

State Council of the People's Republic of China Announces Regulations for the Implementation of the Foreign Investment Law

China Business Solution Office
RMB Internationalization Business Promotion Office

On December 31, 2019, the State Council of the People's Republic of China (State Council) published Regulations for the Implementation of the Foreign Investment Law (State Council Ordinance No. 723, hereinafter referred to as the "Regulations"). The Regulations took effect on January 1, 2020, simultaneously abolishing the previous Regulations for the Implementation of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment, Interim Provisions Concerning Contract Period of Chinese-Foreign Equity Joint Ventures, Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, and the Detailed Rules for the Implementation of the Law of the People's Republic of China on Sino-foreign Contractual Joint Ventures.

Key Takeaways

- Existing foreign invested enterprises must complete adjustments to their organizational form and structure prior to January 1, 2025.
- Administrative regulations relating to foreign investment are currently being overhauled, which may result in significant changes in the practice of and procedures for foreign investment.

1. Background of the Regulations

On March 15, 2019, the Foreign Investment Law of the People's Republic of China (hereinafter "FIL") was passed by the National People's Congress. The FIL became the new fundamental law for foreign investment which comprehensively encompasses all aspects of foreign investment including access, promotion, protection, and management.

The Regulations are regarded as associated provisions to the FIL and were jointly drafted by the Ministry of Justice in conjunction with government departments including the Ministry of Commerce and the National Development and Reform Commission. On November 1, 2019, the Ministry of Justice released a preliminary draft for soliciting opinions on the Regulations, and then formulated a revised draft based on opinions from all quarters of society. This draft passed through the 74th executive meeting of the State Council on December 12, 2019, and the Regulations were formally published on December 31, 2019.

Both the FIL and the Regulations came into effect from January 1, 2020, to replace the established "three laws of foreign capital" and their related regulations. (Refer to Figure 1.)

[Figure 1] Basic Law and Administrative Regulations on Areas of Foreign Investment

Classification	Former	Current
Laws	The "three laws of foreign capital": Law on Wholly Foreign-Owned Enterprises Law on Chinese-Foreign Equity Joint Ventures Law on Sino-Foreign Contractual Joint Ventures	Foreign Investment Law (FIL)

Administrative Regulations	<p>Regulatory bylaws related to the “three laws of foreign capital”:</p> <p>Detailed Rules for the Implementation of the Law on Wholly Foreign-Owned Enterprises</p> <p>Regulations for the Implementation of the Law on Joint Ventures Using Chinese and Foreign Investment</p> <p>Interim Provisions Concerning Contract Period of Chinese-Foreign Equity Joint Ventures</p> <p>Detailed Rules for the Implementation of the Law on Sino-foreign Contractual Joint Ventures</p>	<p><u>Regulations for the Implementation of the Foreign Investment Law (the Regulations)</u></p>
-----------------------------------	--	---

2. Main Contents of the Regulations

The Regulations share the same structure as the FIL and are divided into "General Provisions," "Investment Promotion," "Investment Protection," "Investment Management," "Legal Liability," and "Supplementary Provisions." The Regulations give specifics on the provisions of the FIL in a total of 49 articles across 6 chapters, the main points of which are given below.

[Figure 2] Main Specific Details of the Foreign Investment Law in the Regulations

Keyword	FIL Contents	Specific Details from the Regulations
Chapter I General Provisions		
Other investor	<p>Classification of foreign investment:</p> <p>1. “A foreign investor establishes a foreign-funded enterprise within the territory of China, independently or jointly with any <u>other investor</u>;”</p> <p>2. “A foreign investor makes investment to initiate a new project within the territory of China, independently or jointly with any <u>other investor</u>;”</p>	<p>“Other investor:”</p> <p>Includes <u>natural persons of China</u>. (Article 3)</p>
Chapter II Investment Promotion		
National policies on supporting corporate development	<p>“All <u>national policies on supporting</u> the development of enterprises shall equally apply to foreign-funded enterprises in accordance with the law.”</p>	<p>The support policies that will equally apply to foreign enterprises comprise the following fields:</p> <p><u>Government funding, provision of land, tax and expense exemptions, licensing, establishment of standards, project applications, human resource policies,</u> etc. (Article 6)</p>
Methods for requesting opinion	<p>“<u>Comments and suggestions</u> from foreign-funded enterprises shall be <u>sought in a proper manner</u> when formulating laws, regulations and rules relating to foreign investment.”</p>	<p>The “proper” methods for requesting opinion include the following:</p> <p><u>Written questionnaires, discussion sessions, debate sessions, public hearings,</u> etc. (Article 7)</p>

<p>Publication of foreign investment-related regulations in accordance with the law in due time</p>	<p>“Normative documents and judgment documents relating to foreign investment shall be <u>published in accordance with the law in due time.</u>”</p>	<p>Publication “in accordance with the law” and “in due time” specifically means that:</p> <ol style="list-style-type: none"> 1. Documents <u>shall not be treated as the basis of administrative management if it is not published.</u> 2. For normative documents containing relevant details on the production and management activities of foreign-funded enterprises, <u>a reasonable period from publication to enforcement must be determined</u> taking actual conditions into account. (Article 7)
<p>Media for consultation and services</p>	<p>“The State [the Chinese government] shall <u>provide</u> foreign investment and foreign investors and foreign-funded enterprises with <u>consultation and services</u> in respect of laws and regulations, policies and measures, investment project information...”</p>	<p>The media for consultation and services include the following:</p> <ol style="list-style-type: none"> 1. <u>Government websites</u> 2. <u>National integrated online government service platform</u> <p>(Article 9)</p>
<p>Foreign investment encouraged catalogue and preferential treatment</p>	<p>“The State may, according to the requirements of national economy and social development, <u>encourage and guide</u> foreign investors to invest in <u>specific industries, fields and areas.</u> Foreign investors and foreign-funded enterprises may enjoy <u>preferential treatments</u> in accordance with laws, administrative regulations or provisions of the State Council.”</p>	<ol style="list-style-type: none"> 1. For industries, fields, and areas designated for encouragement and guidance in foreign investment: Refer to the <u>"Foreign Investment Encouraged Catalogue"</u>. 2. Preferential treatment in the following areas will be available: <u>Public finance, taxation, financing, land,</u> etc. (Article 12)
<p>Setting standards</p>	<p>“The State shall guarantee that <u>foreign-funded enterprises can equally participate in setting standards in accordance with the law...</u>The compulsory standards formulated by the State shall equally apply to foreign-funded enterprises.”</p>	<ol style="list-style-type: none"> 1. Equal participation in setting standards in accordance with the law encompasses: <u>National standards, industry standards, regional standards, and group standards, corporate standards,</u> etc. 2. When setting corporate standards: Standards may be established <u>independently</u> or <u>jointly</u> with other companies 3. Ways to participate: An enterprise may <u>submit a proposal to initiate the standardization of projects</u> to the division of standardization administration and other relevant administrative divisions. In the process of initiation, drafting, technology review, feedback on the standardization

		<p>information, and process evaluation, an enterprise may <u>submit opinions and recommendations</u>, and in accordance with the regulation to undertake the standardization <u>drafting, technology review</u> of the relevant work and conducting <u>foreign language translations</u> on standardization. (Article 13)</p>
<p>Government procurement</p>	<p>“The State shall guarantee that foreign-funded enterprises can <u>participate in government procurement activities through fair competition</u>. Products produced and services provided by foreign-funded enterprises within the territory of China shall be treated equally in [government procurement].”</p>	<p>1. “Fair competition” means that: Government procurement personnel and procurement agencies <u>shall not discriminate</u> against foreign-funded enterprises regarding the <u>release of government procurement information, determination of conditions for and qualification of suppliers, and bidding criteria</u>. <u>Nor shall</u> they restrict suppliers based on the <u>form of ownership, organizational form, equity structure, investor nationality, product or service brand, or by any other unreasonable criteria</u>.</p> <p>2. The following remedial measures are included:</p> <p>(1) In accordance with the <u>Government Procurement Law and its implementation regulations</u>, a foreign-funded enterprise may submit <u>inquiries</u> and <u>questions</u> to government procurement personnel and/or procurement agencies. They may also file <u>complaints</u> with the supervisory and administrative department of government procurement.</p> <p>(2) <u>The supervisory and administrative department of government procurement and other related departments</u> shall strengthen the <u>supervision and inspection</u> of government procurement activities and, <u>in accordance with the law, rectify and eliminate</u> illegal activities such as discriminatory treatment of foreign-funded enterprises. (Articles 15–17)</p>
<p>Means of financing</p>	<p>“Foreign-funded enterprises may conduct financing through public offering of shares, corporate bonds and other securities or <u>by other means</u>.”</p>	<p>“Other means”: Includes <u>other disclosed or undisclosed financial instruments, and financing through foreign debt</u>. (Articles 18)</p>

<p>Local governments attracting foreign investment</p>	<p>“<u>Local people's governments at county level or above</u> may, in accordance with the provisions in laws, administrative regulations or local regulations, formulate policies on the promotion and facilitation of foreign investment <u>within their respective statutory authorities.</u>”</p>	<p>The statutory authorities granted to the local governments of the county level or higher for enacting policies in accordance with laws, administrative regulations, and local regulations: Include <u>expense exemptions, security of land use,</u> and the <u>provision of public services,</u> etc. (Article 19)</p>
<p>Guidelines for foreign investment</p>	<p>“Relevant competent departments shall prepare and publish <u>guidelines for foreign investment</u> and provide foreign investors and foreign-funded enterprises with services and convenience.”</p>	<p>Guidelines for foreign investment include: Content such as an <u>introduction to the investment environment, foreign investment business guidelines, investment project information,</u> and <u>relevant data,</u> etc. (Article 20)</p>
<p>Chapter III Investment Protection</p>		
<p>Expropriation and compensation under special circumstances</p>	<p>“Under special circumstances, the State may expropriate or requisition an investment made by foreign investors for public interests in accordance with the law. Such expropriation or requisition shall be made pursuant to statutory procedures and <u>fair and reasonable compensation</u> will be given in a timely manner.”</p>	<p>Fair and reasonable compensation is defined as: Compensation without delay in accordance with the <u>market value of the expropriated assets.</u> If foreign investors object to the decision of expropriation, they may apply for a <u>review</u> in accordance with the law or file for <u>administrative litigation.</u> (Article 21)</p>
<p>Freedom of inward and outward capital transfer</p>	<p>“A foreign investor may, in accordance with the law, <u>freely transfer inward and outward</u> its contributions, profits, capital gains, income from asset disposal, royalties of intellectual property rights, lawfully obtained compensation or indemnity, income from liquidation and so on within the territory of China in <u>RMB or a foreign currency.</u>”</p>	<p>Free inward and outward transfer means that: Any unit and individual shall not be subject to illegal restrictions on <u>currency, currency amount, or frequency of inbound deposits and/or outbound transfers.</u> (Article 22)</p>
<p>Transfer of technology</p>	<p>“<u>No</u> administrative department or its staff member shall <u>force any transfer of technology by administrative means.</u>”</p>	<p>Administrative means include: <u>Administrative permits, administrative inspections, administrative penalties, administrative enforcement, and other administrative measures.</u> (Article 24)</p>
<p>Trade secrets</p>	<p>“Administrative departments and their staff members shall keep <u>confidential</u> any <u>trade secret</u> of a</p>	<p>The government must implement trade secret protection as follows: 1. The staff members’ access to information is to</p>

	<p>foreign investor or foreign-funded enterprise they are aware of during the performance of their duties, and <u>shall not divulge or illegally provide to others the secret.</u>”</p>	<p>be <u>limited to the extent necessary for the execution of duties</u>; the staff must not handle any related materials or information that are unnecessary for the execution of duties.</p> <p>2. Government agencies shall build and improve their <u>internal management systems</u>.</p> <p>3. In the event <u>when it is necessary to share information with other government agencies</u> in accordance to the law, the <u>confidentiality of information containing an enterprise’s trade secrets must be protected</u> and measures must be taken to prevent leaks. (Article 25)</p>
<p>Legal review</p>	<p>“In formulating <u>normative documents concerning foreign investment</u>, the people’s governments at all levels and their relevant departments shall comply with <u>laws and regulations</u>.”</p>	<p>1. The normative documents pertaining to foreign investment shall conform to the provisions of the laws and regulations as follows: Documents must <u>undergo a legal review to ensure that it conforms to the provisions set by the State Council</u>.</p> <p>2. The following remedial measures are included: In the event of an <u>administrative review</u> or the <u>process of administrative litigation</u>, the applicant may apply for a <u>review of the normative documents</u> in accordance with the law. (Article 26)</p>
<p>Policy commitments of local governments</p>	<p>“Local people’s governments at all levels and their relevant departments shall strictly keep their <u>policy commitments</u> made to foreign investors and foreign-funded enterprises and perform <u>all contracts entered into in accordance with the law</u>.”</p>	<p>1. Policy commitments of local governments are defined as follows: <u>Written commitments</u> containing the <u>government’s support policies, preferential treatment, and conveniences</u> for investments made by foreign investors and foreign-funded enterprises in the applicable regions, made under the statutory authorities by governments of each administrative level and its related divisions.</p> <p>2. The policy commitments and various contracts concluded that are based according to the law shall be performed as follows: The contracts shall not be violated or voided due to <u>adjustment of administrative divisions, change of government, adjustment of system and/or functions, or the replacement of supervisors</u>. (Article 27–28)</p>
<p>Complaint</p>	<p>“The State shall establish a</p>	<p>A complaint mechanism is administered as</p>

<p>mechanism</p>	<p><u>complaint mechanism</u> for foreign-funded enterprises, timely solve the problems reported by foreign-funded enterprises or their investors, and coordinate and improve relevant policy measures.”</p>	<p>follows:</p> <ol style="list-style-type: none"> 1. At the central level: A <u>joint-committee mechanism with the national complaint center for foreign investment enterprises</u> together with the relevant State Council divisions is established to facilitate the handling of complaints and to respectively conduct guidance and supervision accordingly to the complaints filed by local foreign-funded enterprises. 2. At the local level: <u>The local government at the county level or above</u> shall specify the division or mechanism <u>responsible for complaints filed by foreign investment enterprises or investors for the respective region.</u> (Article 29)
<p>Chapter IV Investment Management</p>		
<p>Administrative licenses</p>	<p>“Unless otherwise provided by laws or administrative regulations, the relevant competent department shall review the <u>application for license filed by the foreign investor based on the same conditions and procedures as those for domestic investment.</u>”</p>	<p>The conditions and procedures for the domestic investments which are the same include the following: <u>License conditions, application materials, review process, review period.</u> (Article 35)</p>
<p>Denominated currency of registered capital</p>	<p>(No corresponding text)</p>	<p>The <u>registered capital</u> of a foreign-funded enterprise may be denominated in <u>RMB</u> or a <u>convertible currency.</u> (Article 37)</p>
<p>Chapter V Legal Liability (Omitted)</p>		
<p>Chapter VI Supplementary Provisions</p>		
<p>Transitional period</p>	<p>“Foreign-funded enterprises, which were established in accordance with the [three laws of foreign capital] before the implementation of the [FIL], <u>may retain their original organization forms and other aspects for five years</u> upon the implementation hereof.”</p>	<p>Related provisions for the transitional period: <u>From January 1, 2025,*</u> the departments for market regulation <u>shall not accept any other applications for registration</u> from existing foreign-invested enterprises which have not made any registration changes or adjustments to its organization form or structure and shall <u>publish</u> this information as is, in accordance with the law. (Article 44)</p> <p>* The preliminary draft of the Regulations mentioned a six month buffer period for registration changes on January 1, 2025, but this was removed in the official version.</p>

<p>Execution of existing contracts</p>	<p>(No corresponding text)</p>	<p>After an existing foreign-invested enterprise has modified its organization form and structure of in accordance with the law, <u>the method of equity or interest transfer, revenue distribution method, surplus assets distribution method, etc. originally concluded in each contract for a joint venture or cooperative joint venture, can still be executed as indicated in the contract.</u> (Article 46)</p>
<p>Domestic reinvestment by foreign-funded enterprises</p>	<p>(No corresponding text)</p>	<p>If a foreign-funded enterprise invests domestically in China, <u>the FIL and related bylaws of these Regulations shall apply.</u> (Article 47)</p>
<p>Hong Kong, Macao, Taiwan, and Chinese living overseas</p>	<p>(No corresponding text)</p>	<p>1. If an investor in the <u>Hong Kong Special Administrative Region</u> or the <u>Macao Special Administrative Region</u> invests in China, investments shall be made in accordance with <u>the FIL and these Regulations.</u> In the case where there are <u>separate provisions</u> stipulated by the law, administrative regulations, or the state council, <u>the latter provisions shall be followed.</u></p> <p>2. If investors from the region of <u>Taiwan</u> are investing in mainland China, the provisions of the <u>Law of the People's Republic of China on the Protection of Investments of Taiwan Compatriots and its supplementary bylaws</u> shall apply. For matters not stipulated in this law or its supplementary bylaws, investments shall be made in accordance with <u>the FIL and these Regulations.</u></p> <p>3. If Chinese citizens who live overseas invest in China, they may invest in accordance with the <u>FIL and these Regulations.</u> In the case where there is a <u>separate provision</u> stipulated by the law, administrative regulations, or the State Council, <u>the latter provisions shall be followed.</u> (Article 48)</p>

3. Impact on Companies

The Regulations have substantiated the Foreign Investment Law at the administrative regulatory level. At this time, it is worth noting the freedom of inbound and outbound capital transfer pertaining to foreign investment (including dividends), and the simplification of incorporation procedures for foreign-funded enterprises (elimination of special ratifications and notifications for setting up foreign investments, etc.).

Procedures concerning adjustments to the organization form for existing foreign investment enterprises during the transition period have been clarified in the Regulations. Foreign investment enterprises are encouraged to begin reviewing relevant adjustment procedures as soon as possible to ensure a successful and seamless continuation of business after the five-year transitional period.

Meanwhile, as many years have passed since the establishment of the traditional "three laws of foreign capital," it is assumed that a large amount of related regulations will be promulgated or revised during this transitional period, while some unforeseen practical problems may arise. For example, it can be noted that the provisions of each administrative department have not been unified regarding investments made domestically in China by foreign-funded enterprises (re-investment of foreign capital).

We will continue to follow up on relevant information and provide details as they come.

Disclaimer

This report has been prepared by MUFG Bank (China), Ltd. (the “Bank”), for information only and is not intended for use by or distribution to any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulations. The Bank and/or any person/entity connected with it may make use of or may act upon the information contained in this report prior to the publication of this report to its customers.

Neither the information nor the opinion expressed herein constitute or are to be construed as an offer, solicitation, advice or recommendation to buy or sell deposits, securities, futures, options or any other financial or investment products.

This report has been prepared solely for informational purposes and does not attempt to address the specific needs, financial situation or investment objectives of any specific recipient.

This report is based on information from sources deemed to be reliable but is not guaranteed to be accurate and should not be regarded as a substitute for the exercise of the recipient’s own judgment. The recipient should obtain separate independent professional, legal, financial, tax, investment or other advice, as appropriate.

This report is based upon the analysts’ own views, therefore does not reflect the Bank’s official views. All views herein (including any statements and forecasts) are subject to change without notice, its accuracy is not guaranteed; it may be incomplete or condensed and it may not contain all material information concerning the entities referred to in this report. None of the Bank, its head office, branches, and affiliates is under any obligation to update this report.

Historical performance does not guarantee future performance. Any forecast of performance is not necessarily indicative of future or likely performance of the any product mentioned in this report.

The Bank and/or its directors, officers, and employees, from time to time, may have interest and/or underwriting commitment in the relevant securities mentioned herein or related instruments and/or may have a position or holding in such securities or related instruments as a result of engaging in such transactions. Furthermore, the Bank may have or have had a relationship (for example, the relationship of affiliate, strategic partnerships, etc.) with or may provide or have provided corporate finance or other services to any company mentioned herein.

The information contained herein has been obtained from sources the Bank believed to be reliable but the Bank does not make any representation or warranty nor accept any responsibility or liability as to its accuracy, timeliness, suitability, completeness or correctness. Therefore, the inclusion of the valuations, opinions, estimates, forecasts, ratings or risk assessments described in this report is not to be relied upon as a representation and / or warranty by the Bank. The Bank, its head office, branches, and affiliates and the information providers accept no liability whatsoever for any direct, indirect and/or consequential loss or damage of any kind arising out of the use of all or any part of this report.

The Bank retains copyright to this report and no part of this report may be reproduced or redistributed without the written permission of the Bank and the Bank, its head office, branches, or affiliates accepts no liability whatsoever to any third parties resulting from such distribution or re-distribution.