

2019 INVESTMENT POLICY AND REGULATORY REVIEW

China

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ACKNOWLEDGEMENTS

A team led by Priyanka Kher and Peter Kusek prepared this report. The team core members were Maximilian Philip Eltgen and Azza Raslan. The team would like to thank Caroline Freund (Global Director, Trade, Investment and Competitiveness), Christine Zhenwei Qiang (Practice Manager, Investment Climate), Ivan Nimac (Global Lead, Investment Policy and Promotion), Georgiana Pop (Global Lead, Competition Policy) and Graciela Miralles Murciego (Senior Economist, Competition Policy) for their guidance.

Legal research for the preparation of this report was carried out by the international law firm Baker McKenzie.

The report benefited from the comments of these World Bank Group colleagues: Martin Raiser, Luan Zhao, Xavier Forneris, Dongwook Chun, Tanja K. Goodwin, Sara Nyman, Mariana Iootty De Paiva Dias, Guilherme De Aguiar Falco, Emma Verghese and Abhishek Saurav. The team would like to thank Nick Younes for editing, and Aichin Jones and Brew Creative Pte Ltd for providing design, layout, and production services.

The report was prepared under the Analyzing Barriers to Investment Competitiveness Project, supported with funding from the Prosperity Fund of the United Kingdom.

GLOSSARY

AML	Anti-Monopoly Law
AMB	Anti-Monopoly Bureau
ASEAN	Association of Southeast Asian Nations
CA	Competition Authority
CEPA	China-Hong Kong Closer Economic Partnership Agreement
CIPA	China Investment Promotion Agency
CJV	Cooperative Joint Venture
CIT	Corporate Income Tax
DFCUOI	Department of Foreign Capital Utilization and Overseas Investment
DFIA	Department of Foreign Investment Administration
DPIIT	Department of Promotion of Industry and Internal Trade
DTAA	Double Taxation Avoidance Agreements
EJV	Equity Joint Venture
FIL	Foreign Investment Law
FDI	Foreign Direct Investment
FIE	Foreign-Invested Enterprise
FEMA	Foreign Exchange Management Act
FET	Fair and Equitable Treatment
FIFP	Foreign Investment Facilitation Portal
GATS	General Agreement on Trade in Services
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
IPR	Intellectual Property Rights
IPRR	Investment Policy and Regulatory Review
ISDS	Investor-State Dispute Settlement
MECU	Measures for Examination of the Concentrations Between Undertakings



MFN	Most-Favored Nation
RMB	Renminbi (currency)
SAFE	State Foreign Exchange Administration
SAIC	State Administration for Industry and Commerce
SAMR	State Administration for Market Regulation
SCM	Agreement on Subsidies and Countervailing Measures
SDS	Step Down Subsidiary
SEZ	Special Economic Zone
SHFTZ	China (Shanghai) Pilot Free Trade Zone
SOE	State-Owned Enterprises
SOP	Standard Operating Procedure
TDRs	Transferable Development Rights
TIP	Treaty with Investment Provisions
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
WFOE	Wholly Foreign-Owned Enterprises
WTO	World Trade Organization
Y	Yuan (currency)

1. INTRODUCTION

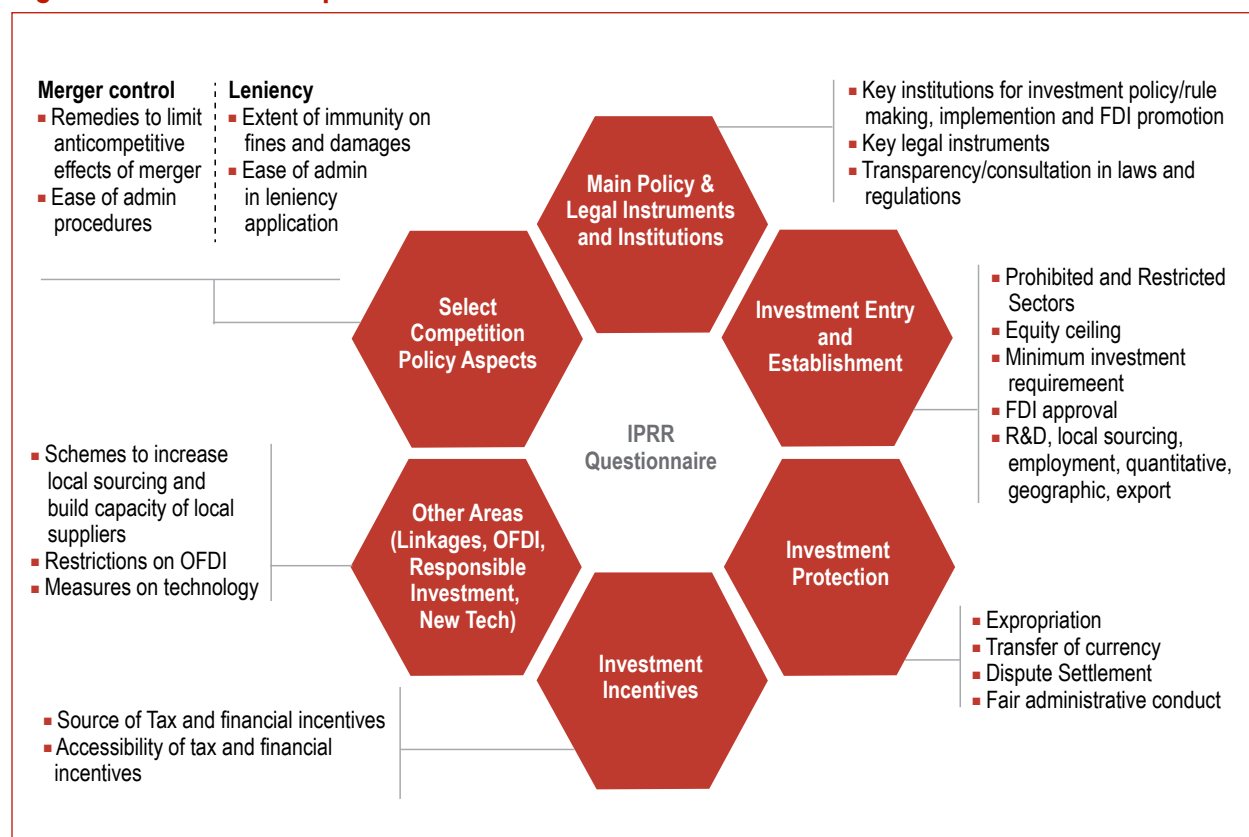
This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) and competition that affect businesses and foreign investors in China. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries (MICs): Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.


The research for preparing this IPRR was undertaken by the international law firm Baker McKenzie, under the supervision of the World Bank Group. The research was primarily based

on a review of currently applicable policies, laws and regulations. In some cases, consultations with regulators were conducted to collect up to date information.

The research was guided by a standardized questionnaire, covering a limited set of topics, including foreign investment entry, establishment, protection and select competition related aspects. The questionnaire focused on de jure frameworks as generally applicable to a foreign investor, not located in any specialized or preferential regime (such as special economic zones). It primarily focused on national, economy-wide (rather than sector-specific laws) and regulations. For the purpose of the research, it was assumed that the foreign investor is a private multinational company with no equity interest or

Figure 1. Overview of Topics Covered in IPRR





management control by the government of its home country (that is, not state-owned enterprise).

There are aspects that this IPRR does not cover. It is not a comprehensive review of the entire legal and regulatory framework affecting investment. Information presented is not exhaustive, but illustrative of the main topics and issues covered (for example, it does not exhaustively list all available tax and financial incentives in the country). It does not present recommendations on reform areas. Notably, it does not capture de facto implementation of laws and regulations in the country. Given these limitations, information presented in this IPRR should be interpreted and used while keeping in view the overall country context and realities. Further, it contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed legal research.

This IPRR is organized as follows:

- Section 2 provides an overview of the country's investment policy framework, including the legal instruments regulating foreign investment, key institutions involved in investment promotion, as well as the country's foreign investment promotion strategy; it also delineates the country's international investment legal framework, including the country's commitments under the World Trade Organization (WTO) and select international investment agreements (IIAs);
- Sections 3-6 cover the country's policies and domestic legal framework concerning different dimensions of the lifecycle of an investment: entry and establishment (Section 3), protection (4), incentives (5) and linkages (6);
- Sections 7-9 explore emerging investment policy and regulatory areas — Section 7 considers outward FDI, Section 8 responsible investment, and Section 9 considers recent policies on new technologies;
- Section 10 focuses on city-specific investment policy and regulatory measures in the largest commercial center; and
- Section 11 covers select aspects of competition law and policy, specifically merger control and leniency frameworks.

2.

OVERVIEW OF INVESTMENT POLICY FRAMEWORK

A. Domestic Legal Instruments Regulating Foreign Investment

China has a new foreign direct investment law that governs foreign investment in the country. In addition to this recent law both sector specific laws and international agreements also regulate FDI in China (alongside the general legal framework that applies to all businesses).

FDI Law and Regulation

On March 15, 2019, the People's Republic of China (China or PRC) passed a new Foreign Investment Law (FIL). The FIL sets out the general principles applicable to foreign investment covering, among others, investment promotion, equal treatment with domestic investors, as well as protection of investment, income, and intellectual property. On January 1, 2020, the FIL entered into force and repealed the following three primary pieces of legislation that served as the core of China's foreign investment laws:

- Law on Sino-Foreign Equity Joint Ventures (EJV Law) (effective as of July 8, 1979 and last amendment effective October 1, 2016).
- Law on Sino-Foreign Cooperative Joint Ventures (CJV Law) (effective as of April 13, 1988 and last amendment effective October 1, 2016), and
- Law on Wholly Foreign-owned Enterprises (WFOE Law) (effective as of April 12, 1986 and last amendment effective October 1, 2016).

There are a number of implementing regulations, M&A regulations and sector specific regulations based on the EJV, CJV and WFOE Laws. These regulations are also expected to be repealed or replaced by the new implementing regulations for the FIL. The rules and other ancillary regulations for implementing the FIL are expected to be formulated in the near future, which will provide details on how the new law will regulate foreign investment in China.

The FIL applies to “foreign investment” in the country, which refers to investment activities directly or indirectly conducted by a foreign natural person, enterprise, or other organization (referred to as a foreign investor) in China. This includes establishing a foreign-funded enterprise, the acquisition of shares, equities or property shares, the initiation of a new project, or any other means stipulated by laws, administrative regulations or provisions of the State Council.

Foreign investment in certain industries is expressly encouraged, prohibited or restricted pursuant to the Special Administrative Measures for Access of Foreign Investment effective as of July 28, 2018 (Negative List) and the Catalogue for the Guidance of Foreign Investment Industries effective as of July 28, 2017 (Catalogue). The FIL states that when international treaties or agreements to which China is a party contain provisions more preferential to the admission of foreign investors, those provisions will take precedence over the existing FDI regulations.

Sector Specific Laws

Foreign investors are subject to sector-specific laws and regulations, depending on the sector in which the investment is contemplated. For example, the FIL specifically states that foreign investment in banking, securities, insurance and other financial industries and in the securities or foreign exchange markets are subject to sector specific regulations.

Public Access to Foreign Investment Laws and Policies

The FIL mandates timely announcement and publication of normative documents and judgments relating to foreign investment in accordance with Chinese laws. The term “timely” is not defined. Normative documents, which are not formally recognized as a source of law, are specific directives, notices or circulars that are formulated

and issued by various administrative authorities in order to provide detailed implementing rules or an explanation of legal principles and administrative regulations. Further, the PRC Legislative Law (effective as of March 15, 2015) requires all laws, administrative regulations and issued departmental rules to be timely published on the relevant government websites and in nationally or locally circulated newspapers. For example, both [enacted laws and administrative regulations](#) are publicly accessible at the PRC government's website. New or amended laws, administrative regulations and departmental rules are supposed to be posted once they are passed or amended. Certain specific rules and regulations are also publicly accessible at the relevant ministerial or sectoral regulators' websites. For example, the rules and regulations issued by the Ministry of Commerce (MOFCOM) are published and publicly available [here](#).

Consultation with Stakeholders

The FIL mandates that the government solicit comments and suggestions from foreign-invested enterprises (FIE) when formulating laws, regulations and rules relating to foreign investment. However, it does not specify a statutory comment period for such consultations. It is currently unclear whether the FIL implementing regulations will specify a statutory period. The PRC Legislative Law, the Regulations on Procedures for the Formulation of Administrative Regulations (last amendment effective May 1, 2018), and the Regulations on Procedures for the Formulation of Rules (last amendment effective May 1, 2018), mandate public consultation for the passage of laws, regulations and rules in general. The comment period is generally not less than 30 days.

B. International Legal Instruments Regulating Foreign Investment

China has undertaken legally binding international investment commitments through a variety of international investment agreements (IIAs) signed at the bilateral, plurilateral and multilateral level. These commitments mainly cover entry and establishment conditions, protection, as well as the legality of specific types of incentives (see Table 1.).

Having become a member of the WTO on December 11, 2001, China has commitments under several WTO Agreements. Under the General Agreement on Trade in Services (GATS), China grants rights to services suppliers from other WTO member countries. This includes services supplied through commercial presence (defined as establishment of a territorial presence), in other words through FDI. These rights are granted through commitments undertaken in “schedules”. The “schedules” list sectors being opened, the extent of market access being given in those sectors (for example, whether there are any restrictions on foreign ownership), and any limitations on national treatment (for example, whether some rights granted to local companies will not be granted to foreign companies). China has made commitments on market access and national treatment in 9 out of 12 services sectors in the WTO Classification:¹ (i) Business services, (ii) Communication services, (iii) Construction and related engineering services, (iv) Distribution services, (v) Environmental services, (vi) Educational services, (vii) Financial services, (viii) Tourism and travel related services, and (ix) Transport services. In these 9 sectors, China has made partial market access commitments for specific services in 35 sub-sectors, as well as national treatment commitments in specific services in 30 sub-sectors (23 full, 7 partial). “Partial” in this context means that although commitments have been made there are still limitations or reservations, which may differ in their restrictiveness. For example, they may be more restrictive by limiting the equity contribution of the foreign investor or less restrictive by merely requiring foreign service suppliers become a member of a union chamber. In addition, under GATS every member country is obligated to unconditionally extend to service suppliers of all other WTO members Most-Favored Nation (MFN) Treatment. However, China has made reservations in that regard, allowing it to discriminate between different service providers of maritime transport services, based on bilateral agreements.

Under the WTO Agreement on Trade Related Investment Measures (TRIMs), China has committed to not apply certain investment measures that restrict or distort trade (local content requirements, trade balancing

Table 1. China's International Investment Framework

Agreement(s) as Basis of Commitments	Type of Agreement	Investment Policy Dimensions Covered
WTO GATS Agreements	Multilateral	Entry and Establishment
WTO TRIMs Agreement	Multilateral	Entry and Establishment, Incentives
WTO SCM Agreement	Multilateral	Incentives
WTO TRIPS Agreement	Multilateral	Protection
Treaties with Investment Provisions (22 signed, 19 in force)	Plurilateral or Bilateral	May cover Entry and Establishment, Protection, Incentives
Bilateral Investment Treaties (127 signed, 109 in force)	Bilateral	May cover Entry and Establishment Protection, Incentives
International Centre for Settlement of Investment Disputes (ICSID) Convention	Multilateral	Protection
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)	Multilateral	Protection (Dispute settlement)
IMF Articles of Agreement (Art VIII Acceptance)	Multilateral	Protection
Double Taxation Avoidance Agreements (92 treaties in force)	Bilateral	Taxation

Source: World Bank Analysis

requirements, foreign exchange restrictions and export restrictions). These measures are prohibited both when the obligation for the foreign investors is mandatory, and when it is tied to obtaining an advantage (that is, an incentive). Incentives are further regulated by the WTO Agreement on Subsidies and Countervailing Measures (SCM), which amongst others prohibits certain types of export subsidies. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), foreign investors' intellectual property rights are protected. In case of a violation of any of its WTO commitments, China may be sued under the WTO dispute settlement mechanism.

China has further entered into obligations through international investment agreements — 109 Bilateral Investment Treaties (BITs) and 19 Treaties with Investment Provisions (TIPs) are currently in force. The latter category comprises treaties that include obligations commonly found in BITs (for example, a preferential trade agreement with an investment chapter). Table 2. provides an overview of select IIAs China's latest IIA (China-Hong Kong Closer Economic Partnership Arrangement (CEPA) Investment

Agreement, 2017), its IIA with the largest home country measured by that country's share in China's total FDI stock (China-United Kingdom BIT, 1986), as well as an IIA with expansive regional coverage (ASEAN-China Investment Agreement, 2010). The table shows that the main protection guarantees are generally provided in the reviewed agreements. The China-Hong Kong CEPA Investment Agreement does not provide for international arbitration, either between investors and the state (investor-state dispute settlement or ISDS) or between states. Instead, claims are referred to domestic remedies or to a Committee on Investment that is set up under the agreement. The BIT with the UK does not offer national treatment.

Some of China's reviewed IIAs contain commitments to liberalize. Both the ASEAN-China Investment Agreement and the CEPA Investment Agreement with Hong Kong include such commitments, but with a different scope and under reservations. The former provides MFN and the latter both national treatment and MFN in the pre-establishment phase. The CEPA Investment Agreement includes a schedule that lists measures

Table 2. Comparison of China's Select IIAs

	Largest Home Country IIA (% of total FDI stock): China-United Kingdom BIT (1986)	Latest IIA (date of entry into force): China – Hong Kong Closer Economic Partnership Arrangement Investment Agreement (2017)	Expansive Regional Coverage IIA (highest number of members): ASEAN-China Investment Agreement (2010)
Scope of Application			
Covers Pre-establishment	No	Yes	Yes
Exclusions from Scope	No	Sectors or investment covered by the CEPA Agreement on Trade in Services	Taxation (except expropriation and transfers), government procurement, subsidies or grants, services supplied in the exercise of governmental authority
Standards of Treatment			
National Treatment (NT)	No	Pre - and post - establishment	Post-establishment
Most-Favored-Nation Treatment (MFN)	Post-establishment	Pre - and post - establishment	Pre - and post - establishment
Fair and Equitable Treatment (FET)	Yes	Yes	Yes
Full Protection & Security	Yes	Yes	Yes
Expropriation	Direct and indirect expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation
Rights to Transfer Funds	Yes	Yes	Yes
Prohibition of Performance Requirements	No	TRIMs+ (Prohibiting a larger number of performance requirements than TRIMs)	TRIMs+ (Prohibiting a larger number of performance requirements than TRIMs)
Dispute Resolution			
State-State Dispute Settlement	Yes	No	Yes
Investor-State Dispute Settlement (arbitration)	Yes	No	Yes, limited to post-establishment

Source: World Bank Analysis based on IIAs obtained from United Nations Conference on Trade and Development (UNCTAD) Investment Policy Hub

that do not comply with the commitments, and a schedule which lists sectors and activities in which countries may maintain existing, or adopt new or more restrictive measures. It further includes a “ratchet mechanism”, which ensures that any future regulatory or legal change that makes it easier for investors from one party to access the other party’s market will automatically be locked-in under the Agreement and cannot be made more restrictive thereafter. The ASEAN-China Investment Agreement does not include such lists but makes a general reservation for any existing or new measure

that does not conform to the commitments under the Agreement, thereby substantially diluting the liberalization commitments. Both agreements prohibit the use of performance requirements. The provisions go beyond TRIMs in scope and include a higher number of performance requirements that are prohibited (a so-called TRIMs+ standard).

China is a member of treaties covering investment arbitration. It is a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)

and the International Centre for Settlement of Investment Disputes Convention, facilitating the enforcement of arbitral awards. It has to date been a respondent in three publicly known investor-State arbitrations. One of these disputes has been decided in favor of the State, one has been settled, while one remains pending.

Acceptance of Art. VIII of the International Monetary Fund (IMF) Articles Agreement requires China to maintain current account convertibility, enabling investors to transfer certain payments related to their investments. China is also party to 92 Double Taxation Avoidance Agreements that are in force, influencing its ability to tax foreign investors and their investments.

C. Key Institutions for Investment Promotion

The FIL mandates the government at all levels, including its relevant competent departments, to optimize and provide foreign investment services and facilities to foreign investors, without specifying the services to be provided. It is unclear whether the implementing regulations will further clarify this area. The FIL also empowers the local governments in the country to formulate policies and measures for the promotion and facilitation of foreign investment within their statutory jurisdictions.

National Level Institutions

The MOFCOM and the National Development and Reform Commission (NDRC) are the two most important national agencies for foreign investment promotion in the country. More specifically, an internal department within the MOFCOM called the Department of Foreign Investment Administration (DFIA) and a public institution directly under the MOFCOM supervision called the China Investment Promotion Agency (CIPA), are both tasked with promoting foreign investment at the national level. The DFIA is also charged with the regulatory function of reviewing and approving foreign investment proposals and managing FDI records. The CIPA on the other hand is responsible for promoting both inbound FDI and outbound FDI (OFDI), and focuses

on coordinating with foreign counterparts, and implementing and organizing foreign investment promotion strategies, plans and activities such as trade fairs and exhibitions to promote FDI and OFDI at the international, regional, national and local levels. For a detailed overview of DFIA's functions, see Box 1.

Further, an internal department of the NDRC called the Department of Foreign Capital Utilization and Overseas Investment (DFCUOI) is charged with consolidating analysis of the utilization of foreign capital, promotion, strategy, planning, and setting goals and policies on the utilization of foreign investment.

Sub-National Investment Promotion Agencies

The national MOFCOM has its local counterparts at provincial, municipality, city and district levels charged with foreign investment promotion functions at the local level. Certain provincial governments also have established foreign investment promotion agencies as counterparts of the CIPA for coordinating with industry associations, other governmental departments and foreign organizations to host investment promotion events such as trade fairs, investment presentations and exhibitions. Local governments, management committees of industrial park zones, development zones and free trade zones may also set up foreign investment promotion bodies or charge an existing body with foreign investment promotion functions, such as the investment promotion bureaus.

The national MOFCOM oversees and directs its local counterparts. The CIPA also cooperates with local investment promotion agencies. One of CIPA's functions is to guide the work of local investment promotion agencies and carry out investment promotion activities in cooperation with local governments and other departments, institutions and enterprises.

D. Foreign Investment Promotion Strategy

The MOFCOM and the NDRC jointly publish and periodically update the Catalogue for the Guidance of Foreign Investment Industries,

Box 1. DFIA's Functions

The DFIA's main functions are to:

- Provide macro-guidance to and carry out general management of nationwide efforts in foreign investment promotion.
- Analyze and study cross-border and FDI trends, and report relevant developments to the State Council on a regular basis, coordinate opinions among relevant departments, and develop suggestions on key issues concerning the promotion of foreign investment.
- Participate in the formulation of development strategies and mid-term and long-term plans for foreign investment utilization as well as the objective of improvements in regional-level industrial structures.
- Draft laws and regulations on foreign investment absorption, formulate relevant rules, policies and reform schemes and organize the implementation, and supervise and examine any subsequent enforcement.
- Participate in the formulation and release of the Catalogue Guiding Foreign Investment in Industry.
- Formulate policies concerning the transfer of assets, equity rights and management rights to foreign investors as well as related merger and acquisition, contract operation and leasing issues.
- Administer and guide the examination and approval, as well as filing, of foreign investments nationwide.
- Work with relevant agencies to establish the inter-ministry joint meeting for security review of merger and acquisition of domestic enterprises by foreign investors, and participate in the formulation of the catalogue of security review of merger and acquisition of domestic enterprises by foreign investors.
- Monitor and examine foreign-funded enterprises' compliance with the relevant laws and regulations.
- Establish multilateral and bilateral investment promotion mechanisms and organize major cross-region activities on investment promotion and presentation of foreign investment policies, lead the coordination of China's positions on investment issues in multilateral, bilateral and regional negotiations.
- Guide and coordinate national economic and technological development zones, industrial parks and cross-border economic cooperation areas, formulate and implement development strategies, policies, laws and regulations, liaise in special economic zones for foreign investment attraction.
- Study, draft and implement programs and policies on regional FDI and investment cooperation, guide and coordinate the construction of platforms like industrial transfer and investment promotion center and demonstration parks, optimize the pattern of foreign investment, coordinate, guide and monitor the complaints of foreign investment enterprises nationwide.

setting out the industries where foreign investment is encouraged, restricted or prohibited. The Catalogue is divided into two parts: (i) encouraged category, and (ii) the Negative List that itemizes the prohibited and restricted categories. Industries that are not specifically listed within the Catalogue are considered “permitted” by default without any foreign shareholding caps or other restrictions. The Catalogue may specify that foreign investment take certain forms or that the foreign shareholder's proportion of the investment in the enterprise be limited to a certain equity threshold. The Catalogue was first issued in 1995 and subsequently amended in 1997, 2002,

2004, 2007, 2011, 2015 and 2017. The Catalogue is expected to remain in force after the FIL comes into effect on January 1, 2020. At present, only the “encouraged” industries section in the Catalogue remains effective (with the other two sections repealed by the Negative List as described in Section 3, below).

The Catalogue includes a comprehensive list of 12 industries with 348 subsectors and business activities in which FDI is encouraged (Encouraged Sectors), reflecting a significant emphasis on manufacturing industries. FDI in the Encouraged Sectors is eligible for incentives and

preferential treatment specified in the relevant laws and administrative regulations. The Encouraged Sectors are listed in Box 2. below.

The MOFCOM and the NDRC have also jointly published the Catalogue of Priority Industries for Foreign Investment in Central and Western

China (2017 Revision). This catalogue sets out the industries where foreign investment is encouraged for the central and western parts of China.

MOFCOM's DFIA and NDRC's DFCUOI are primarily responsible for proposing reforms to the country's foreign investment regime and policies.

Box 2. Encouraged Sectors listed in the Catalogue for the Guidance of Foreign Investment Industries

- Agriculture, Forestry, Animal Husbandry and Fishery
- Mining Industry
- Manufacturing Industries
 - Agricultural and Sideline Food Processing
 - Food Manufacturing
 - Manufacturing of Wine, Beverage and Refined Tea
 - Textile Industry
 - Textile, Clothing and Apparel Sectors
 - Leathers, Furs, Feathers and Related Products and Shoemaking
 - Wood Processing and Wood, Bamboo, Rattan, Palm Fiber and Straw Products
 - Manufacturing of Supplies for Culture and Education, Industrial Arts, Sports and Entertainment
 - Petroleum Processing, Coking and Nuclear Fuel Processing
 - Manufacturing of Chemical Raw Materials and Chemical Products
 - Pharmaceutical Industry
 - Chemical Fiber Manufacturing
 - Rubber and Plastic Products
 - Nonmetallic Mineral Products
 - Nonferrous Metal Smelting and Rolling Industries
 - Metal Products
 - General Equipment Manufacturing
 - Special-Purpose Equipment Manufacturing
 - Automobile Manufacturing
 - Manufacturing of Railways, Ships, Aircrafts and Other Transportation Equipment
 - Electric Machinery and Equipment Manufacturing
 - Manufacturing of Computers, Communication and Other Electronic Equipment
 - Manufacturing of Instruments and Meters
 - Comprehensive Utilization of Waste Resources
- Production and Supply of Electric Power, Heating Power, Fuel Gas and Water
- Transportation, Warehousing and Postal Service Industries
- Wholesale and Retail Industries
- Leasing and Commercial Service Industries
- Scientific Research and Technical Services
- Water Conservancy, Environmental, and Public Facility Management Industries
- Education
- Health and Social Services
- Cultural, Sports and Entertainment Industries

3. INVESTMENT ENTRY AND ESTABLISHMENT

Market Entry and Sectoral Limitations

Foreign investment is expressly prohibited in certain sectors or business activities (Prohibited Sectors) and restricted in certain others (Restricted Sectors) pursuant to the Negative List published jointly by the MOFCOM and the NDRC. The Negative List originated from the Catalogue for the Guidance of Foreign Investment Industries. In July 2018, the Negative List was issued as a standalone document to repeal the “restricted” and “prohibited” industries sections of the Catalogue. The Negative List also sets out in a centralized manner special administrative measures applicable to FDI in restricted sectors, such as limits on proportion of foreign investment and the requirements on senior management, and the transition periods for some sectors to abolish restrictions. Compared to the prior list of prohibited and restricted sectors, the 2018 Negative List decreased the number of items that require special administrative measures from 63 to 48. It also expressly empowers the MOFCOM and the NDRC to interpret the list in concert with related departments. Since the negative List is not a law, amending it does not require the approval of the PRC national legislative authority, the National People’s Congress (and its standing committee).

For industries not included in the Negative List, the general position is that foreign investors are accorded equal treatment as afforded to domestic investors and FDI is permitted without restrictions (unless the relevant industry or sub-sector is closed to both foreign and Chinese investors). FDI in regulated sectors (such as telecommunications, energy and banking) may require the sectoral regulators’ approval, including for transfer of shares, change in shareholders and/or activities relating to mergers and acquisitions, even if 100% FDI is encouraged and permitted in such sector.

Prohibited and Restricted Sectors

Table 3 lists the Prohibited and Restricted Sectors based on the Negative List.

A foreign investor may establish a wholly foreign owned enterprise, except in restricted industries in the Negative List that require a Sino-foreign joint venture or impose foreign shareholding caps. A foreign investor may not bypass these restrictions through mergers and acquisitions.

Restrictions on Non-Equity Contract Based Investments

Foreign investors may be subject to specific restrictions on non-equity contract based investments on certain sectors. For example, pursuant to the Administrative Measures for the Registration of Enterprises of Foreign Countries (Regions) Engaging in Production and Operation Activities within the Territory of China (last amendment effective October 27, 2017), without the approval of the sectoral regulator, foreign enterprises may not conduct any production and operation activities within the territory of China. Moreover, foreign enterprises must complete registration formalities for performing the following non-equity modes of production and operation activities, or alternatively set up a FIE for these activities:

- Engineering contracting, including for construction and decoration of buildings and civil engineering or installation of lines, pipes and equipment;
- Contracting for or accepting entrustment of the operation and management of foreign-funded enterprises.

While foreign investors can outsource services to, or enter into licenses with qualified Chinese enterprises, foreign enterprises cannot conduct production or operation activities in China without completing relevant registrations and obtaining approvals as necessary.

Table 3. List of Major Prohibited and Restricted Sectors

Prohibited Sectors	Scope
Agriculture	<ul style="list-style-type: none"> ■ Research, development, breeding and planting of China's rare and unique precious quality varieties and production of relevant breeding materials (including quality genes of plants, animal husbandry and subjects of aquaculture) ■ Selection of genetically modified varieties and production of genetically modified seeds (fingerlings) in respect of crops, breeding stock and poultry, and aquatic fingerlings
Fishery	Fishing aquatic products in sea areas under Chinese jurisdiction and in inland waters
Mining	<ul style="list-style-type: none"> ■ Exploration, mining and mineral processing of rare earth and radioactive minerals ■ Exploration and exploitation of tungsten, molybdenum, tin, antimony and fluorite
Manufacturing	<ul style="list-style-type: none"> ■ Smelting/processing of radioactive minerals; production of nuclear fuels ■ Application of processing techniques of traditional Chinese medicine decoction pieces and manufacturing of Chinese patent medicine products with a secret formula ■ Production of rice paper and Chinese ink ingot
Wholesale and Retail Trading	Tobacco leaves, cigarettes, re-dried tobacco leaves, and other tobacco products
Transport	Air traffic control
Postal Services	Postal service companies and the business of delivery mail domestically
Internet	Internet news services, online publishing services, online audio-visual program services, internet culture operation (excluding music), and internet public-oriented information releasing services (excluding services permitted under China's WTO accession commitments)
Consultation and Investigation Services	Social surveys
Legal Services	<ul style="list-style-type: none"> ■ Engagement in Chinese legal affairs (except for the provision of information relating to the impacts of China's legal environment) ■ Becoming the partner of a domestic law office
Scientific Research and Technical Services	<ul style="list-style-type: none"> ■ Development and application of technologies of human stem cell and gene diagnosis and treatment ■ Humanistic and social science research institutions ■ Geodetic surveying, hydrographic surveying and charting, surveying and mapping via aerial photography, ground mobile surveying, surveying and mapping of administrative area borders, compiling of certain maps and regional investigations in terms of geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters and remote sensing geology
Education	Compulsory education institutions and religious education institutions
Press and Publishing	<ul style="list-style-type: none"> ■ News agencies (including but not limited to press agencies) ■ Editing, publishing and production of books, newspapers, periodicals, audio-visual products and electronic publications
Radio and TV Broadcasting	<ul style="list-style-type: none"> ■ All levels of broadcasting stations, television stations, radio and television channel and frequency, radio and television transmission networks and engagement in video on demand business and provision of services of installation of ground receiving facilities for satellite television broadcasting ■ Radio and television program production and operation

Prohibited Sectors	Scope
Entertainment	Film production companies, distribution companies, cinema companies and the introduction of films
Cultural	<ul style="list-style-type: none"> Enterprises selling cultural relics by auction, cultural relics stores and state-owned cultural relic museums Cultural and artistic performance groups
Wildlife	Development of wildlife resources originating in China and under national protection
Restricted Sectors	Restrictions on Foreign Equity (some of these restrictions will be phased out in the next 2-3 years, as noted below)
Agriculture—Seed Industry	Selection and cultivation of new varieties of and production of seeds of wheat and corn — up to 49%
Oil and Natural Gas Exploitation	Only permitted via joint ventures and cooperatives
Printing	Printing of publications — up to 49%
Automobile manufacturing	<p>Up to 50% foreign equity (except in special vehicles and new-energy vehicles) and a single foreign investor may establish up to two joint ventures in China to manufacture same type of vehicle</p> <ul style="list-style-type: none"> Foreign equity restrictions in commercial vehicle manufacturing to be removed in 2020 Foreign equity restrictions in passenger vehicle manufacturing to be removed in 2022 Cap on number of joint ventures to be removed in 2022
Nuclear Power Generation	Construction and operation of nuclear power plant — up to 49%
Pipe Network Facilities	Construction and operation of urban gas pipe, heating power and water supply and sewage networks in a city with more than 500,000 residents — up to 49%
Water Transportation	Domestic water transportation companies — up to 49%
Air Transportation for passengers and freight	Public air transportation—minority shareholding permitted and investment by a single foreign investor with its related party enterprises not to exceed 25%
Airport and Air Traffic Control	Construction and operation of civil airports — up to 49%
Telecommunications	<ul style="list-style-type: none"> Value-added telecom (excluding e-commerce) — up to 50% Basic telecom — up to 49%
Capital Market Services	<p>Securities company, securities investment fund management company, futures company — less than 51%</p> <ul style="list-style-type: none"> Cap to be removed in 2021
Insurance	<p>Life insurance company — less than 51%</p> <ul style="list-style-type: none"> Cap to be removed in 2021
Market Surveys	<ul style="list-style-type: none"> Only permitted via joint ventures and cooperatives Broadcasting and TV listening and rating survey — up to 49%
Health	Only permitted via joint ventures and cooperatives
Film Distribution and Projection	Construction and operation of cinema — up to 49%
Cultural and Entertainment	Performance brokerage institutions — up to 49%

Source: Analysis by Baker McKenzie based on country's laws and regulations

Note: The table is based on a review of 32 specific sectors identified for the purpose of this research. The list of sectors is therefore not exhaustive.²

Forms of Establishment

Foreign investors are forbidden to engage in investment activities as individual businesses, investors of sole proprietorship enterprises or members of farmers' professional cooperatives. In addition, there are specific regulations setting out the requirements or conditions when establishing entities via a type of legal form (for example, EJV, CJV, WFOE) or sector, as noted below.

Foreign investors can establish foreign funded joint stock companies and invest in listed companies. Foreign investors can also establish foreign invested partnership and limited partnership enterprises in sectors other than those restricted under the Negative List. Further, the new FIL permits foreign investors to establish an LLC entity in accordance with the PRC Company Law instead of being limited to the entity types under the old EJV, CJV and WFOE Laws. The FIL also provides a 5-year grace period to FIEs established in accordance with the old EJV, CJV and WFOE Laws to reorganize their corporate structures. Specific implementation measures were not put in place at the time of writing of this review.

Although the PRC Company Law contains provisions that cover the establishment of branch offices of foreign enterprises in China, in practice, foreign enterprises are not allowed to set up branch offices in the country. There are certain exceptions: for example, foreign insurance companies are permitted to establish branch offices in accordance with the Regulation on the Administration of Foreign-Funded Insurance Companies (last amendment effective February 6, 2016) and foreign banks are permitted to establish branches in accordance with the Regulation on the Administration of Foreign-Funded Banks (last amendment effective January 1, 2015).

Certain foreign enterprises and organizations, such as non-governmental organizations (NGOs), news agencies, etc. may set up representative offices in China, subject to specific additional regulations. For example, foreign non-governmental organizations are permitted to set up representative offices in accordance with the Law on the Administration

of Activities of Overseas Non-Governmental Organizations within the Territory of China (last amendment effective November 5, 2017). Foreign aviation companies are permitted to set up representative offices in accordance with the Administrative Measures for the Examination and Approval of Permanent Representative Offices of Foreign Air Transport Enterprises (effective September 1, 2018).

Minimum Investment and Paid-Up Capital Requirements

While there is no general minimum investment or registered capital threshold for FDI, certain industry specific regulations may impose a requirement on FIEs. For example, under the Tentative Measures for Administration of Chinese-foreign Joint Venture and Cooperative Medical Institutions (effective July 1, 2000), there is a minimum RMB20 million investment requirement for a Chinese-foreign joint venture or cooperative medical institution to be established. Similarly, under the Provisions on the Administration of Foreign-funded Telecommunications Enterprises (last amendment effective February 6, 2016), if a foreign funded enterprise is engaged in basic telecom business nationwide or beyond a single province, autonomous region or municipality directly under the Central Government, it must have registered capital not less than 1 billion yuan. If it is engaged in the value-added telecom businesses, it must have registered capital not less than 10 million yuan.

Under the Provisions on Investment Companies Established by Foreign Investors (revised in 2015), a foreign investor who intends to establish a wholly owned investment company must meet the following conditions:

- It has sound credit and the necessary economic strength to establish an investment company, has not less than US\$400 million worth of assets during the year before the application, and it has established at least one FIE in the PRC, with US\$10 million or more paid-in registered capital; or
- It has sound credit and has the necessary economic strength to establish an investment company, and it has established 10 or more FIEs in PRC, with US\$30 million or more paid-in registered capital.

Quantitative Limits

There are generally no mandatory quantitative limits on the number of foreign service providers or enterprises that can operate in a given sector. However, there may be certain sector specific quantitative limitations. For example, pursuant to the Negative List, until 2022, a single foreign investor may only establish up to two joint ventures in China to manufacture the same type of vehicles other than special vehicles and new-energy vehicles.

Restrictions on Expatriate Appointments

There are some sector-specific limitations on the appointment of foreigners to the board or to key managerial positions of local companies. For example, the Negative List mandates that legal representatives of general aviation companies and public air transportation companies must be Chinese citizens. Similarly, the Negative List prohibits a foreign citizen from entering into partnership with a domestic law office. Further, the Regulations on the Management of the Employment of Foreigners in China (revised in 2017) require employers to hire foreigners for openings with special needs that cannot be filled by domestic candidates at the time.

The process and specific timelines to obtain expatriate work permits are stated in the Service Guide on Licensing for Foreigners to Work in China (effective March 29, 2017). The Guide requires a decision be made within 20 working days for work permits for a period of more than 90 days, with an extension of 10 working days allowed for special cases. For work permits for a period of less than 90 days and an invitation letter to foreign experts, a decision must be made within 5 working days.

Local Sourcing and R&D Requirements

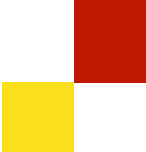
There is no overarching legal requirement that subjects foreign investors to local sourcing requirements or local R&D investments in order to establish business in China. Article 5 of the EJV law states that if the equity contribution by the foreign party is in the form of technology and equipment, such technology and equipment

must be advanced and appropriate to the country's needs. At the same time, a foreign party is not obligated to contribute technology as a matter of law. The CJV law also permits the foreign party to make contribution in the form of non-patented technology but does not require such technology to be advanced.

Foreign Investment Approval

China's FDI regime has been undergoing reforms to switch from an approval-based system to a recordal system. Under the approval-based system regulatory approvals are required for FDI in a restricted industry or business activity on the Negative List, whereas under the recordal system, no approvals are required for FDI in fields outside the Negative List, other than filings with the regulator. The general trend is that fewer FDI matters will require regulatory approvals. Depending on the industry/sector and the investment scale, approval from the national or local counterparts of the MOFCOM, national or local counterparts of the NDRC, and/or industry/sector specific regulators may still be required. For example, foreign investment equal to or greater than US\$300 million in a restricted industry on the Negative List requires approvals from the national MOFCOM and the NDRC. For foreign investment less than US\$300 million in a restricted industry on the Negative List, approvals from provincial counterparts of the MOFCOM and the NDRC are required. For foreign investments outside of the Negative List only recordals are required with the local counterparts of the MOFCOM and the NDRC.

Certain foreign investments may trigger the scrutiny of the Chinese anti-monopoly regulator if the investment thresholds exceed specific amounts. An investment may also trigger a national security review by the MOFCOM and its local counterparts if it invokes national interest issues. For instance, if a merger or acquisition falls within a key sensitive sector such as defense manufacturing, military equipment, key agricultural products, energy resources, infrastructure and so forth, the investment will be subject to the scrutiny of an inter-ministerial joint committee comprised of the MOFCOM and NDRC to oversee the review.



Starting on June 30, 2018 the “One Window, One Form” policy has been implemented for the establishment of FIEs to simplify the process.

Foreign investors can complete both the MOFCOM recordal and application for business license at the local bureau of the State Administration for Market Regulation to set up an FIE outside the scope of the Negative List. The materials and information required for these filings and the regulatory scrutiny have been scaled down significantly.

Foreign investment approval is generally valid for the operating term of the FIE. Subsequent investments or transactions following the establishment of a FIE listed on the Negative List, such as a merger or division in a sector, change of shareholder, increase of investment, extension of operating term, or change of business scope, are subject to approvals by the MOFCOM.

The process of obtaining relevant approvals is set out in the legal instruments that impose the approval requirements. These are the implementing regulation for the EJV Law, CJV Law and WFOE Law, the Administrative Measures for

Approval and Record-filing of Foreign Investment Projects (effective June 17, 2014), and the Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-invested Enterprises (effective June 30, 2018). The implementing regulations for the EJV, CJV, and WFOE Laws specify a statutory time period of 90 days for EJV and WFOE and a period of 45 days for CJV. The new FIL does not specify such a period. It is likely that the FIL implementing regulations will address this issue.

The Interim Measures for the Recordation Administration of the Formation and Modification of Foreign-Funded Enterprises, published in 2016, establish a recordal based system for FIEs instead of approval on a nationwide scale. Historically, a FIE could only be established after receiving approval from relevant MOFCOM authorities. Now, FIEs not falling within the Negative List only need to complete recordal with the MOFCOM, thus eliminating the old case-by-case MOFCOM approval system and simplifying and speeding up the process for foreign investors.

4. INVESTMENT PROTECTION

Protection Against Expropriation

The FIL, in Article 20, protects foreign investors against expropriation, subject to the public interest exception. It states that under special circumstances, the State may expropriate for public interest in accordance with the law subject to timely and reasonable compensation provided to the investor. The FIL also expressly requires the State to protect the intellectual property rights (IPRs) of foreign investors and FIEs. Further, it prohibits administrative agencies to force transfer of technology by administrative means. Instead, it mandates the State to encourage technical cooperation based on voluntary principles and business rules, and the conditions for such cooperation are to be determined by equal negotiation between the parties to the investment in accordance with the principles of fairness.

Similarly, the Constitution of the PRC provides for the protection of private property and permits the State, for reasons of public interest, to expropriate or requisition private property for its use, subject to compensation. The PRC Property Law also establishes a framework of property rights protection, including protection for moveable property and real estate (immovable property), permitting expropriation for public interest, subject to paying reasonable compensation. These protections apply equally to both domestic enterprises and foreign investors.

Restrictions on Inflow and Outflow of Funds

Pursuant to the FIL, a foreign investor may freely transfer inward and outward capital (net of applicable taxes and subject to other standard compliances). This includes capital contributions, profits, capital gains, income from asset disposal, IPR royalties, lawfully obtained compensation or indemnity, income from liquidation and other similar proceeds in renminbi (RMB) or a foreign currency. In practice,

regulations for current account transactions have become flexible but government approval is still required for certain capital account transactions (generally, items of a non-trade, non-recurring nature, such as investment in China, real estate purchases, repayment of principal of foreign currency loans and contributions to registered capital). The general trend is to reduce government approval and permit capital account transactions to be processed by the designated banks. Box 3. lists restrictions on specific types of payments/ transactions.

Currency can be converted at the market rate of exchange instead of an artificially fixed rate. FIEs also have access to the interbank market for the purchase and sale of foreign exchange through the designated banks.

Pursuant to the Provisions on the Foreign Exchange Administration of Domestic Direct Investment of Foreign Investors and the Supporting Documents (last amendment effective 10 October 2018), international payments in foreign exchange and the transfer of foreign exchange under the current items is not subject to any state control or restriction. In practice however, procedural and documentary requirements create de facto restrictions and inefficiencies. By way of example, for an FIE to allocate its profits to foreign shareholders, board resolutions and proof of tax payment (on the profits) must be provided. The proof of tax payment can be time-consuming to process and obtain in practice. In 2017, when China was tightening control of foreign exchange outflows, there were reports that banks were required to make prior filings with the State Foreign Exchange Administration (SAFE) and that for large remittances of profits, the applicant would have to meet face to face with the SAFE for the relevant approval. For remittances of licensing fees, for example, the SAFE requires documents authenticating the transaction, such as contracts, invoices, and a technology import registration certificate.

Box 3. Restrictions on Specific Types of Payments/Transactions

Inflow of initial equity investment — Pursuant to the Notice of the State Administration of Foreign Exchange on Issuing the Provisions on the Foreign Exchange Administration of Domestic Direct Investment of Foreign Investors and the Supporting Documents, the actual inflow amount must not exceed the permitted inflow amount by more than US\$30,000 in aggregate.

There are also various regulations on the permitted use of funds in the capital account. For example, the Circular of the State Administration of Foreign Exchange on Reforming the Management Approach regarding the Settlement of Foreign Exchange Capital of Foreign-invested Enterprises, stipulates that the capital of FIEs (RMB or foreign currency) cannot be directly or indirectly used for the following purposes:

- Payment beyond the business scope of the FIEs or the payment prohibited by national laws and regulations;
- Investment in securities unless otherwise provided by laws and regulations;
- Granting entrustment loans in RMB (unless permitted by the scope of business), repaying inter-enterprise borrowings (including advances by the third party) or repaying bank loans in RMB that have been sub-lent to the third party; and
- Paying expenses related to the purchase of real estate not for self-use, except for foreign-invested real estate enterprises.

Inflow of foreign loan — Pursuant to the Interim Measures on the Management of Foreign Debts, the difference between total investment amount and the registered capital amount is the maximum amount of foreign debt an FIE may incur. A foreign loan exceeding this difference must be approved by SAFE. Further, all foreign loans are required to be registered with SAFE. It is unclear whether this will still be the case after the new FIL is implemented. Only medium-term or long-term foreign debt can be used for the approved purposes and any change in the purpose of use is subject to approval. Short-term foreign debt can be used mainly as circulating funds and cannot be used for medium-term or long-term purposes such as in fixed assets.

Outflow of funds — China has introduced a form of current account convertibility under which FIEs may purchase foreign exchange for current account expenditures without the necessity of obtaining government approval. The country permits the conversion of RMB into foreign exchange for remittances of after-tax profits or dividends to foreign investors in FIEs. Foreign exchange remittances and receipts must go through authorized banks designated to handle foreign exchange transactions. Instead of government approval for foreign exchange remittances and receipts, the designated banks examine the documentation for the underlying transaction to ensure that the proposed payment or receipt qualifies as a current account item and other relevant requirements are met.

Dispute Settlement Mechanisms

A foreign investor in China can generally access dispute settlement through domestic courts, or domestic or international arbitration. China's bilateral investment treaties mostly do not include mandatory recourse to domestic courts before referring the dispute to international arbitration. In most cases, investors have the option to choose between the domestic court and international arbitration under the treaties. Foreign investors may seek administrative review and administrative litigation in accordance with the Law of the PRC on Administrative Review (last amendment effective January 1, 2018) and the Administrative Procedure

Law of the PRC (last amendment effective July 1, 2017).

The FIL mandates the State establish a complaint mechanism for foreign-funded enterprises, provide timely solution to the problems reported by foreign-funded enterprises or their investors, and coordinate and improve relevant policy measures. Yet it remains unclear how the new mechanism will be different from the existing systems of administrative review and administrative litigation. The FIL implementing regulation is expected to provide more details on the scope of protection and how these provisions will be interpreted and applied.


5. INVESTMENT INCENTIVES

China's investment incentives regime applies equally to both domestic and foreign investors. Until January 1, 2008, domestic enterprises and FIEs were afforded different tax treatment at the national and local level. The two different tax regimes were harmonized with the passage of the PRC Enterprise Income Tax Law effective on January 1, 2008, pursuant to which domestic and foreign enterprises are subject to a unified corporate income tax (CIT) and benefits regime. The existing regulations provide “tax deferral” on reinvestment into China under which the 10% withholding tax can be deferred if the dividends from China subsidiaries are used for other investments in China.

Investments in industries under the “encouraged category” of the Catalogue enjoy preferential tax treatment. The Detailed Rules for the Implementation of Corporate Income Tax Law and various tax circulars issued by the State Administration for Taxation set out the CIT incentives and eligibility criteria available to investors at the central level. For example, the Circular on Promoting the Implementation of Enterprise Income Tax Policies for Advanced Technology Services Enterprises Nationwide (No. 79, effective January 1, 2017), grants certain qualified enterprises that are engaged in advanced technology services a reduction in CIT rate and sets out the eligibility criteria for this benefit. Similarly, the Announcement on the Third Party Enterprise Income Tax Policy Concerning Pollution Prevention and Control effective January 1, 2019, provides a lower CIT rate for qualified enterprises commissioned by polluting enterprises or the government to operate or maintain environmental pollution control facilities. On May 21, 2019, the Chinese Ministry of Finance published a tax policy notice introducing tax incentives for qualified integrated circuit design and software companies established before December 31, 2018.

Most tax incentives are in the form of tax holidays based on favored industry, technology or economic zone, not on the identity of foreign or domestic entities. For example, specified basic infrastructure projects in harbor, wharf, airport, railways, highways, and electric power may be eligible for a 6 year tax holiday, with CIT exempted for first 3 years and 50% reduction for the next 3 years. Similarly, zone specific investments may be eligible for tax incentives and preferential treatment based on the region of investment. Other tax incentives may also be available for enterprises using State specified raw materials as resources for the production of non-restricted and non-prohibited items or investing in plants and machinery for State specified environmental protection, and energy and water conservation purposes. High-tech enterprises may also be eligible for lower CIT rate and certain R&D expense rebates.

In addition to the national-level incentives, state, provincial and local governments offer incentives to foreign investors on an ad hoc, case-by-case basis to attract foreign investment. They usually take into consideration factors such as the scale of the investment, the number of jobs it creates, the tax revenue it will generate for the local government, and other benefits it may bring to the area. For example, under the Shenzhen Administrative Measures for the Accreditation of High-tech Firms issued by the Shenzhen government, firms wishing to be certified as high-tech firms are required to meet Shenzhen-specific criteria to claim incentives. These include, among others, sectoral requirements (for example, modern agricultural, bioengineering and new energy), annual R&D input percentage minima, minimum percentage of annual revenue attributable to high technology, sound corporate governance practices, and good quality control measures, etc. It remains to be seen if, and to what extent, this practice will change under the FIL implementing regulations. The new FIL



states that local governments at county level or above may only formulate policies on promotion and facilitation of foreign investment within their statutory authorities, and in accordance with the laws.

There is no uniform national policy providing financial incentives such as cash grants to FIEs. However, local governments may publish their own policies providing such grants. Under the new FIL, local government may only do so within their statutory authorities, in accordance with the laws. There is no readily accessible centralized portal that serves as a repository of central, provincial or local tax and financial incentives available to investors in the country.

Eligibility Criteria and Approval Process

The tax and financial incentives offered at the national level to foreign investors are generally contingent upon the satisfaction of the relevant eligibility criteria set out in the specific circulars and announcements of the applicable incentives. These incentives do not automatically apply. Rather, enterprises that qualify for the preferential corporate tax rate may self-assess and self-declare to make use of the incentive, and the tax department may verify an enterprise's eligibility after the fact. However at the local government level, both tax and financial incentives to FIEs are often granted on a case-by-case basis, and subject to negotiation with the FIEs.

6. INVESTMENT LINKAGES

For the purpose of this section research was focused on the availability of incentive schemes to increase local sourcing, technology transfer and measures to improve information exchange between foreign investors and domestic suppliers. Although not specifically intended for FIEs (and equally applicable to domestic enterprises), certain tax benefits are available for qualified technology transfer. For example, pursuant to Article 90 of the Regulation on the Implementation of the Enterprise Income Tax Law, income of resident enterprises (including FIEs) from qualified technology transfer gets preferential treatment. The first RMB5 million in one tax year is exempted from enterprise income tax and any portion exceeding RMB5 million is taxed at half the applicable rate in one tax year. Similarly, under the Circular on Comprehensively Promoting the Pilot Program of the Collection of Value-added Tax in Lieu of Business Tax issued on 23 March 2016, technology transfer is also exempted from value-added taxes. Under the Circular of the State Administration of Taxation on Issues Concerning the Reduction and Exemption

of Enterprise Income Tax on the Proceeds from Technology Transfers issued on April 24, 2009, a “qualified technology transfer” must satisfy the following requirements:

- The party to the technology transfer that enjoys the preferential treatment must be a resident enterprise as prescribed in the Enterprise Income Tax Law;
- The technology transfer must fall within the scope stipulated by the Ministry of Finance and the State Administration of Taxation;
- A domestic technology transfer must be recognized by a department of science and technology at or above the provincial level;
- A technology transfer to a foreign country must be recognized by a commerce department at or above the provincial level;
- Any other requirement stipulated by the competent department of taxation under the State Council.

7. OUTWARD FOREIGN DIRECT INVESTMENT

For this section, research was focused on whether there are any legal instruments specifically covering outward investment and if there are, whether they impose any restrictions on outward investment. In China, both state-owned enterprises (SOEs) and private sector enterprises can undertake investments overseas in accordance with the OFDI regulations. China's OFDI regulatory regime is complex and in a state of flux. The Circular on Forwarding the Guidance Opinion of the National Development and Reform Commission, the Ministry of Commerce, the People's Bank of China and the Ministry of Foreign Affairs on Further Guiding, and Regulating Overseas Investment Direction, published in August 2017, codifies a set of principles for the Chinese government to follow when regulating OFDI. It also classifies overseas investments into three categories, namely "encouraged", "restricted" and "prohibited."

The Administrative Measures for the Outbound Investment of Enterprises published in December 2017 and the Interim Measures for the Reporting of Outbound Investments Subject to Record-filing or Approval published in January 2018 regulate OFDI activities in general, setting out requirements for approval/recordal for such investments. The Code of Conduct for the Operation of Overseas Investments by Private Enterprises published in December 2017 regulates private sector OFDI.

In February 2018, the NDRC published the Catalog of Sensitive Sectors for Outbound Investment (effective on March, 1 2018) that sets out the following sensitive sectors where OFDI is restricted (OFDI Sensitive Sectors):

- Research, development, manufacturing and maintenance of weaponry;
- Exploitation and utilization of water resources across borders;
- News media; and


■ The following sectors:

- Real estate industry
- Hospitality industry
- Cinemas
- Entertainment industry
- Sports clubs
- Equity investment funds or investment platforms that are established overseas without specific industrial projects.

OFDI by Chinese investors made directly or through offshore enterprises under their control in the OFDI Sensitive Sectors require NDRC's approval. Such approval is also required if the OFDI would jeopardize national sovereignty/security or public interest or if it involves the export of prohibited products or technologies, etc.

OFDI in other sectors is subject to filings under the recordal procedure. Investors are required to provide a substantial number of documents and information to various authorities that have a certain degree of discretion in deciding whether to accept a filing or not.

The OFDI regulations have been relaxed over time as a whole, but in recent years the PRC government has reasserted more control over OFDI to curb capital outflow for investments that do not directly contribute to China's investment competitiveness and development goals (for example, OFDI in cinema studios and football clubs). Since China announced its "Going Out" strategy in 2001, the OFDI regulations have been incrementally streamlined and liberalized by measures such as simplifying approval procedure and documentation requirements, increasing currency thresholds for seeking approval, and delegating authority from national regulators to their provincial counterparts, etc. In 2014, the general framework for OFDI was changed from



an approval-based system to a recordal system, similar to the Negative List approach for FDI. In 2016, however, the PRC government announced its intention to strengthen the OFDI regulations in response to certain OFDI investments in real estate, cinema, entertainment and sports clubs and so forth that drew the Chinese public's attention and were perceived as relatively risky. The subsequently-issued regulations, including the Administrative Measures for the Outbound Investment of Enterprises (published in December

2017) and the Interim Measures for the Reporting of Outbound Investments Subject to Record-filing or Approval (issued in January 2018), represent this trend of tightening the regulations and reasserting control over the OFDI.

The main authorities that administer OFDI are: (i) the NDRC, (ii) the MOFCOM, (iii) the State Administration of Foreign Exchange, and (iv) the State-owned Assets Supervision and Administration Commission, if SOE investments are involved.

8. RESPONSIBLE INVESTMENT

For this section, research was focused on whether there are any measures within the country's investment legislation that are specifically targeted to ensure responsible investment. There are responsible investment measures in other laws and regulations of the country, but China's foreign investment law and policy do not include an explicit reference. Examples of

these other laws are the Environmental Protection Law (last amendment effective January 1, 2015) and the Product Quality Law (last amendment effective December 29, 2018). These laws and regulations apply to all domestic and foreign invested companies in China, so there are no measures specific to foreign investment.

9. RECENT POLICIES ON NEW TECHNOLOGIES

This section considers China's recent policy measures on new technologies (that may affect both domestic and foreign investors). Globally, policy measures on new technologies tend to focus on the enabling (sectoral) regulatory framework, as well as on incentives, digital standards, and clusters. At the same time, countries have taken measures that highlight their changing approaches to national security. Other emerging policies that, though not directly related to investment, nevertheless impact investments are data localization requirements as well as rules and regulations concerning the treatment and use of digital data.

In China several measures have been taken that influence the development of the digital economy and investment in new technologies. Both the Internet of Things and 3D printing have been included in the Catalogue for the Guidance of Foreign Investment Industries, encouraging foreign investment in such sectors. Moreover, there have been discussions around China opening up cloud printing to foreign investment. Currently foreign investors can only enter this sector via a Sino-foreign joint venture and there is a 49% limitation on foreign shareholding. The PRC Cyber Security Law came into effect on June 1, 2017 and applies to all domestic and foreign invested companies alike. The Cyber Security Law sets out requirements and restrictions on the collection of Big Data and cross-border transfer of personal data.

Data Localization

China does not have an omnibus data privacy regulation that imposes data localization requirements, but there are specific regulations that apply to certain types of data. For example, according to Article 37 of the PRC Cyber Security Law (effective June 1, 2017), “key information infrastructure” operators must store personal information and important data gathered and produced during operations within China. The “key information infrastructure” is broadly defined to include public communications and information service, energy, transport, water conservancy, finance, public services, e-government affairs and other important and other important industries and fields. It further includes other key information infrastructure that will result in serious damage to the national security, national economy and people's livelihood and public interests if they are destroyed, there are lost functions or they are subject to data leakage. Where it is necessary to provide such information and data to overseas parties due to business requirements, a security assessment must be conducted by the local provincial-level cyberspace department in accordance with laws and regulations. This applies to both domestic enterprises and foreign investors.

On June 13, 2019, the PRC Cyberspace Administration published the Circular of the Cyberspace Administration of China on Seeking Public Opinions on the Measures for Security Assessment for Cross-border Transfer of Personal Information (Draft for Comment). The draft measures set out the proposed detailed requirements for the security assessment of cross-border data transfer.

10. CITY SPECIFIC REVIEW — SHANGHAI

Shanghai has consistently been at the forefront of the implementation of China's reform and opening-up policy over the past four decades.

As the economic hub of China, Shanghai leads the Yangtze River Economic Belt and serves as China's center in multiple sectors such as finance, trade, transportation, technology and innovation. It is also the location of the China (Shanghai) Pilot Free Trade Zone (SHFTZ), the first pilot free trade zone in China, established in 2013.

The key local regulatory measures for promoting foreign investment in Shanghai (excluding SHFTZ) are:

- The Opinions on Further Opening up and Accelerating the Establishment of a New System for an Open Economy (also known as the “33 new measures”), and
- The Action Plan of Shanghai for Implementing Major National Measures for Further Openness and Accelerating the Establishment of a New System for an Open Economy (also known as the “100 new measures”).

These were issued by the Shanghai Municipal Government on April 26, 2017 and July 10, 2018, respectively.

In particular, the 2018 action plan offers 100 initiatives of preferential and favorable policies for foreign investment in Shanghai. It covers aspects of banking, security, insurance, financial

markets, foreign exchange, service industry, manufacturing of automobiles, aircrafts and ships, intellectual property rights protection, trade environment for goods and service imports.

Policies and regulations published at the national level take precedence over policies and regulations published at the subnational level. Traditionally, local governments (including Shanghai) may publish their own policies and regulations to compete for foreign investment. In the past, not all such measures were in strict compliance with the law. To address this issue, the new FIL explicitly states that local governments at county level or above may only formulate policies on promotion and facilitation of foreign investment within their statutory authorities, in accordance with the laws. The new FIL also explicitly states that governments at all levels and their relevant departments may not impair the legitimate rights and interests of nor impose any additional obligation on a foreign-funded enterprise, set any condition for market access and withdrawal, or intervene in any normal production and operation activity of a foreign-funded enterprise, unless supported by relevant laws and regulations.

The local policies and regulations in Shanghai do not generally impose additional policy and regulatory barriers for foreign investment. As elaborated above, legally, any specific policy and regulatory barriers at the city level that contravene national laws and regulations will be invalid.

11. COMPETITION LAW & POLICY

For the purpose of this section research was focused on merger control and leniency frameworks in the country.

The primary law governing competition in China is the Anti-Monopoly Law (AML), which was adopted by the Standing Committee of the National People's Congress (NPC) on August 20, 2007 and came into effect on August 1, 2008. It applies throughout the PRC with the exception of the two Special Administrative Regions of Hong Kong and Macau. The AML prohibits monopolistic conduct, which can be divided into the following broad categories:

- Anti-competitive agreements between undertakings;
- Abuse of a dominant position; and
- Mergers that may have the effect of eliminating or restricting competition.

Implementing rules and guidelines assist in the application and interpretation of the Anti-Monopoly Law.

The Anti-Monopoly Bureau (AMB, Competition Authority or CA) under the newly created State Administration for Market Regulation (SAMR), established in 2018, is the main body in-charge of implementing competition law and policy in the country. Enforcement powers had previously been vested in three agencies (the National Development and Reform Commission, the State Administration for Industry and Commerce, and the Ministry of Commerce).


A. Merger Control

Merger control in China is governed by the AML, as well as by the following measures and guidelines passed by SAMR on September 29, 2018 (collectively, the China Merger Control Regime):

- Guiding Opinions on the Notification of the Concentration of Undertakings;

- Guiding Opinions on Documents and Materials Required for the Notification of Concentration of Undertakings;
- Working Guidance for Anti-Monopoly Review on Concentration of Undertakings;
- Explanation on the Implementation of the notification Form for Anti-Monopoly Review of Concentration of Undertakings;
- Guiding Opinions on the Notification of Concentration of Undertakings Subject to Simplified Procedure;
- Guiding Opinions on Regulating the Titles of Cases on the Notification of Concentrations of Undertakings.

The merger control regime under the AML applies to all transactions: that (i) meet the definition of a “concentration” and (ii) where the parties meet the turnover thresholds. A foreign investor need not have a physical presence in China for a filing to be triggered. A “concentration” arises where there is a merger between undertakings or an acquisition of control over one or more undertakings by acquiring equity interests, assets or being able to exercise decisive influence over one or more undertakings by contract or any other means. There is no definition of “control”, however it is understood to mean rights, contracts or other means which, either separately or in combination, and in all the factual and legal circumstances, confer on the acquirer the ability to exercise decisive influence on a business operator. Under the Notification Guidance, a newly established joint venture constitutes a concentration if at least two undertakings jointly control the joint venture, including greenfield joint ventures and joint ventures formed by way of acquisition or change of control. To meet the turnover thresholds, the parties to the concentration must generate RMB10 billion globally or RMB2 billion in China, and two or more parties to the concentration must each generate RMB400 million in China according to the Provisions of the State Council on the Standards for Concentration of Business Operators.



Note that foreign investments may trigger other filings and/or require approvals under other legal instruments such as the Foreign Investment Law from other entities such as the MOFCOM.

Pre-notification Meetings

Before formally submitting a merger filing, the parties can request for a pre-filing consultation with the Competition Authority. The parties need to submit a formal pre-filing consultation application to apply for meetings with the CA. Typically, these sorts of requests will arise where there is a doubt about whether a particular transaction is notifiable or not. According to Art. 9 of the Guidance Opinion about the Concentration of Business Operators, State Administration for Market Regulation, 2018, any guidance provided by the CA is oral and non-binding. In most cases pre-notification contacts with the CA are not necessary.

Fast Track Procedure and Information Requests

Per Art. 1-3 of Interim Provisions Concerning the Application of Standards for Simplified Procedure for Concentration of Business Operators, China Ministry of Commerce, 2014, the CA provides for a simplified procedure known as the “Simple Case” review for deals that meet certain criteria. The procedure closely resembles the EU’s simplified procedure. In a Simple Case notification, the parties are required to submit less information — that is, they do not have to provide analysis of the structure of demand and supply and so on. The CA does not publish decisions except in cases where remedies are imposed or the concentration is prohibited. In terms of the unconditional clearance decisions issued to the parties, there is no difference between decisions made in fast track review and full review.

There is no limit to the number of information requests the CA may issue during the merger review procedure. In practice the number of information requests can differ significantly depending on the nature of the products/markets concerned, the extent to which the deal raises competition concerns, the experience/prior knowledge of the case handler etc. There is no statutory mechanism under the China Merger

Control Regime to stop the clock once a filing has been accepted and the formal review clock begins.

Remedies

Per Section 9 of the AML, the CA can accept remedies proposed by merger parties to address its concerns in respect of a given transaction. Remedies cases are relatively rare. Of the 448 deals handled by the CA in 2018, only 4 required remedies. In practice, it will fall to the parties to actively propose remedies to meet the CA’s concerns. The CA can, and has, imposed both structural and behavioral remedies.

File Access and Third Party Intervention

There is no “formal” Statement of Objections under the China Merger Control Regime. The CA will typically disclose its concerns at a state of play (that is, face to face) meeting with the parties. There is no statutory regime guaranteeing the parties the right to inspect the CA’s file/documents. The parties are required to submit two versions of the notification — a confidential and a non-confidential version, according to the Guidance about the Anti-Monopoly Examination of Concentration of Business Operators, China State Administration for Market Regulation, 2018. The confidential version will only be accessible to the CA. The CA may provide the non-confidential version to other government agencies where such agencies are requested to provide opinions as part of the stakeholder consultation. The CA may also provide non-governmental stakeholders (that is, industry associations, competitors, customers and suppliers) with the non-confidential version, however it would be expected to canvass such stakeholders using a short questionnaire.

The AML does not specify any rights for third parties with respect to the merger review process. However, Article 7 of the Measures for Examination of the Concentrations between Undertakings states that the CA may convene a hearing to investigate, collect evidence and hear the views of all parties concerned in response to a request by a party (or parties) concerned. However, neither the law nor any regulations provide details of how a third party can make such a request and the procedure to follow.

Pursuant to the CA's Interim Measures for Investigation and Handling of Concentrations between Undertakings Not Notified in Accordance, effective as of February 1, 2012, individuals and entities who suspect that undertakings have failed to notify a transaction may report their suspicion to the CA. It does not appear to be necessary for the complainant to have “standing” (for example, potentially being affected by anti-competitive effects arising from the transaction).

The CA will maintain the confidentiality of the complainant. A report must be made in writing and provide basic information about the whistle-blower as well as the facts and evidence concerning the suspected concentration. In March 2014 the CA established a dedicated hotline so that whistleblowers can inform the CA of unreported transactions. Under the simplified procedure, any case seeking a fast-track review will be published on the CA's website and subject to public consultation of 10 days. During this period any third party may comment on or object to the use of a simplified review for the particular case. The CA will verify the comments and evidence from third parties, and may, on that basis, require the parties to withdraw and re-file according to the normal procedure.

Substantive Assessment

An assessment of a transaction under the AML involves several steps. The CA will typically start by identifying the relevant market(s). In practice, market definition is a key focus of information requests during the review process, and the pre-acceptance phase in particular. The CA will examine whether the transaction has the effect of eliminating or restricting competition, and whether the concentration may generate efficiencies that significantly outweigh its negative effects on competition, or that the concentration is in the public interest. The CA will usually assess potentially negative effects against this framework. It will not always fully develop a “counterfactual” in the way some overseas agencies would. When assessing a concentration (including any remedies that may be appropriate), the CA is required to consider the factors set out in the AML, Article 27. These include the likely impact of the transaction

on national economic development. In practice, the CA's conditional approval decisions do not usually spell out explicitly that certain conditions are required based on public interest/policy considerations, as opposed to the need to prevent anticompetitive effects.

However, a number of the CA's prior remedy decisions can be read as seeking to safeguard the interests of certain sectors of the Chinese economy. Examples of the sorts of remedies that have been imposed include ensuring continued supply to Chinese customers on fair and reasonable terms, to reduce prices, and to refrain from expanding production in China.

Penalties and Appeals

Per Section 47 of the AML, the CA may impose a fine of up to RMB 500,000 for failure to notify. The CA imposed penalties in fifteen failure to notify/gun jumping cases in 2018, the highest total on record. Companies who breach commitments/remedies face the same maximum fine: RMB500,000. According to Article 53 of the AML, where an undertaking is dissatisfied with the merger review decision, it may first apply for administrative reconsideration within 60 days of becoming aware of the decision; and if it is dissatisfied with the decision made after administrative reconsideration, it may bring an administrative action before the court according to the relevant Administrative Procedure Law.

Publicity and Deadlines for Merger Decisions

The CA publishes a list of unconditional, conditional and prohibition decisions. The list of unconditional approval decisions includes only a brief description of the concentration, the date of the decision and the names of the parties to the concentration. This is now published on a monthly basis. Individual approval decisions are not published. The CA only publishes decisions in conditional approval cases or where it has decided to prohibit the transaction. These published decisions include the CA's reasoning.

The merger approval process in China consists of (i) a pre-acceptance review (where the CA reviews the filing and issues information

requests) and (ii) a formal review process, but only the formal review process is subject to a statutory timetable. According to the Guidance about the Anti-Monopoly Examination of Concentration of Business Operators, China State Administration for Market Regulation, 2018, the timetable is as follows:

- **Pre-acceptance review:** Generally 4-6 weeks (but can be up to 12 weeks).
- **Phase I (initial review):** 30 calendar days from acceptance by the CA of a notification.
- **Phase II (further review):** 90 calendar days from the date of the decision to conduct further review.
- **Phase III:** an additional 60 calendar days where (i) the parties agree; or (ii) information submitted is inaccurate and requires further verification; or (iii) a major change in the relevant circumstances occurs post-notification.
- **Overall timing — long form:** Generally, it takes about 4-6 months to obtain clearance, including pre-acceptance. The precise length of time will depend on the markets/industries involved, the extent of any competition issues, the results of stakeholder feedback and so forth. Clearances of long form cases in Phase I are rare.
- **Overall timing — short form:** The CA aims to clear transactions which qualify for the simplified procedure within Phase I and to date all qualified simplified transactions have been approved within Phase I.

B. Leniency Program

The leniency program in China is governed by the AML. Further, the Draft Guidelines for the Application of the Leniency Program to Cases Involving Horizontal Monopoly Agreements, issued in 2016 by the National Development and Reform Commission (NDRC) (Draft Leniency Guidelines) shed light on how the ABM deals with substantive and procedural issues relative to China's leniency program.

The AML only provides for administrative liability, not criminal liability. The leniency

program therefore only covers immunity from, or a reduction of, administrative monetary punishment. Criminal fines and jail time do not arise for violations of the AML. The leniency program provides no immunity from, or reduction in, private damages that may be awarded as a result of the relevant conduct.

Leniency can be granted to several applicants under the AML. Per the Draft Leniency Guidelines, the first leniency applicant will receive no less than an 80% fine reduction or full immunity, the second applicant will receive a 30% to 50% fine reduction, and the subsequent applicants will receive no more than a 30% fine reduction. Article 46 of the AML only allows for enforcement against companies and not against individuals. As such, the leniency program does not apply to individuals. It should be noted that prior to the merger of the NDRC (competition bureau) and the State Administration for Industry and Commerce (SAIC) into the CA, each entity adopted its own leniency rules. There was some discrepancy between the two, as in case of SAIC where leniency cannot be granted to the initiator of a monopoly agreement while this was never a requirement for NDRC. However, it is expected that the CA will streamline these rules.

The parties being penalized by the CA can initiate an administrative lawsuit against the CA under the relevant Administrative Procedure Law if they are unsatisfied with the administrative decision. Pursuant to the AML, where an undertaking is dissatisfied with the decision made by the CA for the antitrust enforcement on monopoly agreements or abuse of dominance, it may apply for administrative reconsideration or bring an administrative action before the court according to law.

Marker System

The current AML regime does not have clear rules or guidance on marker system. However, the Draft Leniency Guidelines specify how a "marker" works in the context of the AML. Pursuant to these Guidelines, a preliminary report is equivalent to a "marker". Business operators that temporarily cannot provide complete materials when they apply for leniency may submit a

preliminary report regarding the monopolistic agreements to the CA. Business operators should explicitly confess in the preliminary report that they have engaged in monopolistic agreements in violation of the AML, and briefly describe the basics in relation to the conclusion and implementation of the monopolistic agreements, including the participants to the monopolistic agreements, the products or services involved, the dates when these monopolistic agreements were concluded and implemented and so on.

The CA will provide written comments upon receiving the preliminary reports, requiring the business operator to submit supplemental materials within a prescribed period. That period is generally up to 30 days—extended to 60 days under special circumstances. If the business operators have submitted the required supplemental materials within the prescribed period, the CA will define the time when they received the preliminary reports as the time when the business operator made its leniency application. Disclosures can be made orally or in writing. Oral applications will be reduced to minutes and signed by the disclosed party.

Confidentiality

In practice the NDRC and the State Administration for Industry and Commerce maintain confidentiality over the applicants during the leniency process, but no formal or express guidance exists in this regard. The anonymity is lifted when the leniency decision is rendered. Because there are no criminal penalties for violations of the AML the leniency statement cannot be accessed by the public prosecutor. The Draft Leniency Guidelines dictate that leniency statements should not be disclosed to third parties, including other government agencies, without the consent of the applicant(s) and/or unless mandated by law.

Cooperation with other competition authorities

Although the applicable leniency rules are still in draft, in practice, the CA may ask the parties to provide full or partial waivers to enable the CA to communicate with other competition authorities to understand the overseas investigation status and other relevant information.

ENDNOTES

¹ The WTO services sectoral classification list (W/120) is a comprehensive list of services sectors and sub-sectors covered under the GATS. It was compiled by the WTO in July 1991 and its purpose was to facilitate the Uruguay Round negotiations, ensuring cross-country comparability and consistency of the commitments undertaken. The 160 sub-sectors are defined as aggregate of the more detailed categories contained in the United Nations provisional Central Product Classification (CPC). The list can be accessed under the following link: http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc

Services are categorized into 12 sectors:

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services
12. Other services not included elsewhere

² For the purpose of this research, 32 sectors have been identified. This is not an exhaustive list of all sectors of the economy.

Primary: <ol style="list-style-type: none"> 1. Agriculture, Hunting, Forestry, and Fishing 2. Mining, Quarrying, and Petroleum 	Services: <ol style="list-style-type: none"> 18. Electricity, Gas, and Water 19. Alternative Energy
Manufacturing: <ol style="list-style-type: none"> 3. Agroprocessing, Food Products, and Beverages 4. Textiles, Apparel, and Leather 5. Chemicals and Chemical Products 6. Rubber 7. Plastic Products 8. Pharmaceuticals, Biotechnology, and Medical Devices 9. Metals and metal products 10. Non-metal mineral products 11. Wood and wood products (other than Furniture) 12. Furniture 13. Paper and paper products 14. Printing and publishing 15. Automobiles, Other Motor Vehicles, and Transport Equipment 16. Information Technology and Telecommunications Equipment 17. Machinery and Electrical and Electronic Equipment and Components 	<ol style="list-style-type: none"> 20. Construction 21. Wholesale and Retail Trade 22. Hotels and Restaurants 23. Other Travel and Tourism-related Services 24. Logistics, Transport, and Storage 25. Telecommunications 26. Computer and Software Services 27. Financial Services including Insurance 28. Real Estate 29. Business Services 30. Professional, Scientific and Technical Services (Engineering, Architecture, etc.) 31. Health Services 32. Media and Entertainment

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This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment and competition that affect businesses and foreign investors. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries: Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.