

China's new Foreign Investment Law

Earlier this year, the Chinese government approved a new Foreign Investment Law (FIL or 中华人民共和国外商投资法) which aims to level the playing field for foreign and domestic investors & increase the ease of doing business in China.

While details regarding the new FIL have been available for several months, the Ministry of Justice only recently released a [draft of the law's implementation guidelines](#), and it becomes increasingly relevant for businesses investing in China as the date the new law comes into force – January 1, 2020 – rapidly approaches.

Currently, three separate laws regulate the three different types of foreign-invested enterprises (FIE) in China: the Law on Sino-Foreign Equity Joint Ventures, the Law on Sino-Foreign Cooperative Joint Ventures, and the Law on Wholly Foreign-Owned Enterprises. But as of January 1, these three laws will be abolished and all FIEs will come under the new FIL, thus ensuring foreign and domestic invested enterprises are treated equally and under the same law.

The exception being sectors identified on China's Negative List, which still prohibits, restricts, or applies conditions to foreign investment in areas deemed sensitive by the central government.

Some highlights under the new FIL are that foreign investors will be treated no less favourably than domestic investors (Article 4), will have the right to bid for public procurement projects (Article 16), and will be able to issue financial instruments such as stocks and corporate bonds (Article 17).

Forced technology transfers will be prohibited, and intellectual property rights will receive more robust protection (Article 22 and 23).

Additionally, mechanisms for foreign investors to complain against transgressions will be implemented (Article 26), and government employees responsible for implementing the new FIL and who abuse their power for personal gain will be punished accordingly (Article 39).

Finally, the new FIL also stipulates a five year adjustment period for existing Joint Ventures and Wholly Foreign-Owned Enterprises.

Given that some of the changes will require FIEs to modify their contracts or articles of association, particularly in the case of a joint venture, some FIEs will require more time to make the relevant changes and comply with the new FIL.

In this respect, Article 42 stipulates that FIEs established prior to January 1, 2020 may keep their existing form for five years after the new FIL comes into force.

Contact Us

For further details on the changes or to discuss how to prepare your business accordingly, reach out to one of our ShineWing Australia experts.



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