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The Impact of China's New Foreign Investment Law

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On March 15, 2019, the *Foreign Investment Law*[1] (the "**Foreign Investment Law**") was adopted at the second session of the thirteenth National People's Congress (the "**NPC**") of the People's Republic of China (the "**PRC**")[2] The Foreign Investment Law will take effect on January 1, 2020; and the *PRC Sino-Foreign Equity Joint Venture Law*[3] (the "**EJV** Law"), the *PRC Wholly Foreign-Owned Enterprise Law* (the "**WFOE Law**") and the *PRC Sino-Foreign Cooperative Joint Venture Law*[4] (the "**CJV Law**") will be repealed.

This article intends to introduce the development of the legal framework governing foreign investments in the PRC and to interpret the potential impact of promulgation and enforcement of the Foreign Investment Law from the practical perspective.

I. The Evolution of Regulatory Approach on Foreign Investments

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It has been more than four decades since China established its "Reform and Opening-up" (改革开放) policy in 1978, during which the national economy has made great strides. It is obvious to all that foreign investors and foreign invested enterprises ("FIEs") have played important roles in this development. For the past forty years, along with the development of the national economy, the legal environment and regulatory approach on foreign investments have been evolving gradually.

The FIE Laws were introduced in the early stage of "Reform and Opening-up" (in 1979, 1986 and 1988). These laws established a case-by-case approval system for foreign investments handled by the Ministry of Foreign Economic Relations and Trade.[5] Meanwhile, in order to encourage foreign investments, Chinese authorities also introduced a series of preferential policies which mainly focused on taxation, import and export and foreign exchange, etc. For example, FIEs could enjoy tax exemptions for the first two years and a fifty percent tax reduction for the following three years.[6] These measures created a relatively favorable environment for China to attract and encourage foreign investments at such an early stage of "Reform and Opening-up". After Deng Xiaoping's Southern Tour in 1992, China deepened its market economy reforms and ushered in another wave of opportunities for rapid economic development. Thereafter, China's administration of foreign investments became more systematic. The Interim Provisions on Foreign Investment Guidance[7] issued in 1995 made the State Planning Commission[8] the designated "project supervising" authority for foreign investments and also implemented an approval system for investment projects from a macro-economic and development strategy perspective. In the same year, the first edition of the Catalogue for the Guidance of Foreign Investment Industries[9] was published, which for the first time clarified the objective classification standards for foreign investments. Over the following decade, China's regulatory policies on foreign investments remained relatively stable.

China's concepts on the legal administration of business organizations took a giant step forward when the Company Law of the PRC (2005 Revision)[10] and the Partnership Law of the PRC (2006 Revision)[11] were promulgated. These laws introduced modern concepts on the administration of business organizations into China and made the first move towards corporate autonomy. At the same time, Chinese authorities began to narrow the gap between the treatment of domestic enterprises and FIEs, in order to embody the principle of fair competition within the Chinese market. A series of preferential tax policies for foreign investments were gradually phased out, for example, the domestic and foreign investment tax systems were integrated in 2008, which led to a more consistent administration system for domestic enterprises and FIEs. However, with no significant revisions to the FIE Laws, the market entrance administration of FIEs remained the same; thus, FIEs still had to undertake heavier burdens by going through the above mentioned approval procedures before entering the Chinese market. In recent years, reducing the differential treatment of FIEs became a pressing issue.

In late 2013, the Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Deepening of Reform[12] was promulgated, which proposed the implementation of "national treatment with the negative list"[13] for the market entrance of FIEs. Later on, the NDRC[14] promulgated the Administrative Measures on Approval and Filing for Investment Projects,[15] which changed the original pre-approval system for all investment projects into a system where certain types of projects mentioned in the negative list require approval and the rest require pre-registration only. This was meant to give the same treatment to most investment projects funded by FIEs as those by domestic enterprises. Although this change was widely welcomed by the public, there were concerns that the new pre-registration system would just be a de facto examination-based pre-approval system which has no substantial difference to the previous system. In January 2015, the Draft of Foreign Investment Law (the "2015 Draft")[16] was published, which once again attempted to implement the "national treatment and the negative list" approach for the administration of market entrance of FIEs. Even though the promulgation of the Foreign Investment Law was preceded by a 4-year-long difficult journey; the continuous attempt to reform the regulatory approach on foreign investments by the relevant authorities started much earlier, aiming to relieve some of the burdens for FIEs. In 2016, MOFCOM promulgated the Provisional Measures on Administration of Filing for Establishment and Change of Foreign Investment Enterprises.[17] These Measures changed the pre-approval system for all FIEs, into a system in which only certain FIEs need pre-approval. FIEs who want to engage in business activities which are not listed on the negative list,[18] instead of pre-approval, now can complete the filing procedure with MOFCOM and the registration procedure with the AMR[19] at the same time. These Measures greatly simplified the process of establishment and change of FIEs.

Based on the current laws and regulations regarding foreign investments and the existing experience on regulatory approach, the promulgation of the Foreign Investment Law was a natural development. It also symbolizes a new era for the regulation and supervision of foreign investments in China.

II. Overview of the Foreign Investment Law and its Significance

The Foreign Investment Law is relatively short; the full text of which only has six chapters and forty-two articles with a little over three thousand Chinese characters. It intends to serve as a high-level piece of legislation and sets out a basic regulatory system and principles that govern foreign investments in China. Also, it reiterates the principle of protecting the lawful rights of FIEs and reducing burdens faced by FIEs.

The most direct impact of the Foreign Investment Law on FIEs will be on their organizational forms and corporate governance. However, the Foreign Investment Law does not make significant changes to the existing regulatory system for foreign investments. Thus, we expect that the existing system will be basically retained. In the form of high-level legislation, the articles in the Foreign Investment Law reaffirm and clarify specific rules which are effective in practice under the existing system.

On the other hand, the Foreign Investment Law does not provide detailed provisions on some specific matters which currently are only regulated by the FIE Laws. After the repeal of the FIE Laws, there will be legislative gaps on these matters, which may arouse certain concerns amongst FIEs. In this regard, the Foreign Investment Law clarifies how the current laws and regulations shall be applied to FIEs, rather than re-establishing a whole new regulatory system. In addition, the Foreign Investment Law includes some provisions which are not covered by the FIE Laws, but sporadically appear in other administrative regulations, departmental regulations and regulatory documents, as well as some principles drawn from past experiences.

Alongside all the praise, concerns have also been raised. On some issues, the stipulations of the Foreign Investment Law are too general or somewhat unclear. Further clarifications are expected to be made when the relevant authorities issue implementation rules. Another approach may be that the relevant authorities, instead of issuing implementation rules, choose to amend relevant laws or regulations to resolve the problem.

III. The Foreign Investment Law's Impact on Foreign Investments

In this section, we will explain some essential concepts in the Foreign Investment Law and provide an analysis of the potential impact the Foreign Investment Law might have on foreign investments.

A. Some Essential Concepts in the Foreign Investment Law

1. Subjects Regulated by the Foreign Investment Law

According to Article 2 of the Foreign Investment Law, the "foreign investors" subject to this law refer to foreign natural persons, enterprises or other organizations. However, the Foreign Investment Law does not provide a definition of what constitutes as "foreign", nor does it clarify whether "foreign" only refers to foreign countries. We believe that the term "foreign" should include foreign countries and regions. In other words, in the case of a "foreign natural person", it should mean a natural person who holds a passport or an identity verification document from a country or region other than the PRC. In the case of a "foreign enterprise or organization", it should mean an enterprise or organization domiciled outside of the PRC.

In addition, the Foreign Investment Law does not stipulate whether it applies to natural persons, enterprises or other organizations in Hong Kong, Macau and the islands of Taiwan. We are of the opinion that it will be applicable to these regions. A spokesperson of the NPC mentioned that investments from these regions will be handled with reference to foreign investments.[20] We believe that the relevant authorities will further clarify this issue in the future.

It is also worth mentioning that, the FIE Laws only allow Chinese companies, enterprises and other organizations to establish joint ventures with foreign investors. In practice, Chinese natural persons are therefore precluded from investing in joint ventures. In recent years, China has opened-up a few pilot regions where Chinese natural persons have been allowed to participate in the investment of joint ventures established in these pilot regions. But so far, the restriction has not been lifted nationwide. The Foreign Investment Law repeals the FIE Laws without reaffirming such a restriction. Therefore, theoretically speaking, after the Foreign Investment Law takes effect, there will be no legal obstacle for Chinese natural persons and foreign investors to establish joint ventures.

2. Activities Regulated by the Foreign Investment Law

Article 2 of the Foreign Investment Law specifies that "foreign investment" regulated by this law refers to "investment activities carried out directly or indirectly by foreign investors within the territory of China". As for the definition of "foreign investment", the following points are worth discussing:

(1) Direct or Indirect Investment Activities

Most of the existing laws and regulations on foreign investment in China only regulate the direct investment conducted in China by foreign investors.[21] The FIE Laws basically regulate the investment activities of foreign investors made from overseas into China. Now, the Foreign Investment Law explicitly includes "indirect investment" activities into the definition of "foreign investment", yet it does not clarify what constitutes as an "indirect investment" activity. Whether the following situations will be included in the scope of "indirect investment" activities needs to be confirmed:

i. <u>Investment Activities Taking Place Outside of China</u>

When a foreign investor acquires equity of an FIE's offshore shareholder, it means the investment activity takes place overseas. In this situation, the foreign investor would indirectly hold equity in the FIE through an offshore entity. Would this qualify as an "indirect investment" activity? If so, would a foreign investor's investment at every level of an FIE's offshore shareholder be regarded as an "indirect investment"? Therefore, would it need to be disclosed to the relevant authorities and subject to their supervision? Or is the disclosure to and supervision by the relevant authorities only needed when an investment activity results in a change of control?

Since 2016, FIEs have been required to file and update the information of their offshore shareholders and their actual controllers in the online unified platform of MOFCOM. Whether this practice will be continued after the Foreign Investment Law comes into force, or whether the relevant authorities will increase disclosure requirements and expand the scope of disclosed information, remains to be confirmed.

ii. Reinvestment Activities by FIEs in China

Reinvestment activities mean all activities carried out by FIEs and every level of their subsidiaries in China. Theoretically, such activities should be considered as "indirect investments" by foreign investors in China. If so, does this mean that all the investment activities of this type fall within the scope of the Foreign Investment Law?[22]

iii. Indirect Investment Methods

This is when a foreign investor does not establish an investment relationship with an FIE by holding their equity directly. Instead, they hold or control the FIE through some indirect activities, such as nominal shareholding or contractual control arrangements, so as to achieve the purpose of "indirect investment". Will this kind of conduct also be considered as "indirect investment" and subsequently fall within the regulatory scope of the Foreign Investment Law?

We are particularly concerned about whether the current common practice of foreign investors controlling domestic variable interest entities ("**VIEs**") through their domestic FIEs, in order to avoid access restrictions on foreign investment, can be continued under the Foreign Investment Law. The 2015 Draft explicitly included contractual control of domestic entities as one of the foreign investment activities.[23] This provision caused concern amongst the public and was interpreted as an attempt to incorporate the VIE structure into the regulatory scope of foreign investment. However, this provision is not retained in the final version of the Foreign Investment Law. In our opinion, the Foreign Investment Law clearly sets out the principle on foreign investment supervision, that is, both direct and indirect investment activities should be regulated. Theoretically, contractual control ought to be classified as an "indirect investment" method; however, contractual control arrangements are common in current foreign investment practice and can be fairly complicated in some specific cases. The removal of the term "contractual control" should not be interpreted as giving the green light to VIEs; rather, we see it as a conservative approach taken by the authorities, due to the complexity in practice. We will pay attention to this issue and expect to see more explicit guidance from the relevant authorities in the near future.

(2) Four Types of Foreign Investment Activities

The Foreign Investment Law states there are four types of foreign investment activities it regulates:

(1) Foreign investors establish an FIE in China, either by themselves or jointly with other investors.
(2) Foreign investors obtain shares, equity, property shares or other similar rights/interests of an enterprise in China.
(3) Foreign investors invest in new projects in China, either by themselves or jointly with other investors.
(4) Any other way of investment stipulated by laws, administrative regulations or as specified by the State Council.

Compared with the foreign investment activities stipulated in the FIE Laws, two of the types mentioned above are worth expanding on.

i. <u>Inclusion of Subsequent Acquisition of Interests into the Scope of "Foreign Investment Activities"</u>

The FIE Laws focus on newly formed FIEs without providing specific guidance on subsequent acquisition of interests. In current practice, it is treated as the transfer of an FIE's equity or a subsequent capital injection. Some special types of subsequent acquisitions, such as a foreign investor's investment in a listed company and a foreign investor's acquisition of a domestic enterprise, are subject to special regulations.[24] The Foreign Investment Law intends to clarify that subsequent acquisition of interests by foreign investors is within the scope of its regulations. It is also expected that the existing regulations for these specific types of subsequent acquisitions will remain in force.

ii. Inclusion of Investment in New Projects

The FIE Laws only define equity investments by foreign investors as "foreign investments".[25] Now, the Foreign Investment Law introduces a "foreign investor's investment in new projects" as a type of foreign investment. We understand this type of investment activity may refer to: foreign investors who acquire interests of new projects through contracts or other forms of arrangements without setting up entities in China. In other words, the acquisition of contractual rights by foreign investors is also included in the regulatory scope of the Foreign Investment Law. In practice, such contracts may include government franchising/licensing agreements and general project contracts for infrastructure projects. However, the relevant authorities still need to provide clarification on how the foreign investment regulatory system will be applied to investments in new projects and how this type of foreign investment activity will be incorporated into the current administration method.

B. Impact of The Foreign Investment Law on Corporate Governance and Organizational Structure

As mentioned before, foreign investments are mainly regulated by the FIE Laws, which will be repealed when the Foreign Investment Law comes into effect on January 1, 2020. The change of applicable laws will have effects on established and existing FIEs, especially regarding their corporate governance and organizational structure.

1. The Company Law or the Partnership Law will apply to Corporate Governance

The Foreign Investment Law specifies that, same as a domestic company, the laws and regulations applicable to an FIE depend on its organizational structure. The applicable laws and regulations are mainly the Company Law and the Partnership Law which only applied to domestic entities in the past, as well as their supporting measures and rules. This will not cause problems for FIEs established after January 1, 2020. The Company Law and the Partnership Law have been continuously revised, which makes them more in tune with the current economic environment than the FIE Laws. We expect this change to be welcomed by FIEs.

2. Impact on Existing FIEs

Unlike for new FIEs to be established after January 1, 2020, the Foreign Investment Law might cause some issues for FIEs that are established prior to that date. The FIE Laws had specific provisions on the establishment, reform, continuation and dissolution of the three types of FIEs, namely sino-foreign equity joint ventures ("**EJV**"), sino-foreign cooperative joint ventures ("**CJV**") and wholly foreign-owned enterprises. Theoretically, prior to January 1, 2020, all FIEs are established according to the FIE Laws instead of the Company Law or the Partnership Law. There are differences between the FIE Laws and the Company Law or the Partnership Law which can be seen in many aspects, including the establishment, reform, continuation and dissolution of enterprises. Readers can refer to the attachment hereof for details – *Main Differences of Corporate Governance Among Enterprises in Different Organizational Structures Under Relevant Laws and Regulations* for more information.

The Foreign Investment Law stipulates there will be a five-year transitional period, starting from January 1, 2020, during which FIEs established before January 1, 2020 can maintain their organizational structures. The question that remains however is how to bridge the gap between the provisions of the FIE Laws and the Company Law or the Partnership Law before December 31st, 2024. Legal professionals had a heated discussion about this issue. We are optimistic and believe that this gap can be filled. The determining factor should be whether the shareholders of FIEs are willing to stick with the commercial arrangements they made when the FIEs were established.

We recommend that the shareholders of FIEs should first discuss and determine whether the original business arrangements will be carried on or whether they need to be adjusted. After the shareholders agree on the business arrangements, they could then address the legal issues and determine the most suitable resolutions. For example, the EJV Law stipulates that the board of directors is the highest authority of an EJV. It also requires that the shareholders of an EJV should include a provision in its joint venture contract and its articles of association (the "**AOA**") on the composition of the board and the appointment of directors. When converting to the Company Law scheme, the board of directors is no longer the highest authority of a company and a shareholder meeting will be incorporated. An EJV will need to change its AOA to reflect this. In practice, including a provision in the AOA or entering into a shareholder agreement regarding how shareholders of the EJV should elect the directors will have the same effect as preserving the original agreement regarding board elections under the EJV Law scheme. Another example, the Company Law states that the AOA is the highest legal document of a company. This means that a shareholder agreement which conflict with the AOA shall not be enforceable against the company. However, the EJV Law specifies that the AOA, together with the joint venture contract, are the necessary documents to establish an EJV. In practice, the contents of the AOA and joint venture contract are very similar; although occasional discrepancies are inevitable. If it happens, a court will usually look into both documents; instead of simply relying on the AOA of an EJV. We recommend, when converting, the shareholders shall first confirm whether the contents in the joint venture contract can be fully reflected in the AOA. If there are clauses not in the AOA, the shareholders should consider whether it is necessary to amend the AOA to reflect these clauses. If this is not possible, then the shareholders can resolve this issue by supplementing the AOA with a shareholder agreement.

The FIE Laws also have some legal requirements which cannot be found in other laws and regulations or are not consistent with the requirements of other laws and regulations. We believe these requirements should not stand in the way of enterprises reforming their organizational structure. For example, according to the *Regulations for the Implementation of the Law of the PRC on the EJVs*[26] and the *Implementation Regulations for the Law of the PRC on the CJVs,*[27] if a shareholder intends to transfer a part or all of its shares to a third party, unanimous approval from all shareholders must be obtained. However, in contrast, the Company Law states that only a majority approval of the other shareholders is required for the transfer of the company's shares to a third party and the dissenting shareholders have an obligation to buy the shares to be transferred. Even though there are discrepancies between these provisions, the applications in practice are quite similar. According to the *Regulations of Supreme People's Court on Several Issues Concerning the Trial of Dispute Cases Related to FIEs*[28], shareholders of FIEs that do not agree with a transfer of shares have the obligation to purchase these shares. If they do not wish to purchase these shares, the shares can be legally transferred to a third party. Thus, in practice, the preceding regulation is very similar to the Company Law's provision.

However, there is no doubt that whenever the organizational structure of an FIE needs to be changed, all the shareholders involved need to cooperate. If any of the shareholders does not cooperate, it might be difficult for an FIE to change its organizational structure. In the event that the shareholders cannot reach an agreement before the expiration of the five-year transitional period, the FIE may face great uncertainties; though whether it will be dissolved or whether other measures will be taken remains to be determined.

3. Specific Impact on Existing CJVs

At the time of the promulgation of the FIE Laws, the Company Law was in its infancy and the Partnership Law had not been promulgated. In order to meet the needs of foreign investments at the time, the CJV Law was passed. Apart from the organizational structure of limited liability companies, which is the same organization structure that FIEs can adopt under the WFOE Law and the EJV Law, the CJV Law made it possible for foreign investors to choose to set up a CJV either as a legal person or as a non-legal person. The CJV Law states that, if a CJV is set up as a legal person, its organizational form shall be a limited liability company; while if it is set up as a non-legal person, it shall be regarded as a special type of organizational structure – "non-legal person cooperative joint venture". In practice, this has led to confusion as to the entity's legal status and its tax treatment. These uncertainties have caused many foreign investors to give up on adopting the organizational structure of a non-legal person CJV. Despite this, there are still some existing non-legal person CJVs. We recommend these entities to consider changing their organizational structure to partnerships during the transitional period.

4. Impact on FIEs established between March 15, 2019 and January 1, 2020

For FIEs that are established between March 15, 2019 and January 1, 2020, theoretically the laws and regulations in effect during this period shall apply, namely the FIE Laws. However, since the FIE Laws will be repealed soon, the organizational structure of such an FIE will be required to change after January 1, 2020 and before the expiration of the five-year transitional period. This will carry certain risks for the shareholders of the FIE. Therefore, some shareholders may be more willing to set up FIEs in accordance with the Company Law and the Partnership Law to avoid the uncertainties arising from the future change of organizational structure. Whether relevant authorities will allow foreign investors to establish FIEs in accordance with the Company Law and the Partnership Law before January 1, 2020 remains to be seen.

We advise that if it is not possible to set up FIEs under the Company Law or the Partnership Law before January 1, 2020, it is recommended for shareholders to reach an agreement regarding the later transformation of organizational structure at the time of establishment to avoid future disputes.

C. Changes Introduced by the Foreign Investment Law to the Existing Supervision Model and Regulation System

The Foreign Investment Law strengthens and protects the legitimate rights enjoyed by foreign investors. Several improvements are made to the government's role, intellectual property protection and fundraising by FIEs on the public market.

1. The Government's Role in the Foreign Investment Regulation System

The Foreign Investment Law, for the first time, provides regulations regarding the role of the government in the promotion, protection and administration of foreign investments on a national level. Provisions that describe what the government can and cannot do have also been included. This will make it easier for a foreign investor to operate his business. These provisions include:

- Prohibiting authorities and officials to leak business secrets or provide business secrets illegally to third parties.[29]
- Prohibiting local governments to create additional obstacles for foreign investors outside the standard laws or administrative regulations.[30]
- Providing protection for the actions of FIEs which are taken due to the FIEs reliance on certain governmental policies.[31]
- Establishing a mechanism for complaints made by FIEs.[32]

2. Emphasizing Intellectual Property Protection for Foreign Investors and FIEs

The Foreign Investment Law stresses China's willingness to protect Foreign Investors and FIEs. Especially Article 22 of the Foreign Investment Law, which stipulates that administrative authorities and their officials are not allowed to use their administrative powers to force FIEs to transfer their intellectual property.

Before, the *Regulations for the Implementation of the Law of the PRC on the EJVs* stated that, after the expiration of a technology transfer agreement, the technology transferee (which usually refers to the EJV) has the right to continue the use of this technology.[33] This provision was repealed by the *Decision of the State Council on Revising Certain Administrative Regulations*[34] on March 2, 2019, a few days prior to the promulgation of the Foreign Investment Law. The fact that the Foreign Investment Law reaffirms the principle that no administrative powers shall be used to mandatorily transfer technology shows China's dedication to protecting intellectual property rights. The wording of this provision will undoubtedly send foreign investors a positive signal.

3. Fundraising by FIEs on the Public Market

Article 17 of the Foreign Investment Law states that, FIEs may raise funds by offering shares, or issuing corporate bonds and other securities on the public market.

There are, at present, no formal legal obstacles for FIEs to raise funds on China's public markets. In practice, however, for various reasons, there are not many FIEs that have publicly issued shares or bonds. The Foreign Investment Law confirms formally that FIEs have the right to raise funds on the open market. We expect that, this provision will have a positive effect on FIEs by diversifying their methods of financing and encouraging them to issue shares publicly.

D. Reiterating the Existing Administration Model and System

As mentioned before, the Foreign Investment Law specifically reaffirms certain administrative mechanisms that are already in place. These mainly include:

1. Dual Supervision Model of MOFCOM and the NDRC

Currently, MOFCOM is in charge of market entrance applications of FIEs, and the NDRC is in charge of the approval/filing of certain specific foreign-invested projects. The Foreign Investment Law basically restates the current system by specifying that MOFCOM and the NDRC, shall carry out the promotion, protection and administration of foreign investments. In other words, this dual supervision model of MOFCOM and the NDRC will continue. To be specific, MOFCOM is responsible for the guidance of foreign investments nationwide, the formulation, implementation and reformation of foreign investment policy, as well as the approval of the establishment and changes of FIEs. The NDRC is responsible for the planning of major construction projects and the arrangement of relevant production capacity nationwide, and interfere only when construction, infrastructure, and/or land usage are involved. We expect that this existing supervision model will not change greatly in practice.

2. Pre-Establishment National Treatment with the Negative List

The Foreign Investment Law confirms, the use of "pre-establishment national treatment with the negative list" in the form of law for the first time.

As mentioned before, when MOFCOM and the NDRC manage the filings and approvals of FIEs, they have been following the "national treatment with negative list" approach adopted since 2016 and 2014, respectively. To accommodate this approach, the *Catalogue for the Guidance of Foreign Investment Industries* was adjusted in 2017 to incorporate a negative list. These practices are in line with the approach as affirmed under the Foreign Investment Law. Therefore, we expect that, the current regulatory method of foreign investment will continue after the implementation of the Foreign Investment Law.

3. Establishing a National Security Review System on Foreign Investment

The Foreign Investment Law also provides for a national security review system on foreign investment.[35] We have noted that certain regulations governing the security review on foreign investment already exist. However, these are relatively narrow in scope and mainly target specific foreign investments made by specific companies.[36] After the implementation of the Foreign Investment Law, it may be possible that a more comprehensive national security review mechanism will be established based on the existing system. We expect the security review will not be mandatory for every FIE and hope it would be similar to the anti-trust investigation process currently in place in China. An FIE may be allowed to assess itself, or seek advice from the relevant authorities, to decide whether it meets the criteria for a security review. In case it meets these criteria, an FIE would be required to apply for a security review with the relevant authorities.

4. Foreign Investment Information Report System

The Foreign Investment Law also provides for a foreign investment information report system.[37] Currently, the foreign investment information report system is implemented in the form of MOFCOM's Unified Business Platform (业务系统统一平台) and the National Enterprise Credit Information Publicity System (企业信用信息公示系统). We expect that the current system could satisfy the requirements stipulated by the Foreign Investment Law, and that there will be no significant changes required in the short term.

It is worth noting that the Foreign Investment Law states that information submitted by FIEs, which can be obtained by the relevant authorities through interdepartmental information sharing mechanism, is not allowed to be repeatedly requested from FIEs. This provision has the intention of lightening the burden for foreign investors in respect to filing information. In practice, local governments in some areas have tried to establish an online system where investors can set up an FIE by providing the necessary information to the local AMR and MOFCOM; however, only a few were put into use. It is not clear whether, with the implementation of the Foreign Investment Law, this practice will be introduced nationwide.

5. Other Incentives and Protective Measures

The Foreign Investment Law embodies the principle of incentivizing and protecting FIEs. For example:

- Article 16 states that the rights of an FIE to fairly participate in government procurement should be protected.
- Article 21 secures the rights of foreign investors to freely remit their funds in and out of China according to relevant laws and regulations.
- Article 26 stipulates that if a local government changes its policies or contracts, foreign investors and FIEs should be compensated for their losses.

These principles can already be found in practice and are expected to become more complete in the future.

IV. Conclusion

In general, the new Foreign Investment Law emphasizes China's encouragement of foreign investment and determination to protect the legitimate rights and interests of foreign investors. By establishing the regulatory principles that govern foreign investment, the Foreign Investment Law is expected not only to provide a better environment for foreign investors to invest in China, but also to create a friendlier environment for the daily operation of FIEs in China. We believe that foreign investment in China is entering a new stage, and will have healthier development in the future.

Exhibit
Main Differences of Corporate Governance Among Enterprises in Different Organizational Structures Under Relevant Laws and Regulations[38]

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partner-ships**	**Limited Liability Companies**	**Partner-ships**
Applicable Laws and Regulations	The EJV Law, Regulations for the Implementation of the Law of the PRC on the EJVs, etc.	The CJV Law, Implementation Regulations for the Law of the PRC on the CJVs, etc.	The WFOE Law, Implementation Regulations for the Law of PRC on Wholly Foreign-owned Enterprises, etc.	The Partnership Law, the Regulations of Registration of Foreign Invested Partnership, Regulations of the Establishment of Partnership by Foreign Enterprises or Natural Person	The Company Law, the Regulations of the PRC on Administration of Company Registration, etc.	The Partnership Law, the Administrative Measures of the PRC on the Registration of Partnerships, etc.
The Highest Authority	Board of directors	- Legal person: board of directors - Non-legal person: joint management committee	In line with the requirements in the Company Law	In line with the requirements in Partnership Law	Shareholders' meeting/sole shareholder	Meetings of partners
The Composition of the Highest Authority	No less than three (3) persons	No less than three (3) persons	In line with the requirements in the Company Law	In line with the requirements in the Partnership Law	-Share-holders' meeting: two (2) to fifty (50) shareholders - Sole	- General partnership: two (2) or more partners - Limited partnership:

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partner-ships**	**Limited Liability Companies**	**Partner-ships**
					shareholder: one (1) shareholder	two (2) to fifty (50) partners, among which at least one (1) partner shall be the general partner
Voting Mechanism on Significant Matters	The following matters require the unanimous approval from all directors present at the meeting of the board of directors: (1) amendment of the articles of association of the EJV; (2) suspension or dissolution of the EJV; (3) increase or decrease of registered capital of the EJV; (4) merger and division of the EJV.	The following matters require the unanimous approval from all directors/ committee members present at the meeting of the board of directors/the joint management committee: (1) amendment of the articles of association of the CJV; (2) increase or decrease of registered capital of the CJV; (3) dissolution of the CJV; (4) mortgaging of the property of the CJV; (5) merger, division and amendment of the organizational structure of the CJV's	In line with the requirements in the Company Law	In line with the requirements in the Partnership Law	Resolutions regarding amending the articles of association of the company, increase or decrease of registered capital, merger, division, dissolution or change of the corporation form shall be passed by shareholders holding shares representing two-thirds or more of the voting rights.	Unless otherwise provided in the partnership agreement, the following matters shall be approved by all partners: (1) change of name of the partnership; (2) change of the business scope, the principal business premises of the partnership; (3) disposal of real estimate of the partnership; (4) transfer or disposal of intellectual property rights and other property

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partner-ships**	**Limited Liability Companies**	**Partner-ships**
		organizational structure; and (6) other matters as agreed by the shareholders of the CJV.				rights of the partnership; (5) providing a guarantee in the name of the partnership for others; and (6) appointment of persons other than the partners as the business management personnel of the partnership.
Quorum of the Highest Authority	more than two thirds (2/3) of the directors	more than two thirds (2/3) of the directors/ committee members	In line with the requirements in the Company Law	In line with the requirements in the Partnership Law	Determined by articles of association	Determined by the partnership agreement
Voting Rights	one (1) vote per director	one (1) vote per director/committee member	In line with the requirements in the Company Law	In line with the requirements in the Partnership Law	Unless otherwise provided in the articles of association, voting rights shall be exercised by the shareholders in accordance with their shareholding ratio	Voting rights shall be exercised in accordance with the in arrangement the partnership agreement. In the event that the partnership agreement does not or fails to provide for the voting mechanism, the voting mechanism shall be

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partner-ships**	**Limited Liability Companies**	**Partner-ships**
						approved by more than half of the partners in one-man-one-vote way.
Legal Representative/ Executive Partner	- The chairman is the legal representative - In practice, the manager can act as the legal representative	The chairman or the head of the joint management committee is the legal representative	In line with the requirements in the Company Law	In line with the requirements in the Partnership Law	Either the chairman, the executive director or the manager can act as the legal representative	The general partner can act as executive partner
The Composition of the Board/Joint Management Committee	no less than three (3) persons	no less than three (3) persons	In line with the requirements in the Company Law	Not Applicable	The board of directors shall consist of three (3) to thirteen (13) directors. For the Company chooses not to set up a board, then one (1) executive director.	Not applicable
Designation of Directors/Committee Members	Designated by the shareholders	Designated by the shareholders	In line with the requirements in the Company Law	Not Applicable	If the director is not an employee representative, such director shall be elected by the shareholders; If the director is an employee representative, such	Not applicable

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partnerships**	**Limited Liability Companies**	**Partnerships**
					director shall be elected by employees in employee meetings or other ways of election	
Designation of Chairman, Deputy Chairman or Board of Directors, Head and Deputy-Head of Joint Management Committee	The chairman and deputy chairman shall be selected by the shareholders through mutual agreement or shall be elected by the board of directors. Where the board member designated by one shareholder (either Chinese or foreign) act as the chairman, the board member designated by the other kind shall act as the deputy chairman.	The designation method of the chairman and deputy chairman of a board of directors, or the head or deputy-head of a joint management committee should be determined in the articles of association. Where the person designated by one shareholder (either Chinese or foreign) act as the chairman/head, the person designated by the other kind shall act as the deputy chairman/deputy head.	In line with the requirements in the Company Law	Not Applicable	The Company Law only requests that limited liability company setting up board of directors should have a chairman, it does not have compulsory provisions on the deputy chairman; the designation of the chairman and deputy chairman shall be regulated by the articles of association.	Not applicable
Term of Directors and Committee Members	- The term of the directors is four (4) years. This term may be renewed with the consent	The term should be no more than three (3) years. This term may be renewed with	In line with the requirements in the Company Law	Not Applicable	The term should be no more than three (3) years. This term may be renewed	Not applicable

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	CJVs	Wholly Foreign-owned Enterprises	Foreign Invested Partner-ships	Limited Liability Companies	Partner-ships
	of the designating shareholder - In practice, the term can be three (3) years, which is consistent with the requirements of the Company Law	the consent of the designating shareholder.			through an election.	
Quorum of the Meeting of the Board of Directors/Joint Management Committee	More than two thirds (2/3) directors	More than two thirds (2/3) directors or committee members	In line with the requirements in the Company Law	Not Applicable	Regulated by the articles of association	Not applicable
Board of Supervisors	The board of supervisors shall consist of three (3) or more supervisors, or the EJV can set up one (1) or two (2) supervisors	A CJV which is a legal person shall establish a board of supervisors with no less than three (3) supervisors, or set up one (1) or two (2) supervisors	In line with the requirements in the Company Law	Not Applicable	The board of supervisors shall consist of three (3) or more supervisors, or the company can set up one (1) or two (2) supervisors	Not applicable
Election of Supervisors	Elected by the board of directors	Elected by the board of directors	In line with the requirements in the Company Law	Not Applicable	Elected by the shareholders' meeting	Not applicable
Limitations to the Liability of Shareholders /Partners	The liability of a shareholder shall be limited to its subscribed capital contribution	Unless otherwise provided in the CJV contract, the liability of a shareholder shall be limited to its	In line with the requirements in the Company Law	In line with the requirements the Partnership Law	The liability of a shareholder shall be limited to its subscribed capital contribution	General partners shall be jointly and severally liable without limit for the debts of the

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partner-ships**	**Limited Liability Companies**	**Partner-ships**
		investment amount or its cooperation input				partnership, and limited partners shall be liable for the debts of the partnership up to the amount of their subscribed capital contribution.
Share Transfer	- If a shareholder intends to transfer all or part of its shares to a third party, unanimous consent shall be obtained from all shareholders; - If the other shareholders do not consent to the proposed transfer as well as refuse to purchase such shares, they shall be deemed to have consented to the proposed transfer.	- If a shareholder intends to assign all or part of its shares to a third party, unanimous consent shall be obtained from all shareholders; - If the other shareholders do not consent to the proposed transfer as well as refuse to purchase such shares, they shall be deemed to have consented to the proposed transfer.	In line with the requirements in the Company Law	In line with the requirements the Partnership Law	Unless otherwise regulated by the articles of association, a shareholder proposing to transfer its equity interests to a non-shareholder shall obtain the consent of more than half of the other shareholders; in the event that more than half of the other shareholders do not approve such transfer, such dissenting shareholders shall purchase the equity	Unless otherwise regulated by the partnership agreement, the transfer of part or all of a general partner's share in property of the partnership to a non-partner must be approved by all the other partners, while a limited partner could transfers part or all of its share in the partnership to a non-partner with a prior notice to other partners.

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	CJVs	Wholly Foreign-owned Enterprises	Foreign Invested Partnerships	Limited Liability Companies	Partnerships
					interest to be transferred; failure to purchase shall be deemed as consent to the transfer.	
Distribution of Profits and Bonuses	Profits shall be distributed in accordance with the registered capital ratio	Regulated by the CJV contract	In line with the requirements in the Company Law	In line with the requirements the Partnership Law	Unless otherwise agreed by all shareholders, bonus shall be distributed in accordance with the paid-in capital contribution ratio	- General partnership: profits shall be distributed pursuant to the partnership agreement, which should not provide that all profits shall be distributed to part of the partners; - Limited partnership: unless otherwise regulated by the partnership agreement, all profits should not be distributed to part of the partners
Distribution of Remaining Assets	Unless otherwise provided in the EJV contract or articles of association, the remaining	Regulated by the CJV contract	In line with the requirements in the Company Law	In line with the requirements the Partnership Law	Remaining assets shall be distributed in accordance with the registered capital ratio	Distribution of remaining assets of a partnership shall be made pursuant to the partnership

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partnerships**	**Limited Liability Companies**	**Partnerships**
	assets shall be distributed in accordance with the registered capital ratio					agreement. Where the partnership agreement does not or fails to provide for the distribution clearly, the partners shall decide it through negotiation. Where negotiation fails, the remaining assets shall be distributed according to the paid-in capital contribution ratio; where the ratio cannot be determined, the remaining assets shall be divided among the partners equally.
Requirement of Non-cash Contribution by the Foreign Party	- The machinery, equipment and other materials contributed by the foreign party shall be necessary for the production of	- Legal person: in accordance with the Company Law, the non-cash contribution by the foreign party shall be non-monetary property that	- The machinery contributed by the foreign party shall be necessary for the production of the wholly foreign-own	In line with the requirements in the Partnership Law	The non-cash assets can be valued and transferred in accordance with relevant laws	Limited partners shall not contribute capital in the form of labor services.

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	CJVs	Wholly Foreign-owned Enterprises	Foreign Invested Partner-ships	Limited Liability Companies	Partner-ships
	the EJV. - The industrial property or know-how contributed by the foreign party shall be used for improving the capacity, productivity, or energy efficiency of the EJV	can be valued in currency and can be lawfully transferred - Non-legal person: regulated by the CJV contract	ed enterprise - Other requirements are in line with the requirements in the Company Law			
Requirements for Foreign Shareholders /Partners	- The proportion of capital contributed by foreign shareholders shall be no less than 25% of total capital contribution - In practice, where the aforesaid proportion is failed to be achieved, such entity is still an FIE which does not enjoy the treatment of FIEs	- Legal person: the proportion of capital contributed by foreign shareholders shall be no less than 25% of total capital contribution - In practice, where the aforesaid proportion is failed to be achieved, such entity is still an FIE which does not enjoy the treatment of FIEs - Non legal person: regulated by the CJV contract	- All registered capital shall be subscribed by the foreign investors - Other requirements are in line with the requirements in the Company Law	At least one (1) foreign partner	Not applicable	Not applicable
Restrictions on Chinese Shareholders or Partners	- Chinese natural persons generally	- Chinese natural persons generally	No Chinese shareholders	Not applicable	Not applicable	Not applicable

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	CJVs	Wholly Foreign-owned Enterprises	Foreign Invested Partner-ships	Limited Liability Companies	Partner-ships
	cannot establish EJVs with foreign investors - However, it is allowed in certain pilot areas	cannot establish CJVs with foreign investors - However, it is allowed in certain pilot areas				
Reservation for Statutory Surplus Reserve/Reserve Fund, Employees' Bonus and Welfare Fund and Enterprise Development Fund	Net profit shall be first reserved for reserve funds, employees' bonus and welfare funds and enterprise development funds, the proportion of reservation should be decided by the board of directors.	- Not a mandatory requirement - In practice, CJVs may follow the practice of EJVs	Net profit shall be first reserved for reserve funds, employees' bonus and welfare funds. The proportion of reservation of reserve funds shall be no less than 10% of the net profits; when the cumulative proportion of reservation of a reserve fund reaches 50% of the registered capital, such reservation can be stopped. The proportion of reservation of the employees' bonus and welfare funds shall	Not Applicable	Companies shall contribute 10% of the net profit into their legal accumulation fund before distribution of the net profit of the current year; when the cumulative proportion of reservation of a legal accumulation fund reaches 50% of the registered capital, such reservation can be stopped.	Not applicable

Types of Enterprise / Specific Matters	Foreign Enterprises				Domestic Enterprises	
	EJVs	**CJVs**	**Wholly Foreign-owned Enterprises**	**Foreign Invested Partner-ships**	**Limited Liability Companies**	**Partner-ships**
			be determined by the wholly foreign-owned enterprise.			
Governing Laws for Corporate Documents	The PRC laws must be the governing law to the EJV contract	The PRC laws must be the governing law to the CJV contract	No statutory requirements on the governing law for the shareholders agreement	No statutory requirements on the governing law for the partnership agreement	No statutory requirements on the governing law for the shareholders agreement	No statutory requirements on the governing law for the partnership agreement

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[1] Presidential Decree No.26, promulgated by Standing Committee of the National People's Congress (the "**Committee of NPC**") on March 15, 2019.

[2] "**PRC**" or "**China**" means the People's Republic of China, but solely for the purposes of this article, we are excluding Hong Kong, Macau and the islands of Taiwan.

[3] Committee of NPC Decree No.7, promulgated by Committee of NPC on July 8, 1979, amended on April 4, 1990, March 15, 2001 and September 3, 2016, respectively.

[4] Presidential Decree No.39, promulgated by the 'NPC on April 12, 1986, revised on October 31, 2000, and amended on September 3, 2016.

[5] Refer to the Ministry of Foreign Economic Relations and Trade of the PRC and its local counterparts. The Ministry of Foreign Economic Relations and Trade of the PRC was merged with the State Economic and Trade Commission in 2003 to form the Ministry of Commerce of the PRC (together with its local counterparts, hereinafter collectively referred to as "**MOFCOM**").

[6] According to Article 8 of the *Corporate Income Tax Law of the PRC for FIEs and Foreign Enterprises* (Presidential Decree No.45), any manufacturing FIEs scheduled to operate for no less than ten years shall, from the first year of profit, be exempted from corporate income tax in the first and second years, and allowed a fifty percent reduction for the following three years.

[7] State Planning Commission, State Economic and Trade Commission, Ministry of Foreign Economic Relations and Trade No.5, promulgated by Ministry of Civil Affairs, National Development and Reform Commission, State Economic and Trade Commission (changed) on June 20, 1995.

[8] It was renamed as "National Development and Planning Commission" in 1998; and then renamed as "National Development and Reform Commission" in 2003. National Development and Reform Commission and its local counterparts hereinafter collectively referred to as the "**NDRC**".

[9] Jointly promulgated by the Ministry of Foreign Economic Relations and Trade (changed), the NDRC and the State Economic and Trade Commission (changed) on June 28, 1995.

[10] Presidential Decree No.42, promulgated by Committee of NPC on October 27, 2005, together with its amendments, hereinafter collectively referred to as the "**Company Law**".

[11] Presidential Decree No.55, promulgated by Committee of NPC on August 27, 2006, took effect on June 1, 2007, hereinafter referred to as the "**Partnership Law**".

[12] Approved by the third session of the eighteenth Central Committee of the Communist Party on November 12, 2013, and promulgated by the Central Committee of the Communist Party on November 15, 2013.

[13] A system which combines national treatment of FIEs with the negative list, which basically means that foreign companies get treated in the same way as domestic ones, unless the FIE wants to include a business segment mentioned in the negative list within its scope of business. In this case, access to these business segments might be restricted or forbidden.

[14] Formerly known as the State Planning Commission, please refer to footnote No.9.

[15] NDRC Order No.2, promulgated by the NDRC on March 8, 2017.

[16] Published by MOFCOM on January 19, 2015.

[17] MOFCOM Announcement [2016] No. 3, promulgated by MOFCOM on October 8, 2016, amended on July 30, 2017 and June 30, 2018, respectively; hereinafter referred to as the "**Measures**".

[18] Referred as the "FIEs which are not subject to special administrative measures stipulated by the State" under the *Provisional Measures on Administration of Filing for Establishment and Change of Foreign Investment Enterprises*.

[19] Means the State Administration for Market Regulation and its local counterparts.

[20] At the press conference of the second session of the thirteenth NPC held on March 4, 2019, Mr. Zhang Yesui, the spokesperson of the NPC, replied to a question from a reporter: "In practice, investments from Hong Kong, Macau and the islands of Taiwan have been managed with reference to foreign investments. The enactment of the Foreign Investment Law will not change the national legal arrangements for investments from these regions. The relevant system will also be revised and improved according to practical needs, and to further provide a more open and convenient environment for investments from these regions."

[21] In recent years, Chinese authorities have noticed the issue of direct and indirect investment. Some laws and regulations have included "indirect investment" activities into the scope of regulation, such as, the *Announcement of the State Administration of Taxation on Several Issues Relating to Enterprise Income Tax on Transfer of Assets between Non-resident Enterprises (State Administration of Taxation Announcement [2015] No. 7)*.

[22] Currently, the *Interim Provisions on Investment Inside China by Foreign Investment Enterprises* (promulgated by MOFCOM on October 28, 2015) only stipulates the first level reinvestment activities of FIEs and the enterprises invested or established in China through such reinvestment activities.

[23] Article 15 of the 2015 Draft stipulated that, the term "foreign investments" refers to the following investment activities conducted, directly or indirectly, by foreign investors: … (6) control domestic enterprises or hold equity in domestic enterprises by contracts, trust or other ways.

[24] Namely, the *Administrative Measures on Strategic Investment in Listed Companies by Foreign Investors*, MOFCOM, China Securities Regulatory Commission, State Administration of Taxation, State Administration for Industry and Commerce and State Administration of Foreign Exchange Order No. (2005) 28, MOFCOM, China Securities Regulatory

Commission, State Administration of Taxation, State Administration for Industry and Commerce, State Administration of Foreign Exchange jointly issued on December 31, 2005; revised on October 28, 2015; and the *Provisions on Merger and Acquisition of Domestic Enterprises by Foreign Investors*, MOFCOM, State-owned Assets Supervision and Administration Commission of the State Council, State Administration of Taxation, State Administration for Industry and Commerce, China Securities Regulatory Commission and State Administration of Foreign Exchange Order No. (2006) 10, MOFCOM, State-owned Assets Supervision and Administration Commission of the State Council, China Securities Regulatory Commission, State Administration of Taxation, State Administration for Industry and Commerce, State Administration of Foreign Exchange jointly issued on August 8, 2006; revised on June 22, 2009.

[25] Whether the interests of CJVs without legal person status, which are under CJV Law's regulation, shall be deemed as equity interests, is still under discussion. However, in practice, relevant laws and regulations on finance, accounting and taxation, and etc., all treat CJVs without legal person status as legal persons on specific matters. Therefore, for the purpose of this article, we classify the interests of CJVs without legal person status into equity interests.

[26] State Council Decree [1983] No.148, promulgated by the State Council on September 20, 1983, amended on January 15, 1986, July 22, 2001 and January 8, 2011 respectively.

[27] Ministry of Foreign Economic Relations and Trade 1995 Order No.6, promulgated by the Ministry of Foreign Economic Relations and Trade on September 4, 1995, amended on February 19, 2014, March 1, 2017 and November 17, 2017 respectively.

[28] Judicial Interpretation (2010) No.9, promulgated by Supreme People's Court on August 5, 2010.

[29] Article 23 of the Foreign Investment Law: The Administrative departments and their officers shall keep confidential the trade secrets of foreign investors and FIEs they have learned about in the course of performing their duties, and shall not divulge or illegally provide such secrets to any third party.

[30] Article 24 of the Foreign Investment Law: In enacting normative documents concerning foreign investment, the governments at all levels and their departments concerned shall comply with laws and regulations. Unless required by laws or regulations, the local governments shall not impair FIEs' legitimate rights and interests or increase their obligations, nor shall they set any market entrance and exit conditions, or intervene the daily operation activities of any FIE.

[31] Article 25 of the Foreign Investment Law: Local governments at all levels and their departments concerned shall keep policy commitments lawfully made to foreign investors and FIEs, and perform all contracts lawfully executed. If any policy commitment or contract needs to be changed for the need of national interests or public interests, such change shall be made within statutory authority of such local government and legal procedures shall be followed. The foreign investor or FIE concerned shall be compensated for losses incurred thereby according to laws and regulations.

[32] Article 26 of the Foreign Investment Law: The State establishes a complaint mechanism for FIEs to timely handle problems encountered by FIEs or their investors, to coordinate and to improve relevant policies and measures. If an FIE or any of its investors deems that the administrative practice of an administrative department or any officer thereof infringes its legitimate rights and interests, it may apply for coordination and resolution through the complaint mechanism for FIEs. It may also apply for administrative reconsideration or initiate an administrative lawsuit under foregoing situation.

[33] Article 43 of the *Regulations for the Implementation of the Law of the PRC on the EJVs* provides that, the technology transfer agreement executed by EJV shall be approved by relevant governmental authorities. The technology transfer agreement should comply with the following regulations: … (IV) after the expiration of the technology transfer agreement, the transferee has the right to continue to use the technology.

[34] State Council Decree No.709, promulgated by the State Council on March 2, 2019.

[35] Article 35 of the Foreign Investment Law: The State establishes a security review system for foreign investment, under which the security review shall be conducted for foreign investment affecting or may affect the state security. A decision on security review shall be final.

[36] For example, the *Notice of Establishment of Security Review System on Merger of Domestic Entities by Foreign Investors* (General Office of the State Council Order (2011) No.6, promulgated by the General Office of the State Council on February 3, 2011), the *Notice of Printing and Distribution of the Trial Measures of Security Review of Foreign Investment in Free Trade Zone* (General Office of the State Council Order (2015) No.24, promulgated by the General Office of the State Council on April 8, 2015), the *Interim Provisions of MOFCOM's Implementation of measures of Security Review System on Merger of Domestic Entities by Foreign Investors* (MOFCOM Order 2011 No.8, promulgated by MOFCOM on March 4, 2011) and the *Regulations of MOFCOM's Implementation of Security Review System on Merger of Domestic Entities by Foreign Investors* (MOFCOM Order 2011 No.53, promulgated by MOFCOM on August 25, 2011). These regulations provide security review requirements on the establishment and merger of FIEs in the free trade zone and merger of FIEs outside the free trade zone, while do not have requirements of security review on the establishment of FIEs or foreign investments in other forms outside the free trade zone.

[37] Article 34 of the Foreign Investment Law: The State establishes a foreign investment information report system. Foreign investors or FIEs shall submit investment information to MOFCOM through the enterprise registration system and the Enterprise Credit Information Publicity System. The contents and scope of foreign investment information report shall be determined under the principle of necessity; it is not allowed to require FIEs to repeatedly submit any investment information

which can be obtained by interdepartmental information sharing mechanism.

[38] Unless otherwise specified herein, contents in this Exhibit are mandatory provisions of laws and regulations.