

China Promulgates its New Regulations for the Implementation of Foreign Investment Law

On 26 December 2019, the State Council of the People's Republic of China (“**PRC**”) promulgated the new PRC Regulations for the Implementation (“**RI**”) of Foreign Investment Law (“**FIL**”). The purpose of the RI is to further elaborate the details and implement the FIL already promulgated in March 2019. The RI, together with FIL, came into force on 1 January 2020 and 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 were the laws applicable to foreign investments in PRC) and their respective regulations for implementation.

This update sets out a short summary of the salient terms of the new RI.

Equal Treatment Between Domestic Enterprises (“**DEs**”) and Foreign Invested Enterprises (“**FIEs**”)

The FIL provided that FIEs will be treated equally with PRC DEs and foreign investors will be treated equally for investment in the PRC subject only to the negative list. The RI goes further to provide the details of such equal treatment as follows:

- The mandatory standards by the government will apply equally to DEs and FIEs, and there will be no standards applicable to FIEs only nor any higher standards which apply to FIEs only.
- No discrimination against FIEs will be allowed in government procurement on grounds of foreign shareholding, nationality of shareholder, brand of supplied products/services, tendering qualifications, etc.
- FIEs are allowed to conduct IPOs in the Shanghai / Shenzhen Stock Exchange without discrimination.
- Local government agencies are not allowed to discriminate against FIEs in the case of investment incentives, land quota allocation, public service, etc.
- In granting the license for investment in any specific industry or sector, the FIEs will be treated equally and there shall be no discrimination against the FIEs in respect of conditions for granting the license, application package, review, timeline for granting license, etc. subject to statutory regulations publicly available.

Protection of Foreign Investment

In line with the principles set by the FIL, the RI further specifies the following protections offered to foreign investment:

- There will generally be no requisitions of an FIE or its assets. In cases of requisitions in the public interest, compensation will be offered based on market value and in line with due legal process without any discrimination.
- All equity investments, profits, capital gains, asset disposal proceeds, intellectual property rights (“**IPRs**”) license royalties, liquidation proceeds, salary and other lawful income may be repatriated out of PRC without restrictions as to currency, amount, frequency, etc.
- The government will protect the IPRs of the FIEs and foreign investors and will not force the transfer of IPRs by leveraging administrative licensing, inspection, penalty, coercion or other administrative activities. All IPR transfers can be commercially negotiated between the relevant parties.

- The government agencies are required to protect trade secrets and confidential information disclosed by the FIEs. Access to the confidential information by government officers will only be granted on a “need to know” basis and any one in breach of such confidentiality obligations will be punished.
- Local government agencies are required to honour their commitments made in favour of the foreign investors/FIEs and are not allowed to dishonour such commitments on ground of adjustment of administrative division, change of government officers in charge, change of functions of government agencies, etc. Dishonour of commitments on the ground of social or public interest is subject to fair and reasonable compensation and due legal process.

Transitional Arrangement

The FIL provided 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. The RI further provided that the existing FIEs may adjust its organisational structure and form, etc. within such 5-year transitional period and bring the registration to be under the regime of PRC Companies Law and Partnership Law before 1 January 2025. It is provided that if the existing FIEs fail to complete the transition before 1 January 2025, the registration authority will no longer accommodate the registration of such FIEs after 1 January 2025.

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 whom you normally work with or any of the following partners:

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