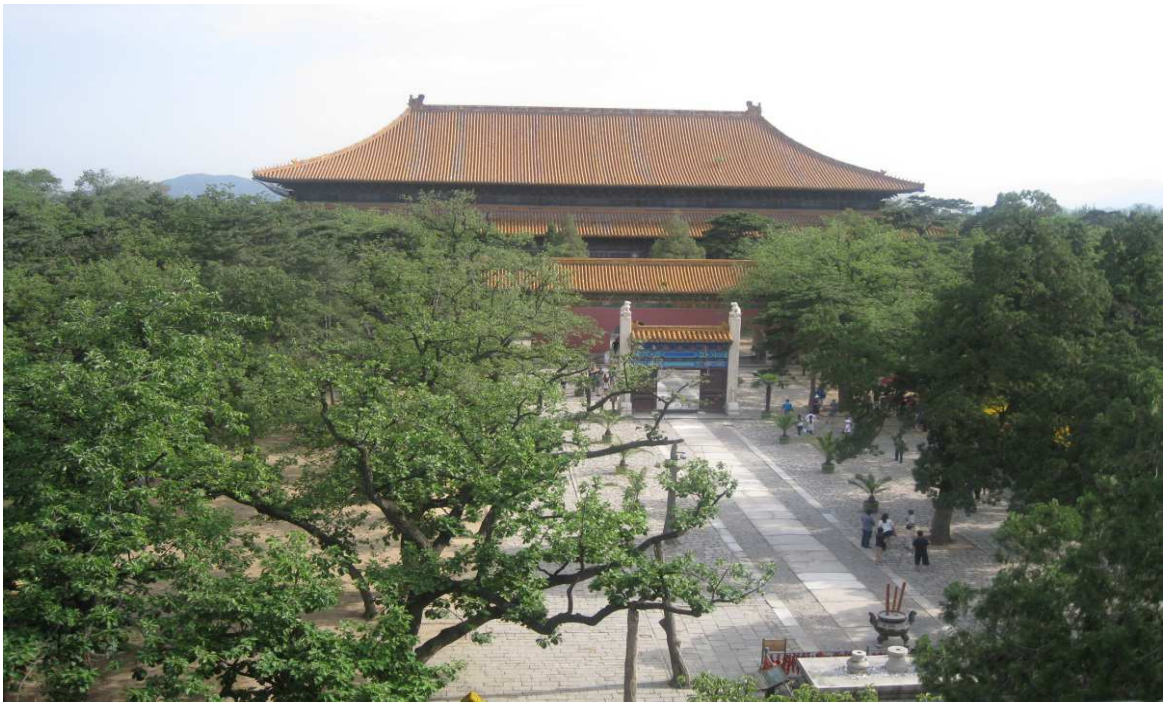
瑞士文斐律师事务所
WENFEI ATTORNEYS-AT-LAW LTD.

China Legal Briefing* 248

March 2015



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1. Release of Draft Foreign Investment Law

The Chinese Ministry of Commerce has released the draft of a proposed new Foreign Investment Law to solicit public opinions. The law is set to replace the three current key laws on foreign investment in China: the *Law on Sino-foreign Equity Joint Ventures*, the *Law on Wholly Foreign-owned Enterprises* and *the Law on Sino-foreign Cooperative Joint Ventures*. The intention of this important move is to standardize and simplify the current regulatory framework for foreign investment. Specifically, there will no longer be a separate legal regime for WFOEs, Equity JVs and Cooperative JVCs, while foreign invested enterprises in general shall largely be subject to the same legal treatment as domestic companies.

The proposed law will bring a considerable reduction of legal entry barriers to foreign investment in China. At the same time, however, scrutiny is increased in order to assure that foreign investors do not evade regulations prohibiting investment in restricted industries.

The highlights of this Draft Foreign Investment Law are summarized as follows:

A. Broader definition of foreign investment

The definition of foreign investment is broadened to include the following activities conducted by foreign investors:

1) establishing a domestic enterprise;
2) acquiring shares, equities, property shares, voting rights or similar interests in a domestic enterprise;
3) providing financing for at least one year to a domestic enterprises mentioned under item 2;
4) acquiring concessions to explore or exploit natural resources, or to construct or operate infrastructure within the territory of China;
5) acquiring land use rights, house ownership or other rights to immovable property in China;
6) acquiring interests in or control over a domestic enterprise by contract, trust or other means.

Furthermore, any transaction occurring outside of China that leads to the transfer of the actual control over a domestic enterprise to a foreign investor shall be deemed as a foreign investment.

A major change that leads to a significant broadening of the term "foreign investor" is reflected the following sentence in article 11 of the draft law: *"Domestic enterprises under the control of the subjects as mentioned in the preceding paragraph* [i.e. natural persons of foreign nationality, enterprises

incorporated under foreign laws, foreign governments and international organisations] *are deemed foreign investors."* The practical consequence of this is that not only a domestic enterprise that is established or controlled by a foreign company (e.g. a WFOE), but also this domestic enterprise itself is considered a foreign investor. As a result, any subsidiary of this foreign invested domestic company is considered a foreign invested company. This would be a paradigm change compared to the current regime, under which only the WFOE itself is considered an foreign invested entity, but not its subsidiaries.

In company law however, the consequences of this change would mitigated by the fact that differences in legal treatment between foreign invested and domestic companies has been largely eroded in recent years. On the other hand, it is yet unclear if there will be consequences in other areas, for example in Civil Procedure Law, where the jurisdiction of certain courts depends on thresholds of the amount in dispute that vary if a foreign invested company is involved.

B. The notion of actual control

The draft law introduces the notion of actual control, which is defined as follows:

1) holding, directly or indirectly, not less than 50% of shares, equities, share of properties, voting rights or other similar rights of the enterprise;
2) holding, directly or indirectly, less than 50% of shares, equities, share of properties, voting rights or other similar rights of the enterprise, but falling under any of the following circumstances: (1) having the right to directly or indirectly appoint not less than half of the members of the board of directors or other a similar decision-making body of the enterprise; (2) having the ability to ensure that its nominees occupy not less than half of the seats on the board of directors or another similar decision-making body of the enterprise; or (3) holding voting rights sufficient to impose significant impact on any resolution of the board of shareholders, at the general meeting of shareholders, or of the board of directors or another decision-making body of the enterprise;
3) imposing a decisive impact on the operation, financing, personnel or technology of the enterprise by contract, trust, or other means.

C. Introduction of a negative list

Under the Draft Foreign Investment Law, foreign investments are generally entitled to enjoy national treatment and do not require any pre-approval, unless they fall under a "prohibited" or "restricted" category. Instead, they need to submit a report (see below). This is basically a national introduction of the negative list system that has been on trial in the Shanghai Free Trade Zone since 2013. The State Council will issue a "Catalogue of Special Administrative Measures" listing investments that are prohibited or restricted. The two criteria

are the industry in which the investment is made as well as the investment amount. Investments in restricted industries need to be pre-approved on the provincial level or by the State Council. Investments exceeding the monetary threshold need to be pre-approved by the State Council itself. This not only relates to the initial investment but also includes later instalments made within 1-2 years.

D. Reporting

All foreign investors need to submit a report prior to the investment or within 30 days after the investment is made. The initial investment report needs to provide basic details about the foreign investor (name, domicile, organisation form, main business etc.) and the investment itself (amount, source, time, ratio to other investors etc.). For investment into a domestic entity, it must also include basic information about the company, such as name, location, registered capital, investment amount, equity structure etc. Furthermore, the foreign investor or the foreign-invested enterprise need to report on any changes to the investment within 30 day time frame.

In addition, a new report has to be issued every year. Apart from all the information contained in the initial report, foreign investors must also provide operational information about the foreign invested entity, which includes financial statements, taxes, imports and exports, major legal cases and the entity's dealings with the foreign investor and its affiliates (e.g. transfer pricing practices).

E. National Security Review

A national security review may be conducted to by a joint ministerial conference hosted by the National Development and Reform Commission under the State Council to assess if a foreign investment endangers national security. The review can be voluntarily requested by the foreign investor or it may be initiated *ex officio*. The draft law states a number of grounds for a review, such as national defence, telecom and internet security, influence on economic stability and access to resources, control by a foreign government or access to technology crucial to national security. The list is open-ended, stating that "other factors the Joint Conference deems necessary" may be investigated. Upon completion of the review, the foreign investment in question may be approved, rejected or approved under restrictive conditions, such as a disinvestment of assets or business lines, limits on the percentages of shareholding, requirements on the operating period or other restrictions. No administrative reconsideration of or litigation against a national security review decision is possible.

2. New Financial Cooperation between China and Switzerland

On 21 January 2015, Li Keqiang, Premier of China, and Simonetta Sommaruga, president of the Swiss Confederation witnessed the signing of a Memorandum of Understanding ("MoU") by the People's Bank of China ("PBOC") and the Swiss National Bank ("SNB"). Under the MoU, China will give Switzerland an investment quota of RMB 50 billion under its Qualified Foreign Institutional Investors scheme to support the establishment of the Zurich offshore Renminbi market. Previously, on 21 July 2014, PBOC and SNB signed a Bilateral Currency Swap Agreement covering an amount of RMB 150 billion. The term of the agreement is 3 years, extensions are possible with the mutual consent of both parties.

3. Simplified Visa Procedure for Short-Term Work Assignments implemented on a Trial Basis

Starting from 1 January 2015, the new "Handling Procedures for Foreigners entering China for the Accomplishment of Short-Term Work Assignments" ("Handling Procedures") are implemented on a trial basis. The Handling Procedures were released jointly by the Ministry of Human Resources and Social Security, the Ministry of Foreign Affairs, the Ministry of Public Security and the Ministry of Culture comes. The release of this new trial procedure appears to be a reaction of the authorities to some of the criticism that arose from the international business community in China after the new Exit and Entry Administration Law brought much stricter visa requirements upon its entry into force in 2013. One of the complaints was that the new law brought an unnecessary burden for professionals on short term working assignments, which includes internships in particular.

The Handling Procedures address this issue by permitting certain categories of paid short-term work to be completed under an M-visa (visa for business visits) or an F-visa (visa for exchanges, inspections and non-commercial visits). Other short-term work assignments continue to require a Z-visa (work permit). The activities subject visa requirements are categorised as follows in the new Handling Procedures:

A. Short term work assignments requiring M-visa or F-visa

According to Section II of the Handling Procedures, a foreigner staying in China for no more than 90 days may conduct work assignments under an M-visa in the following cases:

(1) Supporting repair, installation, commissioning, disassembly, instruction or training services with the purchase of machinery;

(2) Instruction, supervision or inspection with respect to a bid-winning project

in China;

(3) Assignment to short-term work at a branch office, subsidiary or representative office in China;

(4) Participation in a sports competition (including as an athlete, coach, team physician, assistant or any other relevant personnel, except when the foreign national enters China to compete in a sports event with a registration card in accordance with the requirements of an international sports organization and upon approval by a competent Chinese authority).

A foreigner staying in China for no more than 90 days may apply for an F-visa in the following cases:

(1) A volunteer or any other person who enters China to engage in unpaid work or is paid by an overseas institution;

(2) The competent culture department does not indicate "foreign-related commercial performances" in its approval document.

In case a foreigner stays in China for more than 90 days under any of the above circumstances, except (4) which is still subject to an M-visa, he or she shall apply for a work permit and a Z-visa under the existing rules.

B. Short term work assignments still requiring a Z-visa

A foreigner entering China for any of the following reasons and staying in China for no more than 90 days shall continue to apply for a work approval and a Z-visa based on Section I of the Handling Procedures:

(1) Completion of certain technological work, scientific research, management or instruction at a partner entity in China;

(2) Trial training at a sports institution in China (including as a coach or an athlete);

(3) Filming (including commercials and documentaries);

(4) Fashion shows (including a car show model, shooting of a print advertisement, etc.);

(5) Foreign-related commercial performances.

Although there are no public regulations on this issue yet, consultations with the competent authorities have shown that the application requirements for a work permit that covers a period of no more than 90 days are relaxed as opposed to those relating to long term work assignments. For example, the labour bureaus appear not to require proof of prior work experience in the applicant's country of origin, which is a requirement for a long term work permit. Applications for a Z-visa covering stays of no more than 90 days should therefore be less expensive and time-consuming.

C. Conclusion

The Handling Procedures are a welcome development removing some of the unnecessary and probably unintended hurdles that have been created by the 2013 Exit and Entry Administration Law. Notably, foreign short-term interns do not require a Z-visa anymore if they engage in paid work, and they do not need to satisfy the requirements for a work permit, such as having at least 2 years of work experience in their country of origin. Instead they can either be categorized as a "volunteer or any other person who enters China to engage in unpaid work or is paid by an overseas institution" and apply for an F-visa or under an "assignment to short-term work at a branch office, subsidiary or representative office in China" and apply for an M-visa.

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