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NEW COMPANY LAW PROVISIONS IN CHINA

On 1st January 2020 two important laws came into effect in the People's Republic of China on investments in China by companies with foreign equity (so called foreign invested enterprises, hereinafter "**FIEs**"): the Foreign Investment Law ("**FIL**"), issued on 15th March 2019, and the Foreign Investment Law Implementing Regulation ("**FIL Implementing Regulation**"), issued on 31st December 2019, which sets forth the implementing provisions of the FIL.

The FIL mainly provides for, with certain exceptions, that the law provisions regulating Chinese companies shall also be applicable to FIEs, repealing and replacing the laws which regulated foreign investments in China, and thus **(i)** the Sino-foreign Equity Joint Ventures Law ("**EJV Law**"), which regulates the sino-foreign joint ventures, by incorporation of a company; **(ii)** the Sino-foreign Cooperative Joint Ventures Law ("**CJV Law**"; together with the EJV Law, collectively, hereinafter "**JV Laws**"), which regulates the sino-foreign joint ventures, with or without the incorporation of a company; and **(iii)** the Wholly Foreign-owned Enterprises Law ("**WOFIE Law**"), which regulates the enterprises entirely owned by foreign funds. For the already existing FIEs a 5-year transitional period is provided, within which such FIEs shall have the right to maintain their current structure (as regulated by the relevant law).

The main corporate innovations set forth under the FIL and the FIL Implementing Regulation concern the corporate governance of the FIEs and the simplification of the corporate information reporting regime, better described below.

1. Corporate Governance

Pursuant to the FIL, starting from 1st January 2020 the company law on Chinese companies (the "**Company Law**") shall be applicable to FIEs and, therefore, the FIEs incorporated after such date shall be regulated under the same legislation applied to Chinese companies.

However, for the already existing FIEs, it will be necessary to start a process to revise the relevant corporate documents and amend them in order to make such documents comply with the Company Law, within the 5-year transitional period set forth under the FIL. In this respect, please note that while the WOFIE Law has minor differences from the Company Law (among which the restriction for Chinese individuals to invest in a WOFIE), the JV Laws have significant differences from the Company Law, among which:

Item	EJV	CJV	Company Law
Highest corporate body	Board of directors	Board of directors	Shareholders' meeting
Chinese individuals as shareholders	No	No	Yes
Number of directors	3 or more directors	3 or more directors	1 sole director or 3-13 directors
Term of the directors' office	4 years	3 or less years	3 or less years
Attending quorum	At least 2/3	At least 2/3	No quorum
Voting quorum (for certain major items provided by law)	Unanimous consent	Unanimous consent	2/3 or the quorum set forth under the relevant by-laws
Veto on transferring shares of the	Unanimous	Unanimous	Simple majority or the majority set forth

Item	EJV	CJV	Company Law
relevant company	consent	consent	under the relevant by-laws
Non-proportional distribution of dividends	No	No	Yes

In light of the above, it would be advisable for existing FIEs to commence the process of revising their current corporate documents as soon as possible, in order to assess **(i)** the necessary amendments to their corporate governance; **(ii)** the possible negotiation of new terms and conditions with their partners in the relevant joint venture; and **(iii)** the review of the corporate documents, in order to delete provisions which are no longer applicable and setting forth new provisions under the laws applicable to Chinese companies or following the negotiations under point **(ii)** above. After such analysis phase, it will be necessary to commence the amendment of the corporate documents as soon as possible, in order to make them comply with the Company Law.

2. Simplification of the corporate information reporting regime

Furthermore, the FIL sets forth that: the corporate information reporting regime shall be simplified, the reporting shall be under the principle of "true necessity", as well as the principle of sharing investment information between authorities without requesting the FIEs to report the same corporate information multiple times.

Indeed, before the entering into force of the FIL, the FIEs had to report their corporate information, pursuant to different procedures, both before the Chinese Ministry of Commerce ("**MOFCOM**") and before the State Administration for Market Regulation ("**SAMR**"), the governmental authority for regulating areas such as market competition, monopolies and intellectual property. Supporting and integrating the above, the FIL Implementing Regulation sets forth that SAMR shall be the authority competent to receive corporate information reporting from FIEs, therefore excluding the MOFCOM.

Following the above mentioned provisions, the SAMR and the MOFCOM issued the Measures for Foreign Investment Information Reporting via order no. 2/2019 (and other ancillary measures, also together with the State Administration of Foreign Exchange, among which, the Announcement on Matters Relating to Foreign Investment Information Reporting, the Notice on the Proper Handling of the Work of the Reform of "combining multiple reports into one integrated report" for Annual Reports, the Announcement on the Submission of Annual Reports for 2019 Foreign Investment Information Reporting and the Notice on Implementing the Foreign Investment Law and the Proper Handling of the Work of the Registration of Foreign invested Enterprises), which, replacing the preceding regime, provides that all corporate information shall be reported on-line to SAMR and the content of such reported corporate information shall then be communicated to MOFCOM by SAMR.

With the coming into effect of the above mentioned provisions, not only was the double corporate information reporting regime overcome, - which only had the effect to increase costs and expenses to be borne by the FIEs, among which the reporting of the yearly financial statements, - but above all, it overcame certain practical difficulties during the incorporation of FIEs, among which more restrictive and discretional requirements set forth by the MOFCOM (which under the new provisions is no longer part of the corporate information reporting regime) and the request by the State Administration of Foreign Exchange of a certificate to be issued by the MOFCOM in order to open bank accounts.

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The China Desk team of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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