



USCBC Foreign Investment Law Implementing Regulations Comments

General comments:

USCBC received comments from 17 companies across industries including consumer products, ICT, pharmaceuticals, auto, and service firms. One member provided detailed tax comments related to the FIL, which will be included as a separate attachment.

1. The implementing regulations should clearly define essential terms vaguely described in the FIL, including what constitutes a foreign investment and foreign investor, what the specific process is for filing and approving foreign investments, and what the specific responsibilities are for regulatory agencies at all levels.
2. Existing regulations with language relevant but contradictory to the FIL should be revised or rescinded to ensure consistency with the requirements of the FIL, especially on priorities such as equal treatment in management, standards making, technology transfer requirements, capital outflows, et. al.
3. Clarity is needed on the national security and information reporting systems, including details on the regulators and stakeholders, timelines, and review process. Implementing regulations should limit third-party influence, increase administrative efficiency by reducing industrial licensing requirements, and narrow the scope of national security review criteria by maintaining the balance between an open trade and foreign investment environment and national security concerns.
4. The process of formulating specific implementing regulations should be transparent and open to foreign company comments. A feedback mechanism allowing for additional consultation after the January 1, 2020 implementation date would help to address challenges encountered during implementation in a unified and sustainable way.

List of Comments

Article #	Article/Clause	Comments	Suggestions
Chapter I	General Principles		
2	<p>This Law applies to foreign investment within the mainland territory of the People's Republic of China (hereinafter referred to as mainland China). "Foreign investment" as used in this Law refers to the investment activities in mainland China conducted directly or indirectly by natural persons, enterprises, or other organizations of foreign countries (hereinafter referred to as foreign investors), including the following circumstances:</p> <p>(1) Where foreign investors individually or jointly with other investors establish foreign-invested enterprises in mainland China;</p> <p>(2) Where foreign investors acquire stock shares, stock equity, property shares, or other similar rights and interests in mainland Chinese enterprises;</p> <p>(3) Where foreign investors individually or jointly with other investors invest in new projects in mainland China;</p> <p>(4) Other methods of investment as</p>	<p>1) It is not clear whether foreign investors can include foreign or regional governments and international organizations.</p> <p>2)"Indirect foreign investment" is described in such vague terms that it may include the subsidiaries of the corporate joint ventures where the foreign investor has any equity stake. It is unnecessarily burdensome to require such entities to become subject to the regulatory requirements of a foreign investment.</p> <p>3) We are also concerned that re-investment activities by existing foreign-invested enterprises will be considered indirect foreign investment, increasing the complexity of a routine business function.</p> <p>4)Additionally, in defining foreign investors, it is unclear if the registration place of a foreign enterprise or the registration place of</p>	<p>Foreign-invested companies should be subject to the same legal and reporting requirements as domestic companies. Eliminating extensive reporting requirements and additional supervision and inspection requirements that apply solely to FIEs will help to ensure that foreign companies are not treated differently from domestic companies. China's complex pre-establishment restrictions on market access, such as administrative approvals required before business can be conducted, impact many industries and undermine equal treatment by impeding foreign investors from investing in the first place. These pre-establishment requirements should be amended to reflect the goal of the draft law of treating foreign and domestic investments equally.</p> <p>If that is unacceptable, then the definition of "foreign investor" and "foreign investment" are not clear and may cause confusion and divergent interpretations in implementation. We suggest that the implementing regulations clarify that "indirect investment" does not include reinvestment in existing business or subsidiaries of equity joint ventures.</p> <p>We further suggest that a "foreign investor" be defined as any foreign national, foreign government or foreign entity, or any Chinese entity controlled by a foreign person. A foreign</p>

	<p>prescribed by laws, administrative regulations, or the State Council.</p> <p>"Foreign-invested enterprises" as used in this Law refers to enterprises that, in accordance with Chinese law, are established in mainland China after being registered and that are wholly or partially invested by foreign investors.</p>	<p>the actual controller of such foreign enterprise will be the decisive factor. It is also not clear if the definition will be based on the nationality/jurisdiction of the direct shareholder or the nationality/jurisdiction of its actual controller. We also suggest that implementing rules clarify whether entities invested by HK, Macau and Taiwan investors will be applicable to foreign investors.</p> <p>5)It is not clear what the term "other investors" entails and whether it covers Chinese individuals. The FIL did not specify the definition of "new projects" and whether/how it is managed differently from foreign-invested enterprises.</p> <p>6)FIL provides that Foreign Investor may invest through other approaches as specified by the laws, administrative regulations or other method provided by the State Council. It will be very helpful for implementing regulations to specify what are those additional approaches.</p>	<p>entity includes any entity organized under the laws of a foreign state if either its principal place of business is outside the People's Republic of China or its equity securities are primarily traded on one or more foreign exchanges, unless the entity can prove China nationals own a majority of its equity.</p> <p>Finally, we recommend the implementing regulations list the specific laws, administrative regulations or other method provided by the State Council that can be legally used as investment vehicles.</p>
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4	<p>Article 4: The State implements the management scheme of pre-establishment national treatment plus negative list with respect to foreign investment.</p> <p>As used in the previous paragraph, "pre-establishment national treatment" refers to affording foreign investors and their investments treatment, during the investment access stage, no less favorable than that afforded to Chinese domestic investors and their investments; and "negative list" refers to the special administrative measures on access that are implemented in certain fields for foreign investment as prescribed by the State. The State affords national treatment to foreign investment outside the negative list. The negative list is to be published by or published as authorized by the State Council.</p> <p>Where the international treaties or agreements that the People's Republic of China concludes or joins have more favorable provisions for the treatment of access by foreign investors, the relevant provisions may be followed.</p>	<p>Several articles in existing regulations and measures are in conflict with the national treatment principle by having special requirements for foreign-invested enterprises. For example:</p> <p>1) The Regulations on Foreign Investors Acquiring and Merging Domestic Companies outline specific rules for evaluation, payment and timeline for merger and acquisition activities.</p> <p>2) The Management Rules for Foreign-Invested Construction Enterprises also includes restrictions on the scope projects FIEs can engage in.</p>	<p>We suggest to amend or nullify any regulations, department rules and notices that are in conflict with the principle of equal treatment. We encourage Chinese legislators and policy makers to consult with industries and business communities to identify the conflict areas and seek recommendations for solutions.</p>
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7	<p>The competent departments for commerce and investment under the State Council are to carry out work on promoting, protecting, and managing foreign investment according to their division of duties; the other relevant departments under the State Council are responsible for the relevant work on promoting, protecting, and managing foreign investment within the scope of their respective duties.</p> <p>The relevant departments of the local people's governments at or above the county level are to carry out the promotion, protection, and management of foreign investment in accordance with laws and regulations and the division of duties determined by the people's government at the same level.</p>	<p>Excluding exceptional cases, most foreign investors establish new investments by registering foreign-invested enterprises or through a merger or acquisition. According to current rules, MOFCOM is responsible for the regulation of foreign companies. NDRC is responsible for managing foreign-invested investment projects. The FIL does not specify if these regulators will continue in these roles.</p>	<p>To ensure consistency in foreign investment management, we recommend the implementing regulations clarify that MOFOM will remain responsible for the management of foreign investors and the NDRC for managing foreign investment projects. If other regulators will manage foreign investment in the future, we recommend scope of responsibilities and regulatory authority be clearly defined. .</p>
Chapter II	Investment Promotion		
10	<p>In the formulation of laws, regulations, or rules relating to foreign investment, appropriate means shall be taken to solicit the opinions and suggestions of foreign-invested enterprises.</p> <p>...</p>		<p>We recommend the implementing regulations create a designated unified channel to make draft versions of all policies (national, industry, local, et. al.) set by government or government-affiliated organizations available to domestic, foreign-invested, and foreign-based companies for public comment for a period of at least 60 days. Additionally, it would greatly increase the opportunities for foreign investors to engage in the policy making process to add language that requires all non-governmental bodies and organizations that draft policies and guidelines to increase transparency by</p>

			<p>making draft versions of these documents freely available for public comment by all stakeholders regardless of nationality.</p> <p>Finally, we recommend the implementing regulations require all policies to be published in both Chinese and English.</p>
11	<p>The State establishes and improves the foreign investment service system and provides counseling and service for foreign investors and foreign-invested enterprises about laws and regulations, policy measures, project information, and such other areas.</p>	<p>Due to lack of detailed definition of responsibilities, there is risk of competency overlap between different authorities.</p>	<p>We recommend clarifying which ministry or agency is responsible for providing which services to further define the Foreign Investment Service System and how it is implemented. It would be even more helpful if a “one-stop shop” were established to provide these services to foreign investors.</p>

15	<p>The State ensures that foreign-invested enterprises equally participate in efforts to formulate standards, and strengthens information disclosure and public oversight during the formulation of standards.</p> <p>Compulsory standards formulated by the State are to be applied equally to foreign-invested enterprises.</p>	<p>Though equal treatment has been emphasized in standards making, FIEs still meet challenges in some standard making organizations. For example,</p> <ol style="list-style-type: none"> 1) There is still not enough transparency within the majority of China's standard setting organizations, especially in sectors that are highly competitive. 2) Some TC260 working groups (e.g. security and technology coordination) prohibit foreign companies from joining. 3) The government tends to exclude foreign products and technology when making advanced technology catalogues (e.g., MIIT's "Green Data Center Advanced Technology Catalogue") 4) There also seems to be no foreign representation in the Council of Associations and Technical Management Committee under China Communications Standards Association, despite its policy that foreign companies are not limited to observer seat. 5) Right now, the legal validity of enterprise standards is not officially 	<p>We are encouraged that the FIL stipulates that FIEs are to participate equally in standards setting work. We recommend clarifying the rights and responsibilities of participants in the standards setting process, and specifying the rights and responsibilities that FIEs are to be accorded, such as voting rights and drafting rights.</p> <p>To this end, we recommend the implementing regulations create a designated unified channel to make draft versions of all standards (national, industry, and other types of standards) and standards-related policies and regulations set by government or government-affiliated organizations available to domestic, foreign-invested, and foreign-based companies for public comment for a period of at least 60 days. Additionally, it would greatly increase the opportunities for foreign investors to engage in the standard setting process to add language that requires all non-governmental bodies and organizations that set standards and standards-related policies and guidelines to increase transparency by making draft versions of these documents freely available for public comment by all stakeholders regardless of nationality.</p> <p>Although existing rules and practice such as 2017 State Council Circular No. 5 allow FIEs equal participation in standards development activities, FIEs are not consistently permitted full participation in China's standards development process, including as full voting members of technical committees responsible for standards setting. Permitting FIEs to participate in standards-setting activities on equal footing with their domestic counterparts would promote a more robust standards-setting process.</p>
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16	<p>The State ensures that foreign-invested enterprises participate in government procurement activities through fair competition in accordance with law. In accordance with law, government procurement is to give equal treatment to products manufactured by, or services provided by, foreign-invested enterprises in mainland China.</p>	<p>We welcome safeguards for FIEs' equal participation in government procurement activities, and hope more details can be released to enforce this article.</p>	<p>The implementing rules should detail specifically what is meant by “products manufactured by foreign-invested enterprises in mainland China.” We recommend that products sold by foreign invested enterprises in China, be afforded equal treatment in government procurement, not just products manufactured by foreign-invested enterprises in mainland China. These products should be classified as “domestic products” in government procurement processes. We further recommend that “products manufactured by foreign-invested enterprises in mainland China” be defined with reference to China’s Customs’ regulations on “Country of Origin.” In addition, products manufactured by FIEs that are eligible for government procurement activities should include products that are toll manufactured by foreign-invested enterprises inside and outside of mainland China.</p> <p>We also suggest the implementing rules contain language articulating rules or remedies for foreign enterprises when they are denied equal participation in government procurement activities. This should include remedy measures, accountable agencies, remedy procedures and timelines for appeals.</p> <p>The implementing rules should also require that current documents containing discriminatory articles--such as technologies be “secure and controllable” --be rescinded within six months.</p>
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18	Local people's government at or above the county level may, in accordance with the provisions of laws, administrative regulations, or local regulations, with their legally prescribed authorities formulate policy measures on the promotion and facilitation of foreign investment.	<p>1) It is unclear what kinds of foreign investment promotion policies local governments are authorized or unauthorized to formulate. When local governments develop foreign investment promotion policies or make promises that are beyond their authority in order to incentivize and attract foreign investment, foreign investors should be compensated for any actual damages they incur.</p> <p>2) The term "foreign investment promotion and facilitation policies and measures" is too vague. "Policies and measures" may refer to the local governmental "party directives and government guidance instead of official local regulations.</p>	<p>We suggest that the implementing regulations detail the scope of local authority in foreign investment promotion, adding remedy channels if an incentive is revoked.</p> <p>We also suggest that transparency be guaranteed in the promotion policies making process and a comprehensive list of local policy incentives be developed.</p>
Chapter III	Investment Protection		
20	The State will not expropriate the investment of foreign investors. Under special circumstances, the State may, for the public interest, expropriate or requisition the investment of foreign investors in accordance with the provisions of law. Expropriations and requisitions shall be conducted in accordance with legally prescribed procedure and promptly give fair and reasonable compensation.	Regarding circumstances where the State is permitted to expropriate a foreign investment, the terms "special circumstances," "public interest," "legally prescribed procedures" and "fair and reasonable compensation" are extremely vague.	<p>We recommend implementing rules clarify the terms "special circumstances" and "public interest," and follow the principle of non-discriminatory legal procedures.</p> <p>In cases of expropriation, we recommend that a principle of full and perfect equivalent for the property—what a willing buyer would pay a willing seller—be used as the standard for assessing value. If fair market value does not exist or cannot be calculated, other data agreed upon by an independent panel of experts should be used to assess fair compensation.</p>

			If property is expropriated before payment is made, just compensation should include an amount sufficient to produce the full equivalent of that value paid contemporaneously with the taking.
21	Foreign investors' capital contributions, profits, capital gains, income from asset disposal, intellectual property right royalties, compensation or indemnification obtained in accordance with law, liquidation income, and so forth, that are made or obtained in mainland China, may be freely transferred into or out of mainland China in RMB or foreign exchange in accordance with law.	1) Although the FIL emphasizes that RMB can be exchanged and remitted abroad without restrictions, based on the past experience, such remittance is usually subject to the window guidance of banks or even approval from the local SAFE.	We suggest that the relevant foreign exchange regulations and procedures be specified in the implementing regulations, so that lawful capital transfer activities of foreign companies are not limited, and not subject to prior government approval.
22	The State protects the intellectual property rights of foreign investors and foreign-invested enterprises; protects the lawful rights and interests of intellectual property rights holders and relevant rights holders; and for acts infringing on intellectual property rights, strictly pursues legal responsibility in accordance with law. The State encourages technological cooperation to be conducted in the	1) This article only forbids technology transfer by administrative means. However, coerced technology transfer may happen through other means such as taking advantage of administrative impact 2) It is not clear whether "administrative organs" include units that are directly or indirectly controlled by government agencies.	1) The implementing regulations should clarify that "administrative measures" include informal approaches to forcing or coercing tech transfer. 2) We also suggest the implementing regulations clarify which agencies fall under "administrative organs," and include any relevant units indirectly controlled by government agencies as well as government agencies themselves. 3) To ensure the effectiveness of the protections afforded under Article 22, we recommend the implementing rules state that Article 22 prevails over any conflicting rules.

	<p>course of foreign investment and on the basis of the principle of voluntariness and business rules. The conditions for technological cooperation are to be determined through consultation by the various parties to the investment on the basis of equality and the principle of fairness. Administrative organs and their employees must not force the transfer of technology through administrative measures.</p>	<p>3) Some provisions in the current laws, regulations and Supreme Court interpretations are inconsistent with the FIL on protection of intellectual property of foreign investors and FIEs. For example:</p> <ul style="list-style-type: none"> a. The interpretation in relation to invalid technology contracts in the interpretations of the Supreme Court on article 329 of the Contract Law; b. The relevant requirements under the Provisions on the Access Administration of New Energy Vehicle Manufacturers and Products (Order No. 39 of the Ministry of Industry and Information Technology), effective on July 1, 2017, lead to the reality that foreign investors have no choice but to transfer or license their intellectual property. In order to satisfy the requirement on FIE to have sufficient design and development capability under Article 5 (3) of Order No. 39, the foreign investor is forced to license its FIE extra intellectual property. 	
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23	<p>Administrative organs and their employees shall, in accordance with law, maintain the confidentiality of the trade secrets of foreign investors or foreign-invested enterprises that they learn in the course of performing their duties, and must not disclose or unlawfully provide them to others.</p>		<p>We suggest the implementing rules provide specific examples of prohibited disclosures such as not allowing disclosure of trade secrets to industry experts employed, affiliated or retained as consultants by any commercial entity. The implementing rules should also prohibit disclosure of trade secrets both in the contexts of where the regulator or employee believes the disclosure might help the agency administer the law, or where the intention is to inform or benefit the person to whom such information would be disclosed.</p> <p>We appreciate the criminal penalty that is stipulated by the FIL, but we hope that can be expanded to cover not only leaking sensitive information by government officials but also cover IP infringement commercially.</p>
24	<p>Normative documents formulated by the various levels of people's governments and their relevant departments that involve foreign investment shall conform to the provisions of laws and regulations; without any basis in laws or administrative regulations, they must not derogate from the lawful rights and interests of foreign-invested enterprises or increase their obligations, must not set market access or exit conditions, and must not interfere with the normal business activities of foreign-invested enterprises.</p>		<p>The implementing rules for Article 24 should set a timeframe to eliminate regulations and policies which are inconsistent with FIL within one year of implementation.</p>

25	<p>The various levels of local people's governments and their relevant department shall fulfill the policy commitments made to foreign investors or foreign-invested enterprises and the various types of contracts concluded in accordance with law.</p> <p>Where it is necessary that they change policy commitments or contractual agreements for the national or public interest, they shall proceed in accordance with legally prescribed authorities and procedures and compensate the foreign investors or foreign-invested enterprises for any loss sustained as a result in accordance with law.</p>		<p>The implementing rules should provide more clarity on “legally prescribed powers and procedures” when local governments and related departments are authorized to breach contract terms with FIEs.</p> <p>We also suggest that the implementing regulations stipulate local governments' liability if compensation is not made.</p>
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26	<p>The State establishes working mechanisms for complaints by foreign-invested enterprises, promptly handles the issues raised by foreign-invested enterprises or their investors, and coordinates and improves the relevant policy measures.</p> <p>Where foreign-invested enterprises and their investors consider the administrative acts of administrative organs and their employees to have infringed upon their lawful rights and interests, they may petition for a resolution through the working mechanisms for complaints by foreign-invested enterprises.</p> <p>Where foreign-invested enterprises and their investors consider the administrative acts of administrative organs and their employees to have infringed upon their lawful rights and interests, in addition to petitioning for a resolution through the working mechanisms for complaints by foreign-invested enterprises in accordance with the provisions of the previous paragraph, they may also petition for administrative reconsideration or initiate administrative litigation in accordance with law.</p>	<p>1) This article stipulates the complaint mechanism for foreign-invested enterprises. However, the specific mechanism to coordinate the settlement of disputes is subject to further elaboration by the implementing regulations.</p> <p>2) It is also not clear whether the decisions from compliant mechanism are legally binding, and how it should connect with petition for administrative reconsideration or initiate administrative litigation in accordance with law.</p>	<p>We recommend that the implementing regulations further stipulate the leading agency, scope, processes and fees of the complaint mechanism. The mechanism should be convenient, transparent and streamlined.</p> <p>We also recommend that the implementing rules clarify how the multiple channels for complaints will interact, including the new complaint mechanism, as well as administrative reconsideration, and administrative litigation.</p>
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Chapter IV	Investment Management		
28	<p>For fields in which the negative list for foreign investment access provides that investment is prohibited, foreign investors must not make investment.</p> <p>For fields in which the negative list for foreign investment access provides that investment is restricted, foreign investors shall meet the requirements provided by the negative list in making investment.</p> <p>Fields outside the negative list for foreign investment access are to be managed according to the principle of consistency between domestic and foreign investment.</p>	<p>Under the current law system, foreign investment on the negative list will be approved on a case-by-case basis, and foreign investment outside of the scope of the negative list will only need to file for the record. When the FIL replaces the three current laws governing foreign investment, what will be the new mechanism for approval and filing?</p>	<p>We suggest that the implementing regulations have a detailed explanation of the new foreign investment management system. Such rules should be as streamlined as possible and provide foreign investment outside the scope of the negative list equal treatment with domestic companies.</p>
29	<p>Where any foreign investment needs to undergo the approval or filing of investment projects, the relevant provisions issued by the state shall apply.</p>	<p>There is no clear guideline regarding the approval and filing process of the establishment, change and dissolution of a foreign invested enterprise.</p>	<p>1) We suggest that the implementing regulations provide clear guidelines regarding the approval and filing process for the establishment, change, and dissolution of an FIE. We also suggest that the regulations stipulate a detailed registration process of FIEs both on and off the negative list. Additionally, we recommend that the implementing regulations include a plan of action for other FIE regulatory processes, such as applications for industrial licenses and permits in the future.</p> <p>2) We also suggest that the implementing regulations exclude the FIE subsidiaries (excluding directly owned subsidiaries</p>

			with investment nature) from the requirements of Article 29, as duplicate registrations are unnecessary.
31	The provisions of the "P.R.C. Company Law" and the "P.R.C. Partnership Enterprises Law" apply to the organizational forms, institutional frameworks, and standards of conduct of foreign-invested companies.		<p>We recommend that the implementing regulations clarify the following questions:</p> <p>1) During the five-year transition period, whether the FIEs that are established before January 1, 2020 and that have not yet amended their original business forms are still subject to the Company Law;</p> <p>2) How the "three funds" of an equity joint venture -- the reserve fund, bonus and welfare fund for staff and workers, and venture expansion fund -- will be transitioned into the Mandatory Common Reserve under the Company Law.</p>
34	<p>The State establishes a foreign investment information reporting system. Foreign investors or foreign-invested enterprises shall submit investment information to the competent departments for commerce through the enterprise registration system and the enterprise credit information disclosure system.</p> <p>The content and scope of foreign-investment information reports are to be determined according to the principle of true necessity; investment information that can be obtained through interdepartmental information sharing must not be required to be resubmitted.</p>	<p>1) This article is not clear regarding the detailed rules, process, scope, and frequency of information reporting.</p> <p>2) Different mechanisms of information collection by separate authorities may lead to confusion and unnecessary burden to companies. The business community is concerned that the reporting mechanism in the FIL is under risk of overlapping with SAMR's Annual Reporting and Publication System, as well as the Annual Joint Inspection System covered by MOFCOM, the National Bureau of Statistics, the State Administration of Foreign</p>	<p>We suggest that the implementing regulations provide details on how the information reporting mechanism will work.</p> <p>2) We further suggest that Chinese authorities consider consolidating all current information reporting systems into one unified platform to lessen paperwork burdens.</p> <p>3) We also suggest that the information collection requirements for FIEs be no more than the requirements for domestic companies.</p>

		Exchange, the Ministry of Finance, and the State Taxation Administration.	
35	<p>The State establishes a security review system for foreign investment and conducts security review of foreign investment that affects or may affect national security. Security review decisions made in accordance with law are final decisions.</p>	<p>Article 35 establishes a national security review system for foreign investment, but does not specify the specific content of the national security review system, such as the scope of the review, the content of the review, the requirements for the application documents, the review procedures and time limits.</p> <p>It is also unclear on what legal basis the national security reviews of newly established FIEs outside of free trade zones would be conducted, since the current legal basis for national security reviews of foreign investment appears in only the Notice of the General Office of the State Council on Establishing a Security Review System for Foreign Investors to Acquire Domestic Enterprises (Guo Ban Fa [2011] No. 6) and the Office of the State Council on Printing and Distributing Free Trade Notice of the National Security</p>	<p>The absence of a meaningful system to appeal decisions contradicts China's efforts to promote more transparent administrative decision-making. We recommend revising this article to state that parties may appeal national security review decisions through China's court system, and to specify in the implementing regulations the specific mechanism and level of court that can hear these cases.</p>

		<p>Review Trial Measures for Foreign Investment in the Pilot Area (Guo Ban Fa [2015] No. 24).</p> <p>Article 35 also stipulates that security review decisions made in accordance with law are “final decisions,” suggesting but not clearly specifying that these decisions cannot be appealed for administrative reconsideration or administrative litigation. Generally, an administrative decision can be reviewed or appealed through litigation.</p>	
Chapter V	Legal Responsibility		
36	<p>.....</p> <p>Where the investment activities of foreign investors violate the provisions of the negative list for foreign investment access, in addition to being handled in accordance with the provisions of the previous two paragraphs, they shall also bear the corresponding legal responsibilities.</p>		<p>We suggest that the implementing regulations explicitly stipulate what the "corresponding legal responsibilities" are.</p>

41	<p>Where the State has separate provisions for the management of foreign investors' investments in mainland China in such financial industries as banking, securities, or insurance, or of their making investments in such financial markets as securities market or foreign exchange market, follow those provisions.</p>	<p>It is not clear how much of the financial sector falls under the FIL.</p>	<p>We suggest that the implementing regulations provide more details on the extent to which foreign financial institutions are regulated by the FIL versus other regulations, to ensure compliance.</p>
42	<p>This Law shall take effect on January 1, 2020. The "P.R.C. Chinese-Foreign Equity Joint Ventures Law," the "P.R.C. Wholly Foreign-Owned Enterprises Law," and the "P.R.C. Chinese-Foreign Contractual Joint Ventures Law" are simultaneously abolished.</p> <p>Foreign-invested enterprises that are established in accordance with the "P.R.C. Chinese-Foreign Equity Joint Ventures Law," the "P.R.C. Wholly Foreign-Owned Enterprises Law," or the "P.R.C. Chinese-Foreign Contractual Joint Ventures Law" before this Law takes effect may retain their original corporate organizational forms, and so forth, for five years after the implementation of this Law. The specific implementing measures are to be formulated by the State Council.</p>	<p>The effectiveness of existing foreign investment regulations under the former three laws governing foreign investment is still unclear. These regulations cover a wide array of key issues for foreign investment, including investment capital, reinvestment, merging activities, stakeholder change, etc. How these regulations will be changed will have direct impact on enterprises' transition to FIL jurisdiction.</p> <p>During the transition period after the announcement date until the effective date, there is no clear guidance on whether the foreign investment shall still follow the current existing legal regime or directly apply the FIL and the PRC Company Law to formulate the JV contract and Articles of Association. During these five years, can FIEs maintain not only</p>	<p>We suggest that the implementing regulations and other guidelines and measures address existing FIEs' concerns during the 5-year transition period. We further suggest that the authorities proactively revisit and confirm the regulations under the three laws previously governing foreign investment that will be no longer effective as of January 1, 2020. Such clarification will contribute to a smoother transition.</p>

	<p>organizational forms but also institutional frameworks and standards of conduct?</p> <p>Due to the complexity of JVs, in many cases the shareholders may be unable to reach agreement upon the expiration of the five-year transition period and may fail to complete the relevant governmental approvals and registrations. It is not clear in the FIL what the consequences will be.</p>	
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