New Foreign Investment Law in China - Call for Public Comments

TAGS Investment

ARTICLES | 8 February 2015

On 19th January, the Ministry of Commerce (MOFCOM) in China released a call for public comments on the Foreign Investment Law of the People's Republic of China (Draft). The new Foreign Investment Law aims to combine the previous three laws on foreign investment, consolidating revisions made by the MOFCOM since the last round of call of comments in November 2014.

The draft proposes to replace existing laws on the three main types of foreign-invested enterprise:

- Wholly-Foreign Owned Enterprises;
- Equity Joint Ventures;
- Cooperative Joint Ventures.

Some key points of the draft are highlighted below.

Defining foreign-invested enterprises based on who actually owns the company

The definition of foreign-invested enterprises in the new law will be based on who actually controls the company. Because foreign enterprises in China are regulated very differently from domestic enterprises, some have avoided restrictions in the past by registering local operations in the name of a Chinese owner.

Establishing a List of Special Management Measures

The new law proposes to use a List of Special Management Measures (also known as the "negative list") to replace the existing case-by-case approval process for foreign enterprises' establishment in China. The list consists of two categories – the "prohibited list" and the "restricted list".

The latter will set ceilings for foreign investment in some scenarios. Foreign-invested companies will largely be subject to the same rules as domestic investors in any areas not covered on the negative list. This means that they will not require permission to enter unless their operations on are the list, in which case they must gain prior approval.

Seven key aspects for Chinese authorities to look out for when approving a new foreign-invested enterprise

The new law also clarifies seven key aspects for Chinese authorities to refer to when investigating a new foreign-invested enterprise that applies to establish in China. The seven aspects include:

- Impact on China's national security;
- Whether or not the invested sector is listed in the Special Management Measures;
- Influence on China's energy, resources, technology innovation, job creation, environmental protection, production safety, regional economic development, capital management and social welfare;
- Influence on the development of the invested sectors and industries in China;
- Compliance to international laws and agreements;
- Background information of foreign investors and actual owners;
- Compliance to other regulations from the State Council.

Annual reports to be required for foreign-invested enterprises

Foreign-invested enterprises will need to submit annual reports under the new law, covering information such as the status of the investment, the performance of the venture, and any change in circumstances.

If you wish to comment on this draft via the EU SME Centre and European Chamber, please send an email to Mr. Xavier-Lluis Sans Powell.

About the SME Advocacy Platform at the EU SME Centre

The EU SME Centre has launched an advocacy platform for European SMEs in collaboration with the European Chamber of Commerce in China (EUCCC).

Companies will have the opportunity to join a new inter-chamber SME working group to share their business challenges and voice common concerns to EU and China policy-makers. The working group meetings will address practical business issues and ensure that SMEs are given the right channels to provide feedback in their industry sectors. Participation will be free-of-charge.

Policy meetings will also be held in Europe to help strengthen advocacy of EU business and negotiations on trade and investment, with the objective of creating a level playing field for SMEs in China.

Feedback will be collected and published in position papers and an annual advocacy report.

For more information about the SME Advocacy Platform, please contact our team.