



NEW CHINESE LAW ON FOREIGN INVESTMENTS

Significant innovations and improvements in the corporate regime



On March 15, 2019, China approved the new Foreign Investment Law, also known as FIL, which will come into force on January 1, 2020.

The FIL has completely reshaped the discipline of access, promotion, protection and management of foreign investments in mainland China.

To date, the subject has been regulated by three laws, namely the "Chinese-Foreign Equity Joint Ventures Law", the "Wholly Foreign-Owned Enterprises Law" and the "Chinese-Foreign Contractual Joint Ventures Law", which date back to the 80s and 90s of the last century.

The new law suppresses the cumbersome distinction of FIEs (Foreign Invested Enterprises) in Equity Joint Ventures (EJVs), Contractual Joint Ventures (CJVs) and Wholly Foreign-Owned Enterprises (WFOEs), and establishes that all FIEs will be governed by the rules applicable to Chinese companies, that is, they will be allowed to operate in China according to the regulation of the P.R.C. Company Law and P.R.C. Partnership Law.

The FIEs already existing and organized according to the pre-existing categories will be able to operate for a transitional period of 5 years from the entry into force of the FIL, after which they will have to convert into the corporate forms provided by the FIL.

The important innovations of the FIL concern the following provisions:

- 1) confirms investment protection and the general ban on state expropriation of investments;
- 2) confirms the protection of the industrial property rights of foreign investors, increasing the legal responsibility in case of violation of said rights;
- 3) introduces the possibility for FIEs to participate in public tenders in equal conditions and to make use of public capital financing;
- 4) provides for the faculty of FIEs to freely transfer, within and outside of mainland China, profits, capital gains and revenues deriving from the sale of movable and immovable property, royalties and offsets;
- 5) provides for the establishment of a body for the management of dispute resolution procedures between FIEs and administrative bodies, government bodies and their employees, without precluding the possible use of ordinary jurisdiction.

The FIL also envisages expansion programs for special economic zones, as well as the establishment of more favorable regimes to guide and intensify foreign investments in specific industries, sectors and geographical areas.

Overall, the FIL has achieved significant regulatory improvements and a general simplification of the discipline of foreign investments, with particular reference to the reduction of the gap between domestic and foreign companies and the introduction of equal treatment of FIEs with respect to the corresponding domestic entities, in addition to a strengthening of the protection of industrial property rights.