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China
Investing In

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in China.

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China: Investing In

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

China experienced a consistent upward trend in inflows of foreign direct investment ("FDI") from 2020 to 2022, according to statistics published in the UNCTAD World Investment Report. Starting at US$ 149.34 billion in 2020, the inflows increased annually, reaching US$ 189 billion in 2022. However, FDI inflows dropped to US$ 163.25 billion in 2023, which is the first time it has shown a downward trend since 2009. Expectations for a strong post-COVID rebound in China have faltered due to factors such as weak consumer and business confidence, rising local government debts, and slowing global growth. While China remains a global economic powerhouse, its declining appeal to foreign investors has become a growing concern. In light of this, the Chinese government has recently taken significant steps to improve the investment climate, such as removing barriers to foreign investment, implementing tax incentives, and supporting foreign-funded R&D centers. Foreign direct investment has shown a noticeable uptick in high-tech industries, such as open platforms and software-as-a-service operators that are setting up operations within China due to network latency and localization requirements.

China FDI trends over the last three years, by the numbers:

- Average volume of foreign direct investments (by value in US dollars):

2021: $180.96 billion

2022: $189.13 billion

2023: $163.25 billion

2024: $95.7billion in the first ten months

- Average volume of foreign direct investments (by deal number):

2021: 47,647 newly established foreign-invested enterprises

2022: 38,497 newly established foreign-invested enterprises

2023: 53,766 newly established foreign-invested enterprises

2024: 46,893 newly established foreign-invested enterprises in the first ten months

(Sources: UNCTAD World Investment Report and Ministry of Commerce of the PRC)

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

Typical forms of FDI in China include:

- greenfield investment and brownfield investment;
- joint ventures;
- mergers and acquisitions of equity or assets of Chinese domestic companies;
- strategic investments in China-listed public companies;
- others, e.g., representative offices, variable interest entity structures, etc.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Foreign investors are generally allowed to own 100% of a domestic company or business, unless the investment is subject to special administrative measures provided in the FDI negative list (with the latest version of the negative list issued in 2024). Per the FDI negative list, foreign investments in certain industries are either restricted (e.g., telecommunications, education, healthcare, etc.) or prohibited (e.g., broadcasting and publishing, etc.). Foreign investors may not invest in prohibited industries and their investments are subject to special administrative measures (including shareholding limitations) in restricted industries.

The shareholding limitations vary depending on the industry in which the foreign investment is made. For value-added telecommunication services, foreign shareholding is generally limited to 50%, except for certain subcategories where it can reach up to 100%. In the case of public air transportation services, the foreign shareholding is capped at 25%. Financial services are mostly open to foreign investment, but the regulators' prudential approval process is said to have been heightened, resulting in some difficulties in establishing foreign-owned financial services firms.

China has continued to update and shorten the FDI negative list from 2017 to 2024, and the list has been significantly trimmed down to 29 for the national list and 27 for the free trade zones (also known as FTZs). As a result, most foreign investment faces minimal restrictions when entering China either by way of greenfield investment or through acquisitions. It is also notable that although the latest FDI negative list still provides that it is prohibited to invest in the development and application of human stem cells, gene diagnosis and treatment technologies, and that medical institutions shall be limited to the form of joint ventures, a *Notice on Carrying out a Pilot Program for Expanding Opening-up in the Medical-related Field* (the "Notice") was issued by the Ministry of Commerce, the National Health Commission and the National Medical Products Administration right after the issuance of the 2024 FDI negative list. The Notice stipulates that foreign invested enterprises in FTZs in Beijing, Shanghai, Guangdong and Hainan are permitted to engage in the development and application of human stem cells, gene diagnostic and therapy technologies for product registration and manufacturing, and it is proposed to permit the establishment of wholly owned hospitals (excluding hospitals in respect of traditional Chinese medicine and acquired public hospitals) in Beijing, Tianjin, Shanghai, Nanjing, Suzhou, Fuzhou, Guangzhou, Shenzhen and the whole island of Hainan.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Public companies

Foreign investors generally need approval to be eligible to acquire shares in a public company on a domestic stock market, as discussed in Question 9. Eligible investors are allowed to invest and hold the same class of shares in public companies as domestic shareholders. China has implemented a pilot program of preferred shares for public companies.

Private companies

Foreign investors are allowed to invest and hold the same class of shares as domestic shareholders. While Chinese law does not provide for different share classes for private companies (such as those with weighted voting rights), in practice, private company shareholders can utilize a shareholder agreement to assign preferential rights to certain equity interests, such as veto rights on certain reserved matters and rights of pre-emption, first refusal, redemption, and liquidation preference.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

While each company's business organization and management structure may vary depending on the specific circumstances, domestic businesses are predominantly organized and managed through domestic companies.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

There are two typical forms of domestic company: the limited liability company ("LLC") and the company limited by shares ("joint stock company"). An LLC offers the advantages of a straightforward management structure, e.g., an LLC is permitted to have no supervisor upon the unanimous approval by all of the shareholders, while a joint stock company is subject to stricter requirements, e.g., the joint stock company is permitted to have no supervisors or board of supervisors only if it has an audit committee composed of directors in the board of directors to exercise the powers of the board of supervisors. In addition, an LLC has fewer information disclosure obligations and does not need to disclose financial statements publicly. Also, in addition to the principle of capital majority rule as the basis for voting rights, an LLC can also set other methods of exercising voting rights in the articles of association according to its own conditions and needs, which is not as strict as in joint stock companies.

In general, both domestic and foreign shareholders tend to favor the LLC due to its simplicity and privacy, because it is easier to establish and manage an LLC than a joint stock company. However, there are certain circumstances where a joint stock company can be a viable investment choice. Some advantages of a joint stock company include: (i) a clear division between shareholders and management, which allows the separation of investors from daily operations; (ii) capital majority rule that decision-making in a joint stock company strictly follows, thereby avoiding deadlock where decision-making becomes difficult due to disagreements among shareholders; (iii) listing and issuing shares to the public: unlike an LLC, a joint stock company is eligible to be listed on the stock exchange and issue shares to the public, providing opportunities for additional capital infusions and liquidity for shareholders; and (iv) authorized capital system and no par value shares system: enhanced flexibility and adaptability of a joint stock company in terms of capital operation, equity structure design, financing efficiency and other aspects.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Which governmental entities have to give approvals?

The approval mechanisms for foreign investment typically involve the following governmental entities:

- Working mechanism office for security review (similar to FDI filing): This office, jointly led by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM), handles the security review of foreign investment. Approval from this office is required when foreign investments present national security implications.
- State Administration for Market Regulation (SAMR): SAMR reviews merger filings for acquisitions resulting in a change of control or, in certain cases, the establishment of a joint venture passing jurisdictional threshold SAMR handles business registration following the clearance of national security review and/or merger filing. SAMR will review applications to ensure compliance with the requirements stated in the FDI negative list, which may include management structure and shareholding limitations.
- NDRC: NDRC reviews investments entailing fixed asset investment, such as manufacturing, transportation, energy, and natural resource projects. NDRC approval is required for those under the FDI negative list and also for projects under the *Catalogue of Investment Projects Subject to Verification by the Government* (2016 Version), regardless of whether or not they are under the FDI negative list.
- Industry regulators: Certain regulators may become involved where a business or activity requires approval under industry-specific regulations. For example, the approval of the Ministry of Industry and Information Technology (MIIT) is required for foreign investment in the telecommunications industry.

What is the process for forming/incorporating a domestic company?

Forming a company in China generally involves the following steps:

- Enterprise name pre-verification submitted to SAMR;
- Online/onsite application for establishment through SAMR's system;
- Online foreign investment information reporting to MOFCOM;
- Onsite submission of establishment documents to SAMR. A Chinese company is deemed officially established on the issuance date of its business license.
- Completion of various post-establishment registrations or filings (e.g., forex registration, tax filing, etc.).

To the extent that any of the governmental approvals discussed above are required, the company will need to obtain such governmental approval(s) either before or after the issuance date of its business license, depending on the specific requirements of each governmental approval.

What is a required capitalization for forming/incorporating a company?

In general, companies in China are not subject to minimum capitalization requirements, except as otherwise required by specific industry regulations. It should be noted that under the *Company Law of the PRC* (amended in 2023 with effect from 1 July 2024, the "Company Law"), the capital contribution of a limited liability company must be fully paid within five years of its incorporation.

How long does it take to form a domestic company?

Generally, establishing a company in China takes around two weeks to one month, including the SAMR registration and MOFCOM information reporting procedures. It may take another one or two months to complete the various post-establishment formalities generally applicable to all companies, and the timeline may be longer if any of the governmental approvals discussed above are required. That said, the actual time required may depend on local practices with respect to document signing and apostille.

How many shareholders is the company required to have?

Under the Company Law, a limited liability company is required to have at least one shareholder but no more than 50 shareholders. For a joint stock company, the Company Law requires that the number of promoters at the establishment stage be between 1 and 200, and at least half of the promoters must be domiciled in China.

Is the list of shareholders publicly available?

The complete list of shareholders of an LLC is publicly accessible through SAMR's database. However, for a joint stock company, only the information of promoters is available in SAMR's database. To obtain updated shareholder information for a listed joint stock company, one can contact the securities registration and settlement institution. If the joint stock company is not publicly listed, you can obtain the information from the stock and equity exchange if the company has entrusted the registry custodian to such institutions. Otherwise, it is necessary to inquire directly with the joint stock company about its shareholder information.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

According to the *Provisions on the Merger and Acquisition of Domestic Enterprises by Foreign Investors* ("M&A Provisions") promulgated by the MOFCOM in June 2009, a foreign investor needs to obtain approval from MOFCOM if it acquires shares in a Chinese private company or acquires assets from a Chinese company and contributes those assets to a foreign-invested company for use in operations.

While the M&A Provisions remain technically valid, most of their provisions are no longer applicable after the implementation of the Foreign Investment Law and its implementing regulations in January 2020. Under the current regulatory framework, foreign investors only need to report key information on an acquisition to the local counterpart of MOFCOM through an online system, and MOFCOM's prior approval is no longer required for such acquisitions.

Additionally, certain approvals or permits may be necessary depending on the special circumstances of the acquisition, such as merger filing, national security review, and industry-specific permits.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

Public market transactions

Yes, a foreign investor in China needs approval to acquire shares in a public company on a domestic stock market. To obtain approval, the foreign investor needs to apply to the China Securities and Regulatory Commission ("CSRC") to obtain "Qualified Foreign Investor" (QFI) status. As a QFI, the foreign investor is permitted to invest in companies listed on domestic securities and futures markets in either RMB or a tradable foreign currency. CSRC implemented the QFI scheme in 2020 by merging the former Qualified Foreign Institutional Investor (QFII) scheme and Renminbi Qualified Foreign Institutional Investor (RQFII) scheme. QFI status offers a streamlined application process and expanded investment options.

Private transactions

A foreign investor can, without approval, acquire shares in a public company in a direct (private) transaction from another shareholder, provided that the foreign investor qualifies as a "strategic investor" under the *Measures for Administration of Strategic Investment by Foreign Investors in Listed Companies (amended in 2024, effective 2 December 2024)*. To be considered a strategic investor, a foreign investor must have at least USD 50 million in owned assets or at least USD 300 million in managed assets (for a foreign investor acquiring control of a listed company, it must have at least USD 100 million in owned assets or at least USD 500 million in managed assets), amongst other compliance requirements. Additionally, strategic investors must acquire at least 5% of the shares issued by the target listed company if the acquisition is conducted through transfer by agreement or tender offer, while private placement is exempt from the minimum shareholding requirement. The investment is also subject to a lock-up period of 12 months.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

Yes. Under Chinese law, except for circumstances specifically exempted from making a tender offer, a mandatory tender offer to acquire shares in a public company is triggered under any of the following circumstances.

- When an investor's shareholding in a public company reaches 30% of the shares issued and the investor continues to increase its shareholding, the investor is required to make a general tender offer or a partial tender offer.
- When the investor plans to acquire more than 30% of the shares of a listed company by agreement, the investor is required to make a general tender offer.
- When the shares in which an investor holds the equity through indirect acquisition exceed 30% of the issued shares of a listed company, the investor is required to make a general offer.

To sum up, absent a statutory exemption, an acquirer is required to make a general tender offer once it directly or indirectly acquires more than 30% of a public company's voting shares through a share transfer agreement, voting rights entrustment or other contractual arrangements, indirect acquisitions, or secondary market transactions, etc.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

Typically, building a new manufacturing facility in China in a greenfield or brownfield project involves the following approval processes:

- Applying to NDRC for project approval or record-filing;
- Applying to the competent planning and natural resources authorities for a land use permit, construction land planning permit, and construction project planning permit (if applicable);
- Applying to the competent environmental protection bureau for environmental impact assessment approval;
- Applying to the competent fire prevention authorities for fire protection design approval/filing;
- Applying to the competent housing and construction authorities for construction permits;
- Conducting construction acceptance, including environmental protection acceptance and fire protection acceptance, and filing of project completion acceptance documents with competent government authorities.

In addition, before the facility is officially put into operation, it may be necessary to apply for a pollution discharge permit/filing, special equipment use registration, and other applicable industry-specific licenses or permits.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

An investor may use any freely convertible foreign currency (e.g., U.S. dollar, euro, British pound, Japanese yen, etc.) to settle cross-border transactions, including capital contributions, shareholder loans, and international trade transactions.

However, with respect to domestic transactions (including transactions with a foreign-invested enterprise), it is generally required that the parties use the renminbi (RMB), which is the lawful currency of the PRC, for pricing and settlement.

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- **in an acquisition, or**
- **to pay to contractors, or**
- **to pay salaries of employees?**

As discussed above, it is generally prohibited to use foreign currency to settle domestic transactions (including paying employee salaries). As for the cross-border inbound transactions, payment with foreign currency is under the supervision of the State Administration of Foreign Exchange ("SAFE") or its delegated banks.

- Acquisitions: Foreign investors are permitted to use any freely convertible foreign currency to acquire a company in China, to the extent that such acquisition has undergone all applicable FDI filings as discussed in Question 19. There is no approval requirement for the payment itself, except for certain procedural formalities, e.g., a local transferor needs to open a fund remittance account with a bank to receive the foreign currency payment from the foreign investor.
- Payments to contractors: It is generally permissible to use foreign currency to make cross-border payments for current account transactions (such as international trade in goods and services and payment to contractors); however, such payments are subject to the remitting bank's KYC requirements.
- Employee salaries: A foreign-invested enterprise may not directly use foreign currency to pay salaries of employees within China. A foreign-invested enterprise ("FIE") needs to convert foreign exchange funds into RMB for the payment of its employees' salaries within China.

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

In principle, there is no limit as to how much foreign currency a foreign investor can transfer into China. How much foreign currency a foreign investor may transfer will depend on the underlying transactions, which may be subject to applicable reporting requirements and other formalities (e.g., FDI filings).

Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

There is no limit in principle, but the amount will depend on the underlying transactions, which may be subject to applicable reporting requirements and other formalities (e.g., FDI filings).

Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Yes, a foreign investor may buy RMB outside of China (i.e., cross-border RMB) and transfer it into China for payments. However, cross-border RMB is still considered as a form of "foreign exchange", the use of which is also under the supervision of the SAFE or its delegated banks.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

China does not have approval requirements for a foreign investor to transfer domestic currency or foreign currency out of the country, so long as that the underlying transactions (e.g., exit transactions, dividend repatriations, etc.), which the outbound fund transfers are based upon, have fulfilled all the requisite FDI or ODI (outbound direct investment) approvals or filings.

Whose approval is required?

The outbound funds transfer will be subject to the remitting bank's KYC requirements and the bank will verify whether the requisite FDI or ODI filings arising from the underlying transactions have been completed.

How long does it take to get the approval?

The duration of the necessary FDI or ODI approvals or filings varies based on the specific transaction involved. For instance, completing FDI filings and the inbound payment of share contributions for an equity transfer may take less than one month. However, the formalities required for the liquidation and dissolution of an investee company, before any remaining capital can be remitted out, could take more than a year.

Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

In principle, there is no limitation on outbound transfers of foreign or domestic currency. The amount of currency a foreign investor may transfer outbound will depend on the underlying transaction, which may be subject to applicable reporting requirements and other formalities.

Is the approval required for each transfer or can it be granted for all future transfers?

The timeline for approvals and filings depends on the nature and structure of the transaction. If the payment is done in installments, theoretically, no separate approval or filing is required for subsequent installment payments.

14. Is there a tax or duty on foreign currency conversion?

No, China does not impose a tax or duty on foreign currency conversions.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

No, China does not impose a tax or duty on inbound currency transfers.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

Yes, the taxes imposed will differ in the case of an acquisition of shares versus assets. In an asset acquisition, the parties to the transaction may be subject to various taxes, including income tax, value added tax and surcharges, land value added tax, and stamp duty. By contrast, a share acquisition may only be subject to income tax and stamp duty.

17. When is a stamp duty required to be paid?

A stamp duty may be paid on a quarterly, yearly or transaction basis, depending on the nature of the underlying transaction and the specific requirements of the local tax bureau.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

In general, yes, unless it is subject to FDI-related regulatory requirements (e.g., merger filing, national security review, or industry-specific requirements) or contractual restrictions (e.g., lock-up period, right of first refusal) set out in the investee company's articles of association and other corporate documents.

Can the shares be held outside of the home jurisdiction?

Yes, while both domestic and foreign shareholders may hold share certificates outside China, the shareholding structure of a private company is registered with SAMR, the Chinese companies registry. This registered shareholding information is made available to the public.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

The transfer is subject to FDI-related regulatory requirements as mentioned above and detailed in the responses to Question 19 below.

Are changes in shareholding publicly reported or publicly available?

As detailed in the previous responses to Question 7, the changes in shareholding will be made public through several mechanisms.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Yes, foreign direct investments in China are typically subject to certain mandatory FDI filing requirements. These requirements may include beneficial owner filing, merger filing, national security review, foreign investment project approval or record-filing, industry-specific permits, business registration, and certain post-establishment registrations or filings.

With which agency is it required to be made?

- Merger filing – SAMR
- National security review – A working mechanism office for the security review of foreign investment jointly led by NDRC and MOFCOM
- Foreign investment project approval or record-filing – NDRC
- Industry-specific permits – Relevant industry regulators
- Business registration and certain post-establishment registrations or filings – SAMR and relevant governmental authorities (e.g., MOFCOM, SAFE, PBOC, tax bureau, etc.).

How long does it take to obtain an FDI approval?

- Merger filing – The review may take up to 180 days and consists of an initial review of 30 days, an extended review of up to another 90 days, and a third extension of up to 60 days. A simplified procedure filing or "fast-track" is available for cases which do not give rise to significant competition concerns, which usually can be concluded within 30 days. Nowadays, more than 90% of all merger filings are processed by SAMR under the simplified procedure filing system.
- National security review – It will take 15 working days for the authority to decide whether a transaction is within the scope of review after receiving the declaration materials. If the transaction is within scope, it may take up to another 90 working days (may be extended under special circumstances) for the authority to reach a conclusion whether to clear the transaction.
- Foreign investment project approval or record-filing – NDRC should decide whether to approve the project within 30 working days (not including time for consultation with outside experts) after the application is received. For record-filing, the filing is considered valid and accepted unless NDRC makes a negative filing decision within seven working days.
- Industry-specific permits – The timing of the permits depends on industry-specific
- Business registration and certain post-establishment registrations or filings – It normally takes 5 to 15 days for SAMR to issue a business license to the FIE and another 30 days to complete post-establishment registrations or filings with relevant governmental authorities.

Under what circumstances is the mandatory FDI filing required to be made?

- Merger filing – applicable to cross-border acquisitions resulting in aggregation of market power due to a change of control or, in certain cases, the establishment of a joint venture which meets certain jurisdictional thresholds.
- National security review – applicable to foreign investments with national security implications.
- Foreign investment project approval or record-filing – applicable to foreign investment projects involving fixed asset investments.
- Industry-specific permits – applicable if certain businesses or activities require industry approval under industry-specific regulations or are subject to the special administrative measures provided in the FDI negative list.
- Business registration and certain post-establishment registrations or filings – applicable to all foreign investments, e.g., foreign investment information reporting, beneficial owner filing, forex registration, and tax filings.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

Certain mandatory FDI filings mentioned above permit a governmental authority to substantively review a transaction and potentially block or place conditions on it. These substantive review filings include merger filings, national security review, foreign investment project approval, and industry-specific permits.

If a substantive review filing is not required, no governmental authority is permitted to impose conditions on or block the transaction.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

An indirect transfer may trigger merger filing, national security review, or tax filing requirements, depending on whether the applicable thresholds or conditions are met.

An indirect transfer of control of a Chinese subsidiary will trigger a post-closing reporting requirement with MOFCOM in respect of the change of the ultimate beneficial owner, and also a change of beneficial owner information to be updated in the PBOC's filing system.

Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Yes. If merger filing or national security review is triggered, the relevant governmental authority will undertake a substantive review and may prohibit the proposed transaction because it involves a concentration of undertakings or gives rise to national security concerns.

20. What are typical exit transactions for foreign companies?

Typical exit transactions for foreign companies include: (i) equity transfer to a JV partner or a third party; (ii) withdrawal of capital contribution from the investee company; and (iii) liquidation and dissolution of the investee company.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

In the past, Chinese private companies preferred to pursue an IPO on foreign and offshore stock markets, especially when they were unable to meet the strict listing standards imposed on domestic IPOs. The most common foreign and offshore stock exchanges to pursue an IPO include the New York Stock Exchange (NYSE), Nasdaq, and the Hong Kong Stock Exchange (HKEX).

In recent years, overseas listing has been losing its appeal for various reasons, including high compliance costs and lower valuations in foreign and offshore stock markets. Furthermore, the PRC government has completed its capital market reforms to switch from an approval-based IPO system to a registration-based IPO system nationwide, which aims to facilitate listings in the domestic capital markets, including the major stock exchanges: Shanghai Stock Exchange (SSE), Shenzhen Stock Exchange (SZSE), and Beijing Stock Exchange (BSE).

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

In our experience, M&A, investment, and JV agreements typically provide for dispute resolution through international arbitration. Compared with litigation in domestic courts, arbitration is more acceptable to foreign investors with regard to language, efficiency, neutrality, and confidentiality. Referring disputes to international arbitration offers other benefits, such as the ability to choose arbitrators with the requisite experience and background, as well as the chance for the parties to tailor the procedure to the specific needs of the case.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

The duration of a typical contract dispute case in domestic courts in China can vary depending on multiple factors, including the complexity of the case, the extensiveness of the evidence, and the workload of the court. In China, the litigation procedure typically involves multiple stages, including first instance, second instance, and potential retrial.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Yes, China has undertaken initiatives aimed at providing a more favorable environment for foreign investment. For example, China introduced the Foreign Investment Law in 2019, which aims to protect the rights and interests of foreign investors, promote market access, and create a level playing field for domestic and foreign businesses. There have been many cases where foreign investors have successfully resolved disputes and obtained favorable outcomes through the Chinese domestic court system. In practice, certain Chinese judges have even emphasized that the cases involving foreign parties are usually more complicated than other cases and require more efforts to deal with. The judges are committed to take the cases seriously to ensure that each party is fairly treated. This indicates that domestic courts can indeed provide a reliable avenue for enforcing investors' rights.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

There have been only a few reported cases of ISDS (investor-State dispute settlement) against China. The investors lost in those cases, mainly for lack of jurisdiction. This suggests that abuse of foreign investors is not common.

For cases of investor abuse, the investor may seek remedies against relevant authorities via administrative litigation or civil litigation. If the investor believes that it has not been fairly treated in those proceedings, it may seek remedies via investor-State arbitration, i.e., seeking remedies directly from China under an applicable bilateral or multilateral treaty.

26. Are international arbitral awards recognized and enforced in your country?

China is a signatory to the United Nations Convention on the *Recognition and Enforcement of Foreign Arbitral Awards* ("New York Convention"). Under the New York Convention, arbitral awards made in another member state are generally enforceable in China, subject to certain limited grounds for refusal outlined in Article V of the New York Convention, including invalidity of the arbitration agreement, violation of due process, non-conforming arbitral procedures, and violation of public policy, etc.

27. Are there foreign investment protection treaties in place between your country and major other countries?

Yes. China has entered into foreign investment protection treaties, commonly known as bilateral investment treaties (BITs) or free trade agreements (FTAs), with more than 100 countries and regions such as the United Kingdom, Germany, France, Canada, Australia, Japan, and many others. These treaties generally include provisions related to the protection of investments, non-discrimination, fair and equitable treatment, compensation for expropriation, and dispute resolution mechanisms.

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