

China Business Advisory

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Further Reforms on Foreign Investment Law

On 19th January 2015, the Ministry of Commerce of China released draft legislation to replace Sino-Foreign Equity Joint Venture Law, Sino-Foreign Cooperative Joint Venture Law and Wholly Foreign-Owned Enterprises Law. Key points of this new legislation include:

- There is a broader definition for “foreign investment” embracing the concept of “actual control” attributing to a broader range of activities, examples of which are listed below, being deemed as foreign investments:
 - domestic companies in China established by foreign invested enterprises (“domestic companies”);
 - acquiring interests, such as shares, equity and voting rights, in domestic companies and shares of their property;
 - providing long-term finance by foreign investors to their subsidiaries in China;
 - acquiring and exercising rights to exploit natural resources, or constructing and operating infrastructures in China;
 - acquiring land use rights or immovable properties in China;
 - acquiring rights to exert control by means of contracts, trusts or similar forms over domestic companies.
- Negative list approach is introduced to allow investments not in the negative list to be registered with Administration for Industry and Commerce (“AIC”) directly, obviating the current requirements to go through a tedious set of procedures.

- The requirement of pre-approval will be replaced by subsequent reporting. Although the promulgation establishes a comprehensive information disclosure mechanism for foreign investments and their subsidiaries in China comprising initial, interim, quarterly and annual reporting, benefits from the cutting down on the pre-approval bureaucracy far outweigh, the efforts needed to comply with these reporting requirements .

By way of operation, the legislation will unify the existing foreign investment laws into one and enable foreign investors to gain a comprehensive understanding of the various regulatory aspects of setting up and operating a company in China. In essence, it is aimed at making business registration and operation in China easier for foreign investors.

The legislation however at the same time puts the following to stricter control:

- Foreign investments adopting the Variable Interest Entity structure in an attempt to by-pass restriction on foreign shareholding will be prohibited.
- Foreign investments that could be perceived to cause damages or constitute threats to national security will be subject to a unified national security review.

Easier Capital-Account Transactions in Shanghai Pilot Free Trade Zone

- On 12th March 2015, the Shanghai Branch of People’s Bank of China released Implementation Rules on Prudent Management of Separate Accounting for Overseas Financing and Cross-Border Capital Flows in the Shanghai Pilot Free Trade Zone (“FTZ”). This will allow companies operating in the FTZ to borrow abroad under a simpler regulatory regime. Key aspects of the Implementation Rules include:
- Channels for overseas financing are opened, and limit relaxed. Both financial and non-financial enterprises registered in the FTZ are now permitted to borrow up to twice of their capital, which could be two times of the current standard. The measure may help companies to significantly reduce their financing costs.
- It encourages enterprises to make use of RMB-denominated borrowings; and

- Monitoring of enterprises is now shifted from a system of prior approval to one of post-supervision.

Expansion of FTZ

Following an announcement on 28th December 2014, the FTZ will be expanded with the addition of Lujiazui Financial District, the Jinqiao Development Zone and the Zhangjiang Hi-Tech Park. Enterprises established therein are entitled to enjoy preferential policies promised by FTZ.

New Policies to Encourage Corporate Restructuring and Non-monetary Assets Investment

- To support mergers and reorganizations of enterprises and enhance the environment for enterprises development, Ministry of Finance and State Administration of Taxation have jointly issued “Circular on Corporate Income Tax Treatments to Encourage Corporate Restructuring” ([2014] No.109) and ‘Circular on Corporate Income Tax Treatments on Investment with Non-Monetary Assets’ ([2014] No.116) in December, 2014. The key attributes of the circulars include:
 - The scope of special tax treatment for corporate restructuring is expanded;
 - Deferred tax policy in relation to non-monetary assets is introduced.
 - Threshold for proportion of shares that needs to be subject to reorganization to enjoy special restructuring treatment is relaxed:
 - For internal restructuring:
 - No gain or loss is to be recognized in the books of the transferor and the transferee;
 - For tax reporting, the equity or assets transferred will be accounted for at the transferee's net book value which will also be the basis to account for depreciation on the assets transferred.

- For tax accounting, gains of a resident enterprise, derived from investment, in the form of non-monetary assets contribution, in another resident enterprise, can be deferred and amortized for a maximum term of 5 years.

Service Highlight

The Chinese government has been making continuing efforts to converge the domestic regulations with the international practices to attract foreign investors. With more than 20 years of operation in China assisting foreign investors from different countries, we are confident to offer the assistance foreign companies need to build their business with success in this nation. Please do not hesitate to contact our Marketing Executive, Ms. Yannes Lam, on (852)3579 8745 or at yanneslam@sinobridge-consulting.com to find out more about us.

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