

## client alert

FOREIGN INVESTMENT | CHINA |

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## CHINA REPEALS FOREIGN INVESTMENT APPROVAL NATIONWIDE FOR INDUSTRIES OUTSIDE THE NEGATIVE LIST

On 3 September 2016, the Standing Committee of China's National People's Congress issued the *Decision on Revising the PRC Wholly Foreign-Owned Enterprise Law and Three Other Laws* (全国人民代表大会常务委员会关于修改《中华人民共和国外资企业法》等四部法律的决定, the "**Decision**"), which revises the four main laws regulating foreign investors doing business in China<sup>1</sup>.

The Decision brings a major change to the regulation of foreign investment into China<sup>2</sup>: it fully replaces the traditional company establishment process - which required MOFCOM approval followed by registration with AIC - with what is expected to be a simpler and faster filing procedure. To benefit from this simplified procedure, the activities of the company to be established must not be on a national "negative list", which is expected to be published before the Decision comes into force on 1 October 2016. The approval process will also no longer be required for any modifications to existing businesses falling outside the negative list (including changes of shareholders, capital increase, amendments to articles of association, etc.). As a result, for foreign investors whose businesses fall outside the negative list, the establishment of and any corporate changes to their companies in China will now be subject to AIC registration only, similar to the regime applicable to domestic Chinese companies.

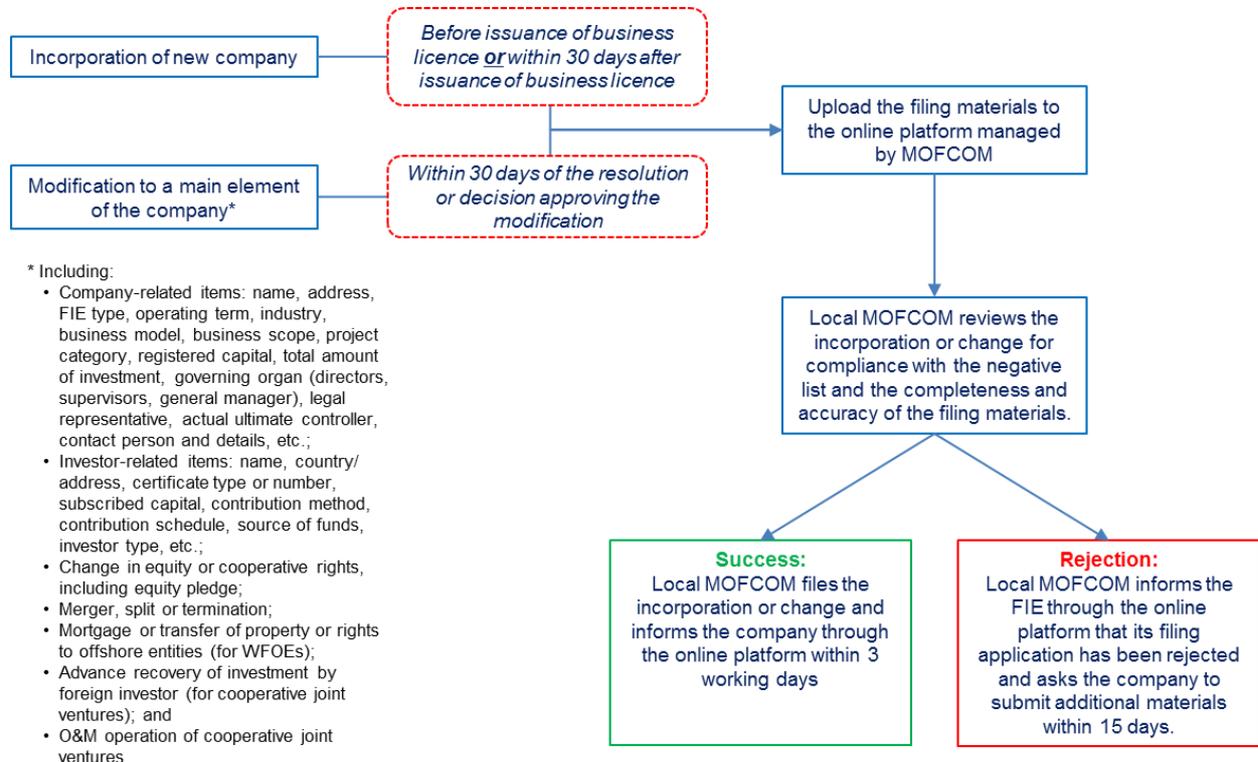
This filing regime will be similar to the one that has been successfully implemented on a trial basis in the free trade zones of Shanghai, Guangdong, Tianjin and Fujian. The change also means that the decades-old *Catalogue of Industries for Guiding Foreign Investment* ("**Foreign Investment Catalogue**") will be phased out and replaced by the negative list, as is currently the case in those free trade zones.

Together with the Decision, MOFCOM released a draft of the *Interim Measures for the Record-Filing Administration of the Incorporation and Change of Foreign-Invested Enterprises*, which details the new filing procedure to be followed with MOFCOM. Public comments on the draft measures are currently being solicited. The following chart illustrates the general process for the filing procedure.

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<sup>1</sup> *Wholly Foreign-Owned Enterprise Law, Sino-Foreign Equity Joint Venture Law, Sino-Foreign Cooperative Joint Venture Law; and Protection of Investment of Taiwanese Compatriots Law*

<sup>2</sup> Including investments by Taiwanese investors



The filing procedure and negative list system are major building blocks in the on-going reform of Chinese foreign investment laws, as they will simplify the establishment of new businesses and the restructuring of existing ones in China. They are also necessary steps toward the “national treatment” requirement under the bilateral investment agreements that China is currently negotiating with the European Union and United States. (Such requirement asks that foreign-invested and domestic businesses be treated on an equal footing, with the exception of certain activities set out in a negative list.)

Although very useful, at this stage, the Decision does not change the current scope of permitted, restricted and prohibited foreign investment (as the negative list will likely remain very similar to the current Foreign Investment Catalogue), nor does it resolve the issue of VIE structures. Both of these topics are expected to be dealt with in the future, alongside negotiations with the EU and US. Gide will follow these developments as they occur.

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