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CHINA/MACAO

NEWS

China - The new foreign investment law

In March of this year, the Chinese National People's Congress approved a new law to regulate foreign investment and it will enter into force on 1 January 2020.

This new law will replace the current foreign investment legislation, which dates back to 1979 and is based on three legal texts: the Sino-Foreign Cooperative Joint Venture ("CJV"), the Sino-Foreign Equity Joint Venture ("EJV"), and the Wholly Foreign Owned Enterprise ("WFOE") laws.

In recent years, these three laws have been widely criticised by foreign investors because of the restrictions they impose and the inefficiencies in the process of incorporating, approving and registering enterprises with foreign capital in China.

With the recent approval of the new law, the Chinese Government has sought to streamline the current foreign investment rules. It has achieved this by deciding to repeal the three laws listed above and by approving the general guidelines to regulate all types of foreign investment in China.

The aim of this note is to summarise the changes that should be considered by companies with foreign capital already incorporated in China, and by foreign investors wishing to incorporate companies in China before this new law comes into force.

In March of this year, the Chinese National People's Congress approved a new law to regulate foreign investment and it will enter into force on 1 January 2020.

Practical considerations for (partial or full) foreign capital companies already incorporated in China:

The new law establishes a transitional period of five years for companies already incorporated in China. During this period, companies can choose to maintain their original structure or to apply the new law, thus changing that structure.

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Some changes will even be compulsory for all foreign capital companies, given that the three previous laws governing foreign investment will be repealed. This has made it necessary to review various corporate documents, among others, articles of association, joint venture agreements and shareholder agreements.

The implementation of the new law will involve a review and renegotiation between shareholders of matters relating to the number and terms of office of managers and directors, the right to vote on certain issues, distribution of profits, and transfer of shareholdings, among others.

Therefore, it is important in the short term for companies to define a strategy to renegotiate these matters that allows them to revise and re-draft their corporate documents based on agreement between the parties involved.

Practical considerations for investors that wish to set up companies in China before the new foreign investment law comes into force:

The rule for all companies incorporated in China before the entry into force of the new law will be the application of the legal rules set out in the three laws currently in force and the subsequent review of their corporate documents after 1 January 2020.

The only exception to this rule will be for companies that the new regulations specify as being subject to the new foreign investment law.

In the case of foreign investors that choose to incorporate companies in China before 1 January 2020, some precautions can reduce uncertainties that precede the entry into force of this new legislation:

In the case of foreign investors that choose to incorporate companies in China before 1 January 2020, some precautions can reduce uncertainties.

For WFOEs (companies with wholly foreign-owned capital): The current law that regulates WFOEs does not differ substantially from the Corporate Law that will apply after 1 January 2020. Therefore, investors may consider not making a specific reference to the applicable laws and provisions in drafting their articles of association, in order to avoid substantial revisions under the new law.

Foreign investors who wish to invest in China through a joint venture can avoid renegotiation with their shareholders on the most important corporate matters. They can do this by agreeing these matters in advance under the new corporate law and by implementing and filing this agreement in the company immediately after the date of entry into force of the new law.

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Conclusions:

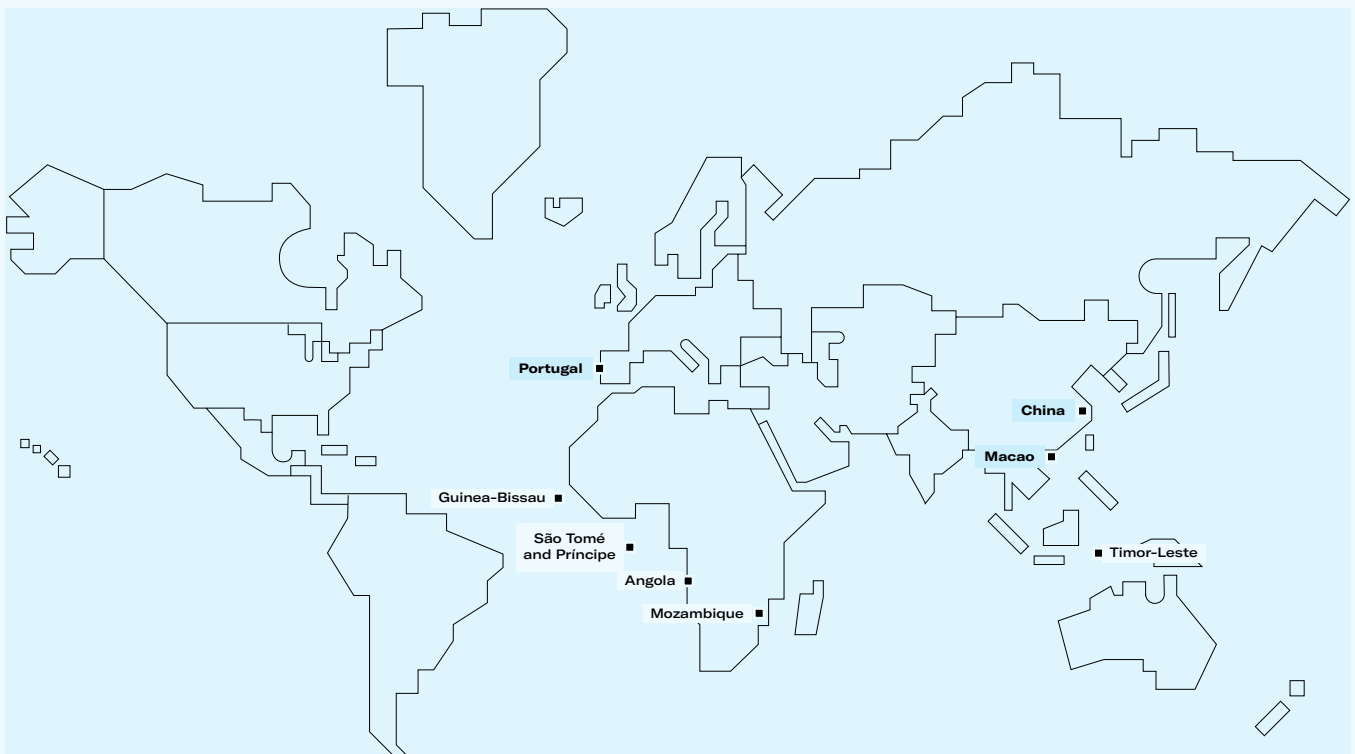
The practical considerations and observations set out above are intended to provide foreign investors with a summary of the changes that will apply from 1 January 2020 in relation to foreign investment.

The shareholders, managers and directors of these companies should be aware of this new legislation and be prepared to adapt their corporate structures in China to comply with the new legislation.

These changes make it necessary for companies already incorporated in China, and those that are incorporated before the new law comes into force, to make changes to their organisational corporate structures during the transitional period of 5 years.

The shareholders, managers and directors of these companies should be aware of this new legislation and be prepared to adapt their corporate structures in China to comply with the new legislation.

The PLMJ China Desk, together with its partners in mainland China through PLMJ Colab, assists its clients with investments in China by carrying out a preliminary analysis of the necessary changes and by dealing with the whole process of revision and renegotiation that is legally required for each type of company. ■



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