

Regional

Foreign Investment Information Reporting System: What Would You Expect After China has Abolished the Approval and Filing System for Foreign Investment in China?

Introduction

With the PRC Foreign Investment Law ("**Foreign Investment Law**") and its Implementation Regulation ("**Implementation Regulation**")¹ being enacted on 1 January 2020, China officially abolished the foreign investment approval (and filing) system, which had been adopted in China for 40 years.

The Foreign Investment Law not only strengthens the promotion and protection of foreign investment in China, but also further strengthens and standardizes the administration of foreign investment by introducing the foreign investment information reporting system as stipulated in Article 34 of the Foreign Investment Law. The foreign investment information reporting system has replaced the existing system of examination and approval, filing and annual report of foreign-invested enterprises.

The State Administration for Market Regulation ("**SAMR**") has now become the major administrative authority for the establishment and registration of foreign-invested enterprises in China. However, the Ministry of Commerce and its local agencies ("**MOFCOM**"), which was the approving authority for foreign investment in China, is now in charge of the foreign investment information reporting system which had been implemented simultaneously along with the Foreign Investment Law and its Implementation Regulation on 1 January 2020. In order to implement the new information reporting system, the authorities have issued the following measures and announcements, which have come into effect on 1 January 2020 and provided more detailed requirements and clearer guidance on how to report foreign investment information:

- (a) Measures for Foreign Investment Information Reporting (外商投资信息报告办法, the "**Information Reporting Measures**") jointly issued by the MOFCOM and the SAMR;
- (b) Announcement on Relevant Matters of Foreign Investment Information Reporting (关于外商投资信息报告有关事项的公告, the "**No. 62 Announcement**") issued by the MOFCOM; and

¹ Please refer to our legal update of "[Revamp of Foreign Investment Laws in China: More Opportunities or Challenges](#)" on the introduction and highlights of the PRC Foreign Investment Law and "[A New Era of Foreign Investment Regulatory Regime in China: State Council of China Issues Implementation Regulation of Foreign Investment Law](#)" on the introduction and highlights of its Implementation Regulation.

Regional

- (c) Announcement on Carrying Out the Annual Reporting of Foreign Investment Information Report for the year of 2019 (关于开展 2019 年度外商投资信息报告年度报告的公告, the “**No. 72 Announcement**”) jointly issued by the MOFCOM, SAMR and the State Administration of Foreign Exchange.

The four main chapters of the Information Reporting Measures are (a) Reporting Entity, Content and Method; (b) Information Sharing, Publicity and Correction; (c) Supervision and Administration; and (d) Legal Liabilities. We detail below some significant points of the Information Reporting Measures.

Reporting Entities Under the Information Reporting Measures

The Foreign Investment Law stipulates that foreign investment refers to the direct or indirect investment activities carried out by foreign investors in China. Foreign investors or foreign-invested enterprises shall submit investment information to the relevant agencies of the MOFCOM through the Enterprise Registration System (企业登记系统) and the Enterprise Credit Information Publicity System (企业信用信息公示系统). Based on such provisions, the Information Reporting Measures further clarify that the information reported covers the following types of foreign investment in China:

- (a) Companies and partnerships directly established by foreign investors in China, as well as those established by a foreign-invested investment holding company, venture capital enterprises or partnership enterprises with investment being its main business in China;
- (b) Manufacturing and operating activities engaged by foreign (regional) enterprises in China;
- (c) Representative offices set up by foreign (regional) enterprises set up in China; and
- (d) Enterprises invested by foreign-invested enterprises in China (including multi-level investment).

The above entities also include banking, securities, insurance and other types of financial institutions invested in by foreign investors in China.

It shall be noted that according to the Information Reporting Measures, entities invested in by investors from the Hong Kong Special Administrative Region, Macao Special Administrative Region, Taiwan, and Chinese citizens residing abroad shall also report their foreign investment information.

Detailed Methods and Requirements of Reporting the Information

The Information Reporting Measures stipulate ongoing as well as routine reporting obligations henceforth, and the detailed methods and requirements for reporting the information by foreign investors and foreign invested enterprises as follows:

Regional

(a) Initial Report

Applicable Situation:

- (i) Establishment of foreign-invested enterprises in China; and
- (ii) Merger and acquisition of the equity interests in domestic enterprises in China.

Time of Submission:

- (i) Submit the foreign investment information online through Enterprise Registration System (企业登记系统) when foreign investors establish foreign-invested enterprises in China; and
- (ii) Submit the foreign investment information online through the Enterprise Registration System (企业登记系统) when foreign investors acquire a domestic company in China.

Content:

- (i) Basic information
- (ii) Information of the investor and its actual controllers; and
- (iii) Investment transaction information, etc.

(b) Alteration Report

Applicable Situation:

When there is any change of relevant information in the Initial Report.

Time of Submission:

- (i) If changes need to be registered with SAMR (such as the change of shareholder(s), company name, director(s), legal representative, board supervisor(s), business scope, registered address, etc.), then submit said alterations online through the Enterprise Registration System (企业登记系统); and
- (ii) If changes do not need to be registered with SAMR (such as the change of actual controller of the investor, tax reduction and exemption information of imported equipment, etc.), then submit said alterations online through the Enterprise Registration System (企业登记系统) within 20 working days after the changes are made.

Regional

Content:

- (i) Change of the basic information;
- (ii) Change of the investor's information and its actual controllers; and
- (iii) No need to fill in and/or amend any information that has not been changed while submitting the Alteration Report.

(c) Annual Report

Applicable Situation:

Applicable for all foreign-invested enterprises.

Time of Submission:

- (i) To be submitted online through Enterprise Credit Information Publicity System (企业信用信息公示系统) from 1 January through 30 June; and
- (ii) Foreign-invested enterprises established in the current year shall submit Annual Reports starting from the subsequent year onwards.

Content:

- (i) Basic information;
- (ii) Information of the investor and its actual controllers;
- (iii) Information of the operation, assets, and liabilities of foreign-invested enterprises, etc.; and
- (iv) Information regarding obtaining relevant industry license (if required and if applicable).

Correction:

If the foreign-invested enterprise wishes to correct or supplement the information in the Annual Report before 30 June 2020, it shall submit these modifications through the Enterprise Credit Information Publicity System (企业信用信息公示系统), however, starting from 1 July 2020, any information to be supplemented or corrected shall be submitted through the Foreign Investment Information Reporting Administration System (外商投资信息报告管理系统).

(d) Deregistration Report

The Deregistration Report does not need to be submitted separately and the SAMR will share relevant information with the MOFCOM when foreign-invested enterprises deregister

Regional

with SAMR or are changed to a domestic company.

(e) Report of Domestic Investment by Foreign-invested Enterprises in China

The report of domestic investment by foreign-invested enterprises in China does not need to be submitted separately and the SAMR will share relevant information with the MOFCOM after the enterprises invested in by foreign-invested enterprises in China register, file with, and submit their annual report to the SAMR.

Information Sharing and Publicizing

The Information Reporting Measures stipulate relevant rules that will help solve the problem of repeated information reporting and effectively reduce the burden on foreign investors and foreign-invested enterprises as follows:

(a) Simplification of the Information to be Reported and the Protection of Trade Secrets

The Implementation Regulation requires that the information reporting system shall be established in accordance with the principles of necessity, efficiency, and convenience. According to the transcript of the press conference held by the MOFCOM, relevant authorities have discussed and simplified the information to be reported, setting out the content, scope, submission frequency, and procedure of the information reported to comply with the requirements in the Implementation Regulation. In addition, the Information Reporting Measures provide that the MOFCOM and SAMR shall protect the trade secrets of foreign investors that they have access to in the course of performing their duties.

(b) Sharing of the Information among Different Authorities

The Information Reporting Measures provide that information that can be obtained through information sharing between the authorities (such as deregistration and domestic investment (including multi-level domestic investment)) does not need to be submitted separately. According to the transcript of the press conference held by the MOFCOM, nearly 30% of data can be collected through the sharing of information, and foreign investors or foreign-invested enterprises do not need to submit such information repeatedly to different authorities.

(c) Consolidation and Optimizing the Process of Reporting

According to the Information Reporting Measures, the Initial Report and Alteration Report will be submitted online simultaneously with the enterprise establishment registration and/or enterprise alteration registration with the SAMR. The Annual Report will be submitted at the same time and through the same channels as the annual reports required by the SAMR.

Regional

Foreign investors are not required to submit relevant investment information to different departments in different procedures separately.

Mechanisms to Ensure the Authenticity of the Reported Information

The Information Reporting Measures provides the following mechanisms to ensure that the information submitted by foreign investors or foreign-invested enterprises is true, accurate and complete:

(a) **Obligation to Report Information**

Foreign investors and foreign-invested enterprises have an obligation to submit investment information in a timely manner and follow the principles of authenticity, accuracy and integrity. They shall not make false or misleading reports or have any major omissions.

(b) **Obligation to Correct Inaccurate Information**

Foreign Investors and foreign-invested enterprises have an obligation to make corrections or supplement information in a timely manner if they find out that they have failed to report, wrongly reported, or omitted relevant investment information, or within 20 working days if the same is spotted by the MOFCOM, who shall notify them to correct or supplement the error.

(c) **Supervision and Inspection by Authorities**

In order to ensure the authenticity of the information reported by foreign investors and foreign-invested enterprises, MOFCOM may conduct supervision and inspection by (i) random inspection, (ii) inspection based on tipping off, (iii) inspection based on the suggestions and reports from other authorities, and (iv) inspection in accordance within its own authority. The MOFCOM may also obtain information from other authorities for the purpose of supervision and inspection and may require the foreign investors and foreign-invested enterprises to provide relevant materials.

(d) **Legal Liability for Violating the Information Reporting Obligation**

If foreign investors or foreign-invested enterprises fail to perform relevant information reporting obligations and the MOFCOM has notified them to correct or supplement relevant information within 20 working days, but the foreign investor fails to do so within the required time period, they will face a fine ranging from RMB 100,000 to RMB 500,000, depending on the seriousness of non-compliance. We would like to highlight that the amount of such fines is much higher than the fines that would be usually imposed by the MOFCOM based on previous laws and regulations. The MOFCOM will also publicize such non-compliances on the foreign investment information reporting system and record it in the credit information system.

Regional

Given the consequences of failing to comply with the Information Reporting Measures, we would recommend that foreign investors and foreign-invested enterprises understand such requirements and comply with the relevant reporting obligations. In addition, we would also like to highlight that the Information Reporting Measures are still quite new in China and that since China is a large country, the interpretation and implementation of the Information Reporting Measures may vary among different cities, although the foreign investment information reporting system is targeted at further strengthening and standardizing the administration of foreign investment without increasing burden on foreign investors and foreign-invested enterprises in China.

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2020 JANUARY

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