said “[d]espite some revisions, the provisions set forth in the latest public draft of the foreign investment law are still quite general and do not address a number of the persistent concerns of foreign companies or foreign-invested enterprises in China.”<sup>3</sup> The New York Times said that “the new law is made up of many single-sentence pronouncements on complex issues, with no details on how those rules would be carried out.”<sup>4</sup> And Carlo Diego D’Andrea, chairman of the European Chamber of Commerce in China, said: “This is good, but it’s not enough.”<sup>5</sup> The 2019 FIL is therefore a work in progress, and its full effect will not be known until a substantial amount of implementing legislation has been written.

### 2. Scope

The 2019 FIL applies to natural persons, enterprises, and other organizations from foreign countries (**Foreign Investors**) when they:

- (a) establish foreign-invested enterprises in China, either individually or jointly (**Greenfield Investments**);
- (b) acquire shares of stock, equity interests, property rights, or other similar rights or interests involving domestic Chinese enterprises (**M&A**);
- (c) invest in new projects, either individually or jointly; or
- (d) invest in mainland China through other means prescribed by PRC law, administrative

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<sup>3</sup> American Chamber of Commerce in China, “AmCham China Statement on Foreign Investment Law,” *AmCham China Statements*, March 13, 2019, <https://www.amchamchina.org/about/press-center/amcham-statement/amcham-china-statement-on-foreign-investment-law>.

<sup>4</sup> Keith Bradsher, “China Law Responds to U.S. Investment Demands. Critics Say It’s Not Enough,” *New York Times*, March 4, 2019, <https://www.nytimes.com/2019/03/04/business/china-foreign-investment.html>.

<sup>5</sup> Bradsher, “China Law.”

regulations, or the State Council.<sup>6</sup>

The scope of investments contemplated by the 2019 FIL is also greater than that addressed by current Chinese law. Existing Chinese law addresses Greenfield Investments, while M&A projects are separately governed by Regulations on Foreign Investors' Mergers and Acquisitions of Domestic Enterprises and Administrative Measures for Foreign Investors' Strategic Investment in Listed Companies.<sup>7</sup> Not only does the 2019 FIL apply to M&A, it applies to “new projects,” which appears to include a much broader range of investments. Such new projects would be allowed as long as they are not prohibited, like foreign-invested sole proprietorships that are currently prohibited but which will probably be allowed when the 2019 FIL takes effect.

### 3. Indirect investment

Implementation rules yet to be written need to clarify what the term “indirect investment” means: An indirect investment will probably be subject to the 2019 FIL if it is made by a foreign entity whose ultimate controlling shareholder is a Chinese entity or a Chinese individual. One way to determine whether an investment is direct or indirect is to examine if the ultimate controlling shareholder is a Foreign Investor. If the ultimate controlling shareholder is a Foreign Investor, but the investing entity is a Chinese enterprise, then the investment is an indirect foreign investment, regardless of how many affiliated entities are between the ultimate controlling shareholder and the investing entity. However, some practical issues remain unresolved, since Foreign Investors, unlike their domestic counterparts, will remain subject to the Negative List when they invest in China.

We do not yet know if the 2019 FIL will require the disclosure of the ultimate controlling shareholder when determining if an investment is a foreign investment. Nor do we know how much needs to be disclosed. It could be to the level of an individual, to a publicly listed company, to a trust, or even to an entity or individual behind a trust. Nor do we know if an investment will be considered a foreign investment if the ultimate controlling shareholder is a PRC citizen or business entity. These questions will need to be clarified by the implementing rules.

### 4. Variable interest entities

A variable interest entity (**VIE**) is controlled by contractual arrangements instead of majority voting rights. VIEs are an important issue in China because they can enable a

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<sup>6</sup> Waishang Touzi Fa (外商投资法) [Foreign Investment Law] (promulgated by the National People's Congress, March 15, 2019, effective January 1, 2020), article 2.

<sup>7</sup> The Regulations on Foreign Investors' Mergers and Acquisitions of Domestic Enterprises, and Administrative Measures for Foreign Investors' Strategic Investment in Listed Companies are available at: <http://www.mofcom.gov.cn/aarticle/b/c/200608/20060802839585.html> and [http://www.csrc.gov.cn/pub/shenzhen/xxfw/tzsyd/ssgs/bgcz/bgxx/201403/t20140317\\_245584.html](http://www.csrc.gov.cn/pub/shenzhen/xxfw/tzsyd/ssgs/bgcz/bgxx/201403/t20140317_245584.html).

Foreign Investor to invest in a sector that would otherwise prohibit foreign investment, like the internet sector. The 2015 Draft Law and its official annotations said that VIEs would be regarded as foreign investments, but the 2019 FIL is silent on this issue. We suspect that the 2019 FIL will apply to VIEs since the law has a “catch-all” provision for foreign investment that includes VIEs. In any event, subsequent regulations will have to clarify whether the 2019 FIL applies to VIEs.

## 5. Investments from Taiwan, Hong Kong, and Macau

The 2018 Draft Law and the 2019 FIL do not explicitly state whether they apply to investments from Taiwan, Hong Kong, and Macau. However, during a press conference a Chinese official said that foreign investment regulations will indeed apply to such investments.<sup>8</sup> If the 2019 FIL does not apply to these investments, then additional legislation will be required.

## Investment promotion

One goal of the 2019 FIL is to make China more attractive to Foreign Investors. The 2019 FIL therefore provides the following incentives:

### 1. Preferential policies for some foreign investments

Preferential policies for Foreign Investors are currently being implemented in certain industries located in special economic zones, like the one in Shenzhen, and pilot free trade zones (**FTZ**), like the one in Shanghai (collectively, “**Special Zones**”). The latest Special Zone was approved by the State Council in September of 2018 and is located in Hainan Province. Internet related and financial industries located in Special Zones currently enjoy preferential policies whose purposes include meeting the current needs of the Chinese economy and enabling China to keep promises it made when it became a member of the WTO. We anticipate that the Chinese government will establish additional Special Zones that promote foreign investment in certain industries.

### 2. More involvement of Foreign Investors in the following areas:

#### (a) Legislative process

This is the first time that PRC law requires that Foreign Investors be given the opportunity to consult with Chinese officials when new legislation, rules, and regulations affect foreign investment. Foreign Investors are also now allowed to participate in the process of setting standards in a wide variety of industries.

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<sup>8</sup> Yesui Zhang, press conference during the 13<sup>th</sup> National People’s Congress of the PRC, *Xinhua Net*, March 4, 2019, [http://www.gov.cn/xinwen/2019-03/04/content\\_5370547.htm](http://www.gov.cn/xinwen/2019-03/04/content_5370547.htm).

(b) Government procurement

Foreign Investors will be treated equally when they participate in government procurement activities. However, as currently written, the 2019 FIL says that the equal treatment extends only to products produced and services provided by Foreign Investors within the territory of China. In other words, the equal treatment might not extend to products not produced in China.

3. Improved government services for Foreign Investors

A stated goal of the 2019 FIL is to make government services provided to Foreign Investors more convenient, efficient, and transparent. The central government will establish a system to provide legal and business consultations and information disclosure. Local governments are also allowed to provide more localized, simple, and streamlined regulations.

**Investment protections**

The 2019 FIL also promises to better protect the investments made by Foreign Investors in the PRC.

1. Intellectual property and trade secrets

Government coerced transfers of intellectual property (**IP**) and technology owned by foreign-invested enterprises are now explicitly forbidden. Such transfers are to be voluntarily negotiated between the parties on an arm's length basis. Government agencies are also instructed to protect IP owned by Foreign Investors and foreign-invested enterprises or these agencies may be held accountable under the 2019 FIL.

It is no secret that “[o]ne of the Trump administration’s primary complaints is on forced technology transfers. The administration said the forced transfers happen as a result of Chinese policies that require foreign firms to enter joint ventures as well as regulatory and licensing reviews.<sup>9</sup> The 2019 FIL is seen as a step in the right direction: White House National Economic Council Director Larry Kudlow said that the 2019 FIL will “restrain any intellectual property theft and will also restrain any forced transfer of technology.”<sup>10</sup> Chinese Premier Li Keqiang also promised that further protections for IP and trade secrets would be made in the near future, including the strengthening of laws that protect IP and the introduction of a mechanism to compensate victims of intellectual property infringement.<sup>11</sup>

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<sup>9</sup> Adam Behsudi, “China’s New Investment Law Replete with Question Marks,” *Politico*, March 15, 2019, <https://www.politico.com/story/2019/03/15/chinas-investment-law-trade-1274817>.

<sup>10</sup> Behsudi, “China’s New Investment Law.”

<sup>11</sup> Ryan Woo and Kevin Yao, “China Will Follow Through On New Investment Law, Premier Pledges,” *Reuters*,



While the 2019 FIL is viewed as a step in the right direction, it still does not address some major concerns of Foreign Investors. For example, Foreign Investors may now ostensibly participate on an equal basis in government procurement activities, but only if their products are manufactured in China. Thus, the 2019 FIL does not explicitly force Foreign Investors to transfer IP to their Chinese counterparts, but the prerequisite that foreigners must manufacture products in China before they are allowed to participate in government procurement activities can put the foreign IP at risk. Foreign Investors need to take other business considerations into account as well, like the time and cost needed to set up a separate plant in China. It remains to be seen how well the 2019 FIL actually protects foreign IP in China.

An interesting late addition to the 2019 FIL regards the protection of commercial and trade secrets.<sup>12</sup> The 2019 FIL now explicitly requires that Chinese officials keep proprietary information and trade secrets of foreign-invested enterprises and Foreign Investors secret. The 2018 Draft Law did not include this provision: It was added to a late draft of the 2019 FIL before it was submitted to the NPC for final review in March. Administrative sanctions and criminal prosecutions may be imposed to ensure that this provision is enforced.

## 2. Free repatriation

The free repatriation of the capital contributions, profits, capital gains, royalties, and other compensation of Foreign Investors will be allowed in RMB or a foreign currency. This appears to be the first time that the word “free” has been used in connection with the repatriation of gains derived from investments made by Foreign Investors in China. Under the Existing Laws, repatriation is (i) limited to legitimate profits, funds that remain after a dissolution, and other legitimate income, and (ii) allowed only after tax clearance. Although the 2018 Draft Law does not mention the tax authority in connection with the repatriation of investments made by Foreign Investors, the government will most likely retain this authority, as well as the authority to regulate foreign exchange. The free repatriation must still comply with relevant PRC laws, regulations, and rules relating to foreign exchange control, which may vary from time to time.

## 3. A complaint mechanism

The 2019 FIL says that an official complaint mechanism will be established that foreign-invested enterprises can use if their investments in China are adversely affected by government conduct. The complaint mechanism provides the right to appeal to the

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March 15, 2019, <https://www.reuters.com/article/us-china-parliament-lawmaking/china-will-follow-through-on-new-investment-law-premier-pledges-idUSKCN1QW04U>.

<sup>12</sup> Evelyn Cheng, “China Scrambled to Show It’ll Change How It Treats Foreign Firms—That May Not Be Enough for Trump,” *CNBC China Economy*, March 15, <https://www.cnbc.com/2019/03/15/chinas-new-foreign-investment-law-may-not-be-enough-for-us-trade-deal.html>.

appropriate authority, and it will apply to all phases of a foreign investment: from the establishment of a business entity to its dissolution. The 2019 FIL also provides two more procedures for resolving disputes with government entities: administrative reconsideration and administrative lawsuits. The 2019 FIL does not specify which authority will oversee the complaint mechanism or what its procedures will entail. Nor is it known whether decisions rendered by the complaint mechanism can be appealed. Specific rules will have to be promulgated to address these issues.

#### 4. Additional protections

##### (a) Expropriation by the state

Investments made in China by Foreign Investors may be expropriated by the state only for public use and only after fair compensation has been paid. This compensation must also be paid in a timely fashion, which was not mentioned in the 2018 Draft Law. Lastly, the 2019 FIL includes a due process clause that better protects the interests of Foreign Investors.

##### (b) Interactions with the state

The 2019 FIL for the first time mandates that the Chinese government keep promises made to Foreign Investors who enter into contracts with the government or governmental agencies. The government may change the terms of state contracts, or rescind promises it has made, but only when in keeping with national interests and after due process has been afforded. The government is also required to act in the best interests of the public, and foreign-invested enterprises and Foreign Investors must be paid fair compensation.

The requirement that the government pay compensation if it breaches a contract will probably encourage foreign investment in western China, and especially in rural areas. Some multinational clients have found that local governments in rural areas are more likely than their coastal counterparts to breach government contracts or to rescind promises, like tax breaks that were made to attract foreign investment. As communications with rural government officials, and even judicial and administrative proceedings whose purpose is to make government entities live up to their promises, have to date been of limited use, there has not been adequate legal protection against arbitrary governmental conduct.

##### (c) More freedom of association

Foreign-invested enterprises may now choose whether to form business associations, something not previously allowed by PRC law. They may now also choose whether to join a business association, which will come as a relief to multinational corporations

who have complained about being coerced into joining local quasi-governmental associations that provide minimal services but which still require the payment of membership fees. Although the implementing regulations still need to be written, the 2019 FIL for the first time guarantees that foreign-invested enterprises have a right of association.

## Investment management

The 2019 FIL is based on the principle of national treatment, and it manages foreign investments in China through a negative list, reporting system, and national security review.

### 1. National treatment

Chinese authorities say they will now apply the “national treatment” standard to both domestic and foreign investments. Similar provisions were introduced in more detail in the 2015 Draft Law; the 2019 FIL provides only guidelines.

Policies that promote the business of Chinese enterprises will now be applied to foreign-invested enterprises as well. Foreign Investors are supposed to be treated the same as their local counterparts when Chinese authorities review applications for licenses, certificates, and qualifications for certain industries. Chinese government procurement procedures will also allow foreign-invested enterprises to participate on an equal basis as long as products have been domestically manufactured by foreign-invested enterprises, and any services are being provided by the foreign-invested enterprises within the territory of China. While this falls short of a true national treatment standard that treats the products and services of foreign-invested enterprises equally, even if not produced in China, the 2019 FIL does provide a more level playing field than the Existing Laws.

### 2. Investment guidance list

The negative list is a list of industries in which foreign investments are either prohibited or restricted (**Regulated Industries**). If an investment is made in an industry not found in the list of Regulated Industries, prior governmental approval is not required. In June of 2018, the National Development and Reform Commission (**NDRC**) released updated negative lists (**2018 Negative List**) that apply to the FTZ and the rest of China.<sup>13</sup> The 2018 Negative List continues to loosen restrictions placed on foreign investments in China. For example, restrictions placed on foreign shareholders are reduced or even eliminated in the TMT, infrastructure, automotive, and aerospace industries.

The NDRC also published a draft list of industries in which the Foreign Investors are encouraged to invest (**2019 Positive List**, together with 2018 Negative List, “**Investment**

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<sup>13</sup> The 2018 negative list issued by the NDRC is available at: [http://www.ndrc.gov.cn/zcfb/zcfbl/201806/W0201\\_80628640822720353.pdf](http://www.ndrc.gov.cn/zcfb/zcfbl/201806/W0201_80628640822720353.pdf).



**Guidance List**”); public opinion was solicited for this draft list until March 2, 2019.<sup>14</sup> In our experience, central and local governments often offer incentives like tax cuts or subsidies to Foreign Investors willing to invest in the areas found in the 2019 Positive List. The 2018 Negative List and 2019 Positive List offer valuable investment guidance for Foreign Investors deciding which industry in which to invest, especially if they are new to China.

### 3. Reporting system

The 2019 FIL says that information about foreign investments will be collected only when necessary. This information will be disclosed to the general public and will be shared with various governmental authorities so that foreign investors will no longer be required to prepare duplicate sets of the same application documents for different authorities. This information-sharing system is expected to increase the efficiency of government review and save time and money for Foreign Investors. Government authorities are also required to use the same review standards with foreign-invested enterprises as they do with their Chinese counterparts, except when otherwise required by law.

The 2019 FIL requires that foreign-invested enterprises submit information about investments to a government-managed platform. The implementing regulations will probably clarify if there will be a single, unified platform for information about both foreign and Chinese enterprises. Today there are two separate platforms. Foreign-invested enterprises are required to upload information onto a platform managed by the Ministry of Commerce (**MOC**); this information is disclosed to the general public and it includes information about annual reports and any legal proceedings in which the enterprise might be involved.<sup>15</sup> Chinese enterprises are required to upload information onto a different platform managed by the Administration of Industry and Commerce.

### 4. National security review

The MOC first introduced the national security review mechanism for foreign investments in 2011 in the *Circular on Formalizing Security Review System for the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors* (**Circular**). The 2015 Draft Law contained 26 substantive and procedural provisions regarding the national security review. The 2019 FIL, however, merely says that foreign investments are subject to a national security review, and that decisions made by the relevant authorities will be final. As the 2019 FIL does not specify how the national security review will be conducted, the final law

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<sup>14</sup> The Positive List issued by the NDRC is available at: [http://www.gov.cn/guowuyuan/2019-02/02/content\\_5363271.htm](http://www.gov.cn/guowuyuan/2019-02/02/content_5363271.htm).

<sup>15</sup> Shangwubu Guanyu Jinyibu Jiaqiang Waishang Touzi Xinxi Baogao Zhidu He Xinxi Gongshi Pingtai Jianshe De Youguan Tongzhi (Shang Zi Han [2017] No. 318), [商务部关于进一步加强外商投资信息报告制度和信息公开平台建设有关工作的通知 (商资函 318 号)] (promulgated by the Ministry of Commerce, effective June 27, 2019) article 1.

will probably contain a reference to the Circular and to other regulations that have been implemented by that time, as the scope of the Circular is limited to M&A.

## Legal liability

### 1. Chinese government officials

Government officials will receive administrative sanctions or even be prosecuted criminally if they abuse their power, are derelict of duty, engage in favoritism, or disseminate trade secrets in the course of performing their official duties.

### 2. Foreign Investors

Foreign Investors who violate the provisions of the Investment Guidance List could be subject to preliminary injunctions, be forced to pay restitution, and have to disgorge profits earned from unapproved investments. Foreign Investors who fail to comply with the reporting system will first receive a warning from the local authorities, and may be subject to a fine from ten thousand to fifty thousand RMB if the noncompliance is not remedied in a timely fashion.

## Conclusions and suggestions

The 2019 FIL is a concise blueprint for the regulation of foreign investments in the PRC. Because it lacks detail, subsequent rules and regulations (**Accompanying Regulations**) will need to be promulgated before it is fully implemented. The stated goal of the 2019 FIL is to create a more friendly and efficient market for Foreign Investors in the PRC.

Some in the foreign media greeted the 2019 FIL with skepticism. The Financial Times said that “the foreign business community has complained that the law leaves out many details compared with a 2015 version drafted by the Ministry of Commerce, opening the door to hidden impediments being written into the more detailed regulations.”<sup>16</sup> The Chinese government has promised to issue Accompanying Regulations that will reduce the ambiguity, and it has requested that Foreign Investors be patient. Chinese Premier Li Keqiang said: “I have said many times that China’s opening-up measures are often not launched as one package; they come out every year and even every quarter ... Then you turn around and realize they’ve cumulatively had an unimaginable effect.”<sup>17</sup>

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<sup>16</sup> Lucy Hornby, “China Passes Law in Bid to Ease Overseas Investor Concerns,” *Financial Times*, March 15, 2019, <https://www.ft.com/content/7e796b92-46bf-11e9-b168-96a37d002cd3>.

<sup>17</sup> Gerry Shih, “Amid Skepticism, China Fast-Tracks Foreign Investment Law to Show Goodwill to Washington,” *Washington Post*, March 15, 2019, [https://www.washingtonpost.com/world/asia\\_pacific/amid-skepticism-china-fast-tracks-foreign-investment-law-to-show-goodwill-to-washington/2019/03/15/9506b31e-4701-11e9-9726-50f151ab44b9\\_story.html?utm\\_term=.b2b094013636](https://www.washingtonpost.com/world/asia_pacific/amid-skepticism-china-fast-tracks-foreign-investment-law-to-show-goodwill-to-washington/2019/03/15/9506b31e-4701-11e9-9726-50f151ab44b9_story.html?utm_term=.b2b094013636).

Some in the foreign media also speculate that the “Chinese government appears to have rushed through the investment law as an olive branch to the US amid trade war negotiations.”<sup>18</sup> Even if that is the case, the rapidity with which the law was passed might suggest that the Chinese government now wishes to address some major concerns that Foreign Investors have for many years expressed about their investments in China. We will have a better idea if continued skepticism is warranted after the Accompanying Regulations have been promulgated.

V&T offers the following suggestions to our international clients regarding the 2019 FIL:

### 1. Consolidation of foreign investment regulations in five years

Starting on January 1, 2026, all current types of foreign-invested enterprises in China will cease to exist: Equity joint ventures, contractual joint ventures, and wholly foreign owned enterprises will have to convert into other business entities provided by PRC Company Law, like limited liability companies, companies limited by shares, or other approved forms. All foreign-invested enterprises in China should therefore start planning now so that during the five-year grace period they can change their business structures as mandated by the 2019 FIL. Five years after this law takes effect it will supersede the three principal laws and implementing regulations that currently govern foreign investment in China.<sup>19</sup>

### 2. Compliance is key to foreign investment in China

Foreign Investors should pay close attention to the rapidly evolving regulatory regime for foreign investment in China. Central and local governments will manage an information disclosure platform for Foreign Investors and their investments in China. The platform will include information about noncompliance and penalties that have been imposed on the Foreign Investors. Government authorities will take any unfavorable information into account when they approve foreign investments, as will Chinese banks when they decide whether or not to grant loans to Foreign Investors.

### 3. Know your own government’s treatment of Chinese investments

Before investing in the PRC, Foreign Investors should try to determine if the Chinese government thinks that the government of the Foreign Investor discriminates against Chinese investors. The 2019 FIL explicitly says that China retains the right to implement retaliatory measures against Foreign Investors from countries or regions that impose discriminatory restrictions on Chinese investors.

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<sup>18</sup> Stephen McDonnell, “China Foreign Investment Law: Bill Aims to Ease Global Concerns,” *BBC News*, March 15, 2019, <https://www.bbc.com/news/business-47578883>.

<sup>19</sup> The Sino-Foreign Equity Joint Venture Law, the Sino-Foreign Contractual Joint Venture Law, and the Foreign-Invested Enterprise Law.

#### 4. Arbitration remains the preferred way to resolve disputes

We recommend that disputes that arise from foreign investments be resolved through arbitration. The 2019 FIL requires the public disclosure of court judgements involving Foreign Investors. There is therefore a risk that confidential information about Foreign Investors and their businesses could be disclosed if disputes with Chinese counterparts are litigated in court. Arbitration is less costly, more time efficient, and also far less likely to be subject to compelled disclosure by the Chinese government.

#### 5. The financial industry will remain subject to different rules

Foreign Investors who wish to invest in the financial sector should seek legal guidance before investing. China's financial industry has been opening up gradually to Foreign Investors since China joined the WTO. For example, foreign shareholders now may hold up to 51% of the shares of a foreign-invested securities firm (**FISF**).<sup>20</sup> Previously, the limit was set at 49%. And on March 29, 2019, the CSRC allowed JP Morgan Chase and Nomura Securities to set up new joint ventures whose shareholding structure allows foreign shareholders to maintain control over the joint ventures.<sup>21</sup> But despite China's efforts to liberalize foreign investments, its financial industry will continue to be regulated by a separate set of rules and regulations because it is still relatively immature when compared to those of the US and UK.

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<sup>20</sup> The new FISF regulation is available at: [http://www.csrc.gov.cn/pub/zjhpublic/zjh/201804/t20180428\\_337509.htm](http://www.csrc.gov.cn/pub/zjhpublic/zjh/201804/t20180428_337509.htm).

<sup>21</sup> The CSRC approval is available at: [http://www.csrc.gov.cn/pub/Newsite/zjhxwfb/xwdd/201903/t20190329\\_353513.html](http://www.csrc.gov.cn/pub/Newsite/zjhxwfb/xwdd/201903/t20190329_353513.html).



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