

MEMBER CONTRIBUTION**The New Foreign Investment Law in China**

The New Foreign Investment Law (FIL) in China will bring some changes, such as the elimination of the three foreign investment laws. Some of the important effects of this new FIL is the changes that foreign-invested enterprises will no longer be distinguished as Sino-Foreign Equity Joint Ventures (EJVs), Sino-Foreign Contractual Joint Ventures (CJVs) and Wholly Foreign Owned Enterprises (WFOEs), but will be designated as foreign-invested enterprises (FIEs) and established in accordance with Chinese Company Law. Since this law was issued in China, on January 2020, investors, lawyers, and policymakers must be aware of the changes of the FIL in China.

The basic framework of China's foreign investment law and policy has developed gradually since it adopted its open-door policy. In 1979, the first investment law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures was issued. This law is known as the Equity Joint Venture Law¹. Then, the National People's Congress (NPC) promulgated the Law of the People's Republic of China on Foreign-Invested Enterprises, known as the Foreign Invested Enterprises Law and the Law of the People's Republic of China on Chinese Foreign Invested Joint Ventures named the Contractual Joint Ventures Law. These laws are known as China's three investment laws. Hence, these have been the laws governing foreign investments in China². It is important to note that these three laws have their own regulations bodies.

¹ Gao Xiang & Huiqin Jiang. The Trend of China's Foreign Investment Legal System From the perspective of the China (Shanghai) Pilot Free Trade Zone. Available at <https://press-files.anu.edu.au/downloads/press/p320411/pdf/ch17.pdf> (visited 13 Jun 2020).

² Gao Xiang & Huiqin Jiang. The Trend of China's Foreign Investment Legal System From the perspective of the China (n 2 above).

In China, the Company Law establishes the legal framework for the special laws that apply for foreign investment companies and establish the law for domestic

companies. Basically, the three investment laws, the regulations of the three investment laws, and the Company Law, are the legal framework for foreign investment in China. As a result, these types of companies have been treated differently over the years including in relation to the legal framework, administrative institutions, and requirements.

One of the big changes of the new FIL is that the three types of foreign enterprises, WFOEs, CJVs, and EJVs, will disappear and the distinction between WFOE, EJV and CJV will no longer exist. The current foreign investment structures will uniformly be referred to as FIEs.

These changes will bring more uniformity to how foreign companies and Chinese companies are treated, as the legal and the administrative differences between foreign and national companies will no longer exist. Foreign invested companies will continue in their current form and will have five years to change. During this period, all current FIEs must adapt their corporate governance structure to conform to Chinese Company Law or Chinese Partnership Enterprise Law.

Carolina Fabara

Legal advisor

Shanghai University of Finance and Economics | CHINA

E-mail: abogadacfabara@gmail.com

Bibliography:

Gao Xiang & Huiqin Jiang. The Trend of China's Foreign Investment Legal System From the perspective of the China (Shanghai) Pilot Free Trade Zone. Available at

<https://press-files.anu.edu.au/downloads/press/p320411/pdf/ch17.pdf> (visited 13 Jun 2020).

Marius Stucki, China's New Foreign Investment Law – With A Special Note On Swiss-Chinese Investment (Beijing, December 14, 2019). Available at SSRN: <https://papers.ssrn.com/sol3/Data Integrity Notice.cfm?abid=3503897>.