

China's New Foreign Investment Law



China's new Foreign Investment Law (FIL) will take effect on January 1, 2020. The reform will change the laws regulating Foreign Invested Enterprises (FIEs), changing the way many operate in China.

Are you prepared?

We all know the implementation measures are still forthcoming. And many of the reforms should be associated with a transition period. But that doesn't mean you should wait until January.

Wholly Foreign-Owned Enterprises (WFOEs), Sino-Foreign Equity Joint Ventures (EJVs), and Sino-Foreign Cooperative Joint Ventures (CJVs) will all need to make changes. EJV and CJV structures will become obsolete. Businesses that change their corporate structure will need to revise corporate documentation. Any revisions will need to be reported to local authorities. These challenges require time and expertise.

We have specialized in managing foreign investment concerns in China since 1992, and we understand how difficult these transitions can be. To help business leaders prepare, our experts compiled a Q&A on the top three FIL challenges we are managing with our clients.

How should you prepare for restructuring?

Work with your legal advisor

You need your legal counsel to conduct extensive reviews of the FIL and its impact on your company's operations. Your legal counsel should know about the new FIL and its affect on your company. But if your in-house counsel needs to remain focused on core objectives, work with an outside advisor that understands the FIL and FIEs in China.

Be aware and stay informed

Your leadership team needs to learn about how the FIL will affect your business, and sooner rather than later. Ask your counsel to review the structure and documentation of the company, prepare a summary of the key changes your business will need to make, and draft a memo to your leadership team (such as the board of directors) for review and action.

Embrace change

Once your leadership team has made a decision about next steps, this needs to be communicated with shareholders for confirmation, while your legal counsel will need to draft new documentation, such as a JV contract, the Articles of Association (or AoAs), and other documents that shareholders need to approve before your business' registration can be amended.

What challenges do WFOEs, EJVs, and CJVs face in re-structuring?

EJVs, CJVs have more to do than WFOEs

WFOEs will need to revise their AoAs during the five-year transition period that begins on January 1. They can prepare their AOAs in accordance with the current Company Law – so the revision process shouldn't be a major challenge.

EJVs and CJVs need to change their AoAs and their contracts during the same transition period. The revisions that EJVs and CJVs need to make to their AoAs and contracts are substantive because EJV and CJV laws will become obsolete under the new FIL.

That means business leaders at EJVs and CJVs need to be ready to negotiate their restructure with JV partners and file all revisions with the authorities.



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Start communicating with your EJV or CJV partner early

For EJVs and CJVs, the AoA and partnership contract are the two most important documents. The AoA is the most significant statutory document regulating internal governing structure, while the contract is the most significant document concerning rights and obligations.

To renegotiate your EJV or CJV contract, your company and its partner will need to explore business critical issues like revenue sharing, intellectual property ownership, and the composition of the board. And your business may have changed since the initial contract. You may need to review the actual business requirements of the partnership, which would require renegotiating rights and obligations for each party.

Meanwhile, to revise the AoA of your EJVs and CJVs, your company and its partner will need to have agreement on high level concerns, such as the board of directors and board of shareholders, along with their respective authority and procedures.

The entire process can take a long time. The government's five-year deadline for transition may seem like a long time now, but foreign companies really must start this process as soon as possible to ensure they don't get stuck into a corner.

Is it difficult to file revised corporate documentation with the authorities?

Your local authorities will make a big difference

WFOEs, EJVs, and CJVs will need to file the new AoA or AoA amendment with the Administration for Market Regulation

(AMR). On paper, the AMR is just a filing authority. However, in practice, local AMR officials may require your company to follow their template or request additional modifications to your documents.

Meanwhile, some local AMRs may request EJVs or CJVs to share their contracts – and even suggest changes – even though it is not required by law to be filed. Your company may need to go through several rounds of discussion before successfully filing the correct documents.

Expect back and forth

The authorities will primarily be concerned with whether the revisions your company made to its structure and documentation fully comply with laws and regulations. Authorities may reject certain terms agreed upon internally by your company.

Documents may also be subject to comments and changes that your company will need to follow before attaining approval. This increases the importance of both making fully compliant revisions and communicating those revisions accurately.

Maintain patience

Bureaucratic procedures may seem excessive or time consuming at times, but companies that need to restructure and file revised documentation absolutely must maintain patience.

In China, there is a margin for negotiation with authorities: companies may advance technical arguments in support of their revisions – it's a right protected by law. A 'firm smile' and technical expertise can make a key difference.



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How Dezan Shira & Associates can help

We have been helping foreign investors in China for nearly three decades. We understand where local customs, foreign practices, and the law meet. This is vitally important when dealing with reforms like the FIL, which changes the way foreign firms can operate in China.

Our highly experienced and qualified team of legal experts across China has the case history you need to manage FIL inspired restructuring. We offer multilingual support, across China, Asia, and the world. That means our services come to your doorstep in your language of choice.

We can provide your leadership team with the soft communication skills and hard technical expertise and you need to succeed. We work closely with local authorities to keep up to date on regulatory changes, providing real time advice to our clients on how reforms affect businesses – on paper, and in practice.

We offer flexible and customizable service packages, allowing you to choose the most suitable solutions for your business. Whether you are an SME or a larger company, you can choose how much support you need, ranging from specific service support to full-service coverage.



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Do you need a ready reference? This issue of *China Briefing* offers a comprehensive analysis of the new law to help you make sense of the changes.

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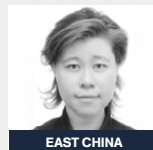
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