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CHAMBERS GLOBAL PRACTICE GUIDES

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# Investing In... 2026

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**China: Law & Practice  
and Trends & Developments**

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Fangda Partners



# CHINA

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## Law and Practice

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**Fangda Partners** has over 800 lawyers across its seven offices in Beijing, Guangzhou, Hong Kong, Shanghai, Shenzhen, Nanjing and Singapore. The firm is widely acknowledged as having the leading foreign direct investment (FDI) practice in China, with extensive experience in advising foreign investors on making their investments in China, including green-field investments, joint ventures, and share and cash acquisitions. Its FDI expertise also extends to equity and asset restructuring of foreign-invested entities,

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## 1. Legal System and Regulatory Framework

### 1.1 Legal System

China's legal system (excluding that of Hong Kong, Macau and Taiwan for the purpose of this article) is commonly accepted to be a civil law system.

China's legislative framework is premised on its Constitution, which designates the National People's Congress and its Standing Committee as the supreme source of legislation. Regulations are promulgated at the central level, as well as the local provincial or municipal levels, with national-level laws taking priority over provincial and municipal-level laws. Under China's Constitution, the National People's Congress and its Standing Committee may annul or override any laws promulgated by other administrative bodies.

The judicial system in China comprises the Supreme People's Court (the final appellate court), local people's courts (at provincial, municipal, district or lower-level) and special people's courts (courts designated for military, intellectual property or financial matters). Notwithstanding that the Chinese legal system is commonly accepted to be more aligned with civil law frameworks with no principle of binding judicial precedent like in common law jurisdictions, the Supreme People's Court has issued guidelines requiring lower courts to conform their judgments to the judicial interpretations of the Supreme People's Court and the Supreme People's Procuratorate.

### 1.2 Regulatory Framework for FDI FDI Review and Approval

During the past three decades, foreign investments have been subject to a case-by-case approval system. Consistent with the recent trend towards market liberalisation, the Foreign Investment Law of 2020 marked the evolution of China's case-by-case approval system for foreign-invested companies to a system that does not distinguish between foreign-invested companies and local companies for the purposes of establishment and registration, except in a limited number of sectors regarded as highly sensitive.

### Negative List

Foreign investors have the same access as locally owned enterprises to the PRC market, except for sectors identified in the Special Administrative Measures for Market Access of Foreign Investment (Negative List), the latest version of which took effect on 1 November 2024. Foreign investment restrictions fall into the following two categories:

- prohibited sectors – in which foreign investment is fully prohibited (eg, postal services, tobacco wholesale, compulsory education and online publication services); and
- restricted sectors – in which foreign ownership is limited (eg, healthcare institutions, civil airport construction and operation, and certain telecommunication-related sectors).

It is worth noting that the latest version of Negative List has removed all the restrictions on foreign investment in the manufacturing sector.

## 2. Recent Developments and Market Trends

### 2.1 Current Economic, Political and Business Climate

Based on data published by China's central government, FDI in China for the first nine months of 2025 increased by 16.2% from a year earlier.

The Chinese government has emphasised on several occasions its ongoing commitment to integrate with the global economy and to further liberalise the China market. This commitment has been supported through the promulgation of Foreign Investment Law and the opening up of the financial sector to allow full foreign ownership of certain financial services companies. China remains an attractive investment destination for investors looking for market, well trained engineers and talent, and stable infrastructure.

In addition, there has been an increase in the volatility of China's foreign and trade relations with the USA, Australia, EU and India, which has led to several retaliatory and protectionist measures being promulgated by such jurisdictions. The heightened concern expressed



by various countries about data privacy and subsidies which distort the markets – and the steps taken by certain countries to limit Chinese access to advanced technology – may continue to push China to focus on developing these technologies independently, and to take retaliatory or self-protective measures such as the recent promulgation of export control laws and data protection laws. Attracted by the low labour and operation costs, some foreign invested companies have moved their manufacturing plants in China to South-East Asian countries.

In July 2025, the National Development and Reform Commission (NDRC), together with several other ministries, issued the Notice on Implementing Several Policy Measures to Encourage Reinvestment in China by Foreign-Invested Enterprises. The policy aims to encourage foreign-invested enterprises to reinvest their profits in China by introducing measures such as reducing land-use costs (through leasing, lease-before-transfer and flexible tenure arrangements), simplifying approvals for establishing new legal entities, and facilitating cross-border fund transfers. Local governments are also competing with each other to win foreign investment.

## 3. Mergers and Acquisitions

### 3.1 Transaction Structures

Acquisitions in China can be structured as asset or share acquisitions, and such transactions are substantially similar to M&A deals conducted in other jurisdictions. Except for the prior review clearances and approvals mentioned under **3.2 Regulation of Domestic M&A Transactions**, and the foreign ownership limits in certain industries, foreign acquisitions of Chinese business would not be subject to any other significant restrictions.

Acquisitions of Chinese public companies are subject to further regulation, as is customary in other jurisdictions, for change-in-control transactions. These trigger tender offer requirements.

Investors should also be aware of the procedural issues involved in acquiring business held by Chinese parties, exiting from investments in China and remit-

ting proceeds across the border, which may have an impact on conditions precedent and the price adjustment clause in transaction documents.

### 3.2 Regulation of Domestic M&A Transactions Investing in Public Companies

Investing in public companies is subject to approvals, as elaborated under **5.2 Securities Regulation**, and may trigger disclosure or general tender offer requirements pursuant to the securities laws and listing rules.

#### Merger Control Review

Depending on the turnovers of the concentrating parties, an M&A transaction may require clearance from the competition authority. Please refer to **6. Antitrust/ Competition**.

#### National Security Review

Depending on the nature of the transaction, a national security review may be triggered. Please refer to **7. Foreign Investment/National Security**.

#### Review and Approval by Sector Regulators

Prior approval from regulators may be required if the sector in which investment is made is regulated, as is the case with financial institutions.

#### State-Owned Asset Rules

If the target asset or company is deemed a state-owned asset, the transaction may fall within the purview of the State-Owned Assets Supervision and Administration Commission (SASAC) or its local counterparts or delegates. It may then need to comply with certain requirements, such as asset valuations and appraisals, prior approvals or filings with SASAC or competitive bid requirements.

## 4. Corporate Governance and Disclosure/Reporting

### 4.1 Corporate Governance Framework

Under the PRC Company Law, companies may form as either a limited liability company (LLC) or a company limited by shares. Private companies may choose either of the two forms, but they typically form as LLCs, whereas public companies must form as companies limited by shares. LLCs are limited to

a maximum of 50 shareholders, while the number of initial incorporators of a company limited by shares is limited to 200 shareholders.

Foreign investors typically prefer to form LLCs in China because LLCs have greater flexibility in allocating corporate governance and shareholder rights as compared to a company limited by shares.

On 29 December 2023, the Standing Committee of the National People's Congress of the PRC adopted an amendment to the PRC Company Law (2023 Company Law), which came into effect on 1 July 2024. The 2023 Company Law was amended with the aim to give investors more options to simplify corporate governance, strengthen shareholders' obligations in order to provide more protection to creditors, enhance property rights protections and promote sound development of the capital market.

## 4.2 Relationship Between Companies and Minority Investors

Shareholders of Chinese companies are protected under Chinese company law and, in the case of public companies, securities laws and the listing rules and regulations of the Chinese stock exchange on which the company is listed. Statutory shareholder protections under the PRC Company Law include:

- the right of shareholders to request the court to revoke company resolutions on the grounds of defective procedures;
- the right to initiate a derivative lawsuit by shareholders holding 1% or more of the voting rights for more than 180 days in a company limited by shares and by any shareholder in an LLC;
- the right to request repurchase of equity interests or shares if the shareholder votes against certain resolutions;
- the right of shareholders holding 10% or more of the voting rights of the company to apply for voluntary liquidation; and
- the right of shareholders to request the company to acquire their equity interests at a reasonable price if a company's controlling shareholder abuses shareholder rights and seriously damages the interests of the company or other shareholders.

## 4.3 Disclosure and Reporting Obligations

Both domestic and foreign-invested companies are required to submit filings to the AMR (which functions as the company registry) when there are any changes to the company's corporate information. This includes changes to shareholders and shareholding structure, changes to registered capital, operation operating term, business scope, registered address, directors, supervisors, legal representatives and general managers. The information will, in the case of foreign-invested companies, be forwarded by the AMR to the Ministry of Commerce (MOFCOM). In addition, FIEs are required to submit additional information (ie, changes) with respect to the ultimate beneficial owners to the MOFCOM and foreign exchange control authority.

## 5. Capital Markets

### 5.1 Capital Markets Overview

The two primary stock exchanges in Mainland China are those of Shanghai and Shenzhen. Historically, only companies incorporated in Mainland China can be traded in these stock exchanges. On 15 November 2021, the third primary stock exchange in Mainland China, Beijing Stock Exchange, commenced trading.

PRC companies have historically been listed on a variety of overseas securities exchanges, notably NASDAQ or NYSE and HKSE, in addition to the Chinese stock exchanges. It is noted that, in 2023, the securities regulator CSRC issued new rules which provide that PRC companies, by way of either direct or indirect overseas offerings and listings, should file with the CSRC within three business days after the application documents for Overseas Offering and Listing have been submitted to the overseas securities exchanges.

Based on the latest data published by the People's Bank of China, the principal source of funding for Chinese enterprises is still considered to be bank loan financing.

### 5.2 Securities Regulation

Companies listed on the securities exchanges of the PRC are subject to the Chinese Securities Law. The CSRC has oversight over the PRC securities markets and listed issuers.

In general, foreign investors are not subject to PRC securities laws unless the foreign investor intends to invest in a PRC company listed on the securities exchanges of the PRC. If a foreign investor is a strategic investor, the investor must meet qualification requirements for strategic foreign investors. These include thresholds on total assets and sound financial management capability. The strategic foreign investor investing in a listed company through agreement transfers or tender offers must hold at least 5% of the company's shares; for investments made through the private placement, there is no minimum shareholding requirement. All strategic foreign investors, regardless of the investment method, are subject to a 12-month lock-up period.

It is noted that on 1 November 2024, several regulators in China jointly issued the Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors (the "New Measures"), which took effect on 2 December 2024.

The New Measures, in comparison to the old ones, reduce thresholds and relax restrictions for foreign strategic investments. This aims to broaden access for foreign capital in China's securities market, attract greater foreign investment, and promote long-term, value-oriented participation by foreign investors. The changes introduced are as follows.

## Scope of Foreign Investors

The old rules restricted eligible foreign investors to legal entities and organisations. In contrast, the New Measures expand eligibility to include foreign natural persons, enterprises, and other types of organisations.

## Asset Thresholds

Under the Old Measures, foreign investors needed a minimum of USD100 million in total overseas actual assets or USD500 million in total overseas actual assets under management. The New Measures reduce this threshold to USD50 million in total actual assets or USD300 million in total actual assets under management. However, for foreign investors aiming to become controlling shareholders of a listed company, the requirements of USD100 million or USD500 million remain unchanged.

## Lock-Up Period

The Old Measures mandated a lock-up period of three years for strategic investments. The New Measures reduce this period to 12 months.

## Investment Methods

Previously, the Old Measures allowed strategic investments only through private placements or transfers by agreement. The New Measures introduce additional methods, including competitive bidding, subscription of new shares, and tender offers.

## Shareholding Ratio Requirements

The Old Measures required a minimum shareholding ratio of 10% for strategic investments. The New Measures remove this requirement for private placements, while reducing the threshold to 5% for investments made through agreement transfers or tender offers.

Non-strategic foreign investors may also invest via QFII (Qualified Foreign Institutional Investor) status; the thresholds for QFII qualifications were lowered in November 2020 to encourage further foreign investment in the PRC.

## 5.3 Investment Funds

Foreign investment funds investing in PRC-listed public companies are generally required to invest as a QFII and are accordingly subject to compliance with the QFII-related requirements to invest. The QFII requirements also include post-investment obligations, such as the obligation to make certain information reports to the CSRC.

Foreign investment funds investing in non-listed PRC companies are not subject to the QFII requirements. However, if the fund establishes a domestic fund in the PRC or if a domestic fund has overseas investors, it will be designated a "Qualified Foreign Limited Partner" (QFLP) and the establishment of the fund will have to be approved by the finance office of the local government in the fund's domicile. The rules governing QFLPs vary between cities and are not centrally regulated. It is worth noting that the Opinions also require in-depth implementation of pilot projects of domestic investment by QFLPs.



## 6. Antitrust/Competition

### 6.1 Applicable Regulator and Process Overview

China has a “pre-notification” merger control regime. Under the PRC Anti-Monopoly Law (AML), a “concentration of undertakings” that meets certain turnover thresholds must be notified to the State Administration for Market Regulation (SAMR) for merger control clearance and may not be implemented without SAMR’s approval. On 1 August 2022, the amendments to the AML came into effect (the “Revised AML”) following almost two years of public consultation. The Revised AML provides several key changes to the merger control regime in China, including:

- strengthening control of “killer acquisitions” and reiterating the power to review below-threshold transactions;
- introducing a “stop-the-clock” mechanism to the review timeframe and increasing the penalties for failures to notify; and
- power to delegate the review of simple case filings to local authorities.

Following the amendment of the AML, SAMR published the Regulation of Review of Concentration of Business Operators (the “Merger Review Regulation”), updating the former Interim Regulation of Review of Concentration of Business Operators (published in 2020). The Merger Review Regulation came into effect on 15 April 2023.

#### Concentration of Undertakings

The following types of FDI transactions may constitute a concentration of undertakings for the purpose of merger control notification:

- merger;
- acquiring control over another undertaking by virtue of acquiring its equity or assets;
- formation of a joint venture (JV) where at least two parties can exercise control over the JV; and
- acquisition of control over another undertaking or the ability to exercise decisive influence over the other undertaking by virtue of a contract or any other means (such as a VIE structure).

#### Definition of “Control”

There is no explicit definition of “control” under the Revised AML. SAMR has broad discretion in determining control by considering a wide range of factors. The Guidelines for the Anti-Monopoly Compliance of Concentrations of Undertakings set out examples of governance rights that would confer control over another business (Strategic Rights), including:

- right to appoint or remove senior management personnel;
- right to approve the financial budget; and
- right to approve the business plan.

The relevant factors in evaluating “control” include the purpose of the transaction, the target’s shareholding structure, shareholders’ reserved matters, board composition and the voting mechanism at board and shareholders’ meetings.

In practice, “control” could refer to:

- holding 50% or more shares or voting rights; or
- having approval or veto power over the target’s material business and management matters, such as the Listed Strategic Rights.

As there is no de minimis shareholding for the definition of control, the ability to veto any of the Listed Strategic Rights will likely be sufficient to confer control even with a minority shareholding.

#### Turnover Thresholds

Where an FDI transaction constitutes a “concentration of undertakings”, the transaction is notifiable if the undertakings to the concentration also meet the turnover thresholds.

On 26 January 2024, the Provisions of the State Council on Thresholds for Prior Notification of Concentration of Undertakings (“Amended Thresholds”) came into effect. The Amended Thresholds represent a significant increase in these thresholds, particularly in China turnover.

The amended turnover thresholds are as follows:

- the aggregate global turnover of all the undertakings to the concentration exceeds CNY12 billion (increased from 10 billion), or the aggregate Chinese turnover of such entities exceeds CNY4 billion (increased from 2 billion) in the preceding financial year; and
- each of at least two of the undertakings to the concentration had a turnover in China exceeding CNY800 million (increased from 400 million) in the preceding financial year.

Special rules apply to the calculation of the turnover of undertakings in the financial sector.

Consistent with the revised AML, the Amended Threshold reiterates SAMR's right to review transactions that do not meet the turnover thresholds, provided that there is evidence that the transaction may have the effect of eliminating or restricting competition.

### No Possibility of Exemptions for Foreign Investors or Investments

Where the merger requirements are met, no exemption is available for foreign investors or investments.

### Process and Timeline

The merger review procedures in China include the simplified procedure (ie, expedited merger review procedure for certain types of transactions unlikely to raise concerns in China) and the normal procedure (ie, standard procedure for the remaining types of notifiable transactions).

Upon notification, all transactions enter a pre-acceptance phase where SAMR may request further information about the transaction and the notification. There is no statutory time limit for the pre-acceptance phase; the actual duration depends on the questions and time needed to collect the requested information. In the experience of the authors, the pre-acceptance phase generally lasts four weeks on average under the simplified procedure, and four to eight weeks under the normal procedure. A notification will only be accepted once SAMR considers the information it receives to be complete and satisfactory.

Once the case is accepted, it will enter into a three-phase review period. Most cases undergoing the simplified procedure are cleared within Phase I (ie, 30 days upon case acceptance).

For cases undergoing the normal procedure, if the transaction does not raise competition concerns it is usually cleared within the review period for Phase II (ie, 90 days).

For transactions with competition concerns, the review extends to Phase III (ie, 60 days). In practice, SAMR's review of cases with significant competition concerns may exceed the maximum statutory period of 180 days for the three phases. The Revised AML introduced a "stop-the-clock" mechanism whereby the statutory merger control review period can be suspended under three scenarios, namely:

- if the filing parties fail to submit supporting information in a timely manner, which prevents the progress of the review;
- when new circumstances or facts that materially impact the review arise and need to be verified; or
- when remedy conditions need to be further evaluated (provided that the filing parties consent).

There is no maximum time limit for SAMR to suspend the review time under the "stop-the-clock" mechanism.

### Clearance and Transaction Closing

Merger clearance must be obtained before the closing of the proposed FDI transaction which, in the case of a greenfield JV, refers to the incorporation of the JV and, in the case of an equity or asset transfer, the registration of the equity or asset to be acquired.

### Delegation to Local Authorities

SAMR announced a pilot programme to delegate the review of certain simple case filings to five local authorities in Beijing, Shanghai, Guangdong, Chongqing and Shan'xi Provinces during a three-year pilot period commencing on 1 August 2022. Based on SAMR's guidance, a transaction can be delegated to one of the five Local AMRs where it has one of the following nexus to the relevant city or province:

- at least one of the notifying parties is based in that city/province;
- the target is based in that city/province;
- in the case of the establishment of a new joint venture, the joint venture is based in that city/province;
- the relevant geographic market of a transaction is assessed to be regional, and such regional market entirely and mainly falls within that city/province; or
- where SAMR deems it appropriate to delegate.

On 31 July 2025, SAMR issued an announcement officially transitioning the pilot programme, which had been in trial for three years, into a formal delegation programme. The current standards for cases subject to delegation review, as well as the entrusted local authorities and their respective jurisdictions, remain the same as in the pilot phase. However, SAMR has also reaffirmed in the announcement that it may dynamically adjust the delegated local authorities and their jurisdictions based on actual circumstances in the future.

## 6.2 Criteria for Antitrust/Competition Review

### Substantive Review of the Transaction

The Chinese merger control regime involves a substantive overlap and competitive assessment of the investment. The substantive test involves:

- identifying the relevant markets based on the transaction parties' horizontal overlap (ie, competing businesses), vertical links (ie, upstream/downstream relationship) or neighbouring relationship (ie, complementary products);
- assessing the market share and market power of the transaction parties and the effect of the transaction on the level of concentration in the relevant markets;
- assessing the transaction's impact on market entry, technological development, suppliers and customers; and
- assessing the transaction's impact on market entry, technological development, suppliers, national economic development, industry policy and public interest.

## 6.3 Remedies and Commitments

### Remedies

SAMR may conditionally clear a concentration on remedies, including structural, behavioural or hybrid remedies, based on a case-by-case assessment.

### Structural remedies

Similar to the EU and US competition authorities, SAMR may require merging parties to commit to divesting a business, assets or minority interests within a specified time frame post-closing. An example of such a remedy imposed by SAMR was Spirent/Keysight on 28 September 2025.

### Behavioural remedies

Compared to the EU and US competition authorities, SAMR is more receptive to behavioural remedies, despite them being more difficult to implement and monitor than structural remedies. Examples of SAMR's behavioural remedies include "hold separate" remedies that require the transaction parties to operate independently for a period of time until the remedy is lifted, FRAND commitments and commitments restricting tying and bundling, etc.

In June 2025, SAMR conditionally approved Bunge Global's proposed acquisition of another agricultural commodities distributor, Viterra. Citing Bunge's high market shares, the high market entry barriers of Chinese markets for the trade of imported soybean, barley and rapeseed, as well as Chinese customers' high dependency on the import of soybean, barley and rapeseed, SAMR expressed that the proposed transaction could raise competition concerns in the aforementioned markets. To mitigate these competition concerns, SAMR imposed behavioural remedies, including requiring the parties to continue to perform the existing contract, requiring the parties to continue to supply to Chinese customers based on the FRAND principle, reporting the global shortage of crops in a timely manner, and the utmost efforts should be made to fulfil supply obligations. After five years, the merged entity can apply to SAMR to lift the conditions.

### Hybrid remedies

Often, SAMR imposes hybrid remedies, which are a combination of structural and behavioural remedies. In July 2025, SAMR announced its conditional clear-

ance of the acquisition of Ansys by Synopsys. SAMR concluded that the transaction may exclude or restrict competition in the global and Chinese markets for optical software, photonics software, part of the EDA software and semiconductor design IP. To mitigate these competition concerns, SAMR required Synopsys to divest its entire optical and photonic device simulation business and Ansys divest its power analysis software business. It also imposed behavioural conditions, such as requiring the parties to honour existing contracts, refrain from engaging in bundling and tie-in sales, continue supporting industry standard formats, and enter into interoperability agreements with third-party EDA providers, etc. The behavioural remedies will last for ten years and expire automatically.

## 6.4 Antitrust/Competition Enforcement The Authority's Ability to Block or Otherwise Challenge FDI

As described in 6.3 Remedies and Commitments, SAMR has the ability to challenge an FDI transaction (eg, impose remedies) before the investment is made, to the extent that the transaction substantially affects competition in China.

If conditions are not sufficient to address competition concerns, SAMR has the ability to block the transaction. Since the AML took effect in 2008, only four transactions have been prohibited by SAMR:

- Coca-Cola's proposed acquisition of Chinese fruit juice producer Huiyuan in March 2009;
- the proposed Maersk/MSC/CMA CGM P3 Network shipping alliance in June 2014;
- the proposed merger between game-streaming platforms Douyu and Huya in July 2021; and
- Wuhan Yongtong Pharmaceutical's acquisition of a 50% stake in Shandong PKU High Tech Huatai Pharmaceutical.

### Possibility to Appeal and Timeline

Under the AML, a transaction party may appeal to SAMR for administrative review within 60 days of receiving the decision. The timeframe for administrative reconsideration is 60 days.

If a notifying party is not satisfied with an SAMR administrative review decision, it can bring an administrative action within 15 days of receipt of SAMR's decision.

If still unsatisfied with the result of the administrative action, the party can seek judicial review within six months of the final administrative decision.

In 2025, the first judicial review judgment against SAMR's conditional approval decision (ie, the conditional approval decision of the acquisition of Tobishi by Simcere) was made. SAMR took this case as a typical example and published the relevant Review Decision, Administrative Reconsideration Decision and the Judgment of the judicial review: In September 2023, SAMR announced its conditional clearance of the acquisition of Tobishi by Simcere. After the review decision was made, Tobishi filed an administrative reconsideration with SAMR, arguing that the review decision violated the relevant provisions of the Anti-Monopoly Law and the Administrative Licensing Law. In February 2024, SAMR made a reconsideration decision, concluding that the facts of the review decision were clear and the application of law was correct, and therefore upheld the review decision. Subsequently, Tobishi filed a judicial review against both the review decision and the reconsideration decision. After approximately ten months of proceedings, in December 2024, the Beijing Intellectual Property Court rendered a judgment, holding that both the review decision and the reconsideration decision had clear factual findings, correct application of law, and lawful procedures, and thus dismissed Tobishi's claims.

### Higher Penalty for Submitting False or Misleading Information

The Revised AML imposes higher penalties on the notifying parties for providing false disclosure or omissions in filings. For the notifying party, the fines have been increased from CNY200,000 to a maximum of 1% of the party's turnover in the preceding financial year. Responsible individuals are also subject to a fine of up to CNY500,000 (increased from CNY100,000).

## Sanctions for Closing Before Clearance

The AML prohibits parties from implementing a notifiable transaction before filing a merger control notification (failure to notify) and obtaining a merger control clearance (gun-jumping).

The Merger Review Regulation provides guidance on the relevant factors for determining whether a transaction has been implemented and may so constitute a failure to notify or gun-jumping. A non-exhaustive list of actions that may constitute gun-jumping includes:

- effecting changes on the registration of the corporate entity or the register of shareholders;
- appointing senior management personnel;
- participating in business decision-making and management;
- exchanging sensitive information with other operators; and
- carrying out business integration.

The Revised AML increased the maximum fine for failure to notify and gun-jumping from CNY500,000 to CNY5 million where the transaction has no anti-competitive effect. Where the transaction has or may have anti-competitive effect, the maximum fine is 10% of the party's turnover in the preceding year.

As of October 2025, SAMR has imposed penalties on six cases of failure to notify and gun-jumping under the revised AML, with the highest fine reaching CNY1.75 million.

In addition to imposing fines, SAMR can order the transaction parties to undertake the following steps to restore the situation to the pre-transaction state:

- suspend the transaction;
- dispose of shares or assets within a specified time limit;
- transfer the business within a specified time limit; and
- implement other measures as required.

In July 2021, SAMR issued a penalty decision against Tencent for its failure to notify an acquisition of a 61.64% stake in China Music Corporation. SAMR imposed the maximum fine of CNY500,000 (the maxi-

mum fine at the time) and imposed remedies to restore competition in online music broadcasting platforms through measures such as abandoning exclusive music copyright licensing arrangements. Tencent was also required to notify SAMR of future transactions, including those that fall below notification thresholds – a requirement that generally goes beyond the scope of remedies contemplated under the AML.

While the Revised AML notes that criminal liabilities may be imposed for breaches (including gun-jumping), the precise application of criminal liabilities on undertakings and individuals is expected to be clarified in amendments to China's Criminal Law.

## 7. Foreign Investment/National Security

### 7.1 Applicable Regulator and Process Overview

#### National Security Review (NSR) Overview

In China, FDI that has an impact or a potential impact on national security is subject to national security review, as stipulated in both the National Security Law and the FIL. The review regime is established in 2011 and updated in the Measures for Security Review of Foreign Investment (the "NSR Measures") jointly published by the NDRC and MOFCOM on 19 December 2020 and effective from 18 January 2021.

#### NSR Industry Scope

China's NSR regime targets foreign investments in two categories related to defence and national security in China.

- Category A – defence-related sectors, which are notifiable regardless of whether the foreign investor will have control over the target:
  - (a) investment in sectors related to national security, such as the military and arms industry, or other ancillary industries; and
  - (b) investment in areas adjacent to military or arms facilities.
- Category B – other sectors concerning national security, notifiable only if the foreign investor will acquire control:
  - (a) important agricultural products;



- (b) important energy and resource;
- (c) significant equipment manufacturing;
- (d) critical infrastructure;
- (e) critical transportation services;
- (f) important cultural products and services;
- (g) important information technology and internet product and services;
- (h) important financial services;
- (i) critical technology; and
- (j) other industries with national security importance (ie, assessed on a case-by-case basis, with factors including whether the Chinese government has separately flagged or designated certain sectors or certain products or services as “strategic”).

## FDI Types

The NSR regime applies to direct or indirect investments by foreign investors (including those in the regions of Hong Kong, Macau and Taiwan) in Chinese domestic enterprises, primarily in the form of (i) investment in a greenfield project or establishment of a foreign-invested enterprise in China, independently or jointly with other investors, and (ii) M&A (ie, asset or equity acquisitions). The NSR regime can be extended to other transactions such as contractual control, trusts, multi-layer investments, overseas transactions, leases or convertible bonds, created to achieve the same purpose as a direct share or asset acquisition.

In particular, foreign investors investing in offshore entities who (directly or indirectly) own equity in Chinese companies or assets located in China (also called “foreign-to-foreign” deals) are also covered investment transactions. However, recent practice demonstrates that “foreign-to-foreign” deals are less likely to require a formal NSR review or lead to any substantive national security concern.

For an FDI transaction originally not subject to NSR, NSR approval will need to be sought before the parties can make any changes to, for example, the business structure, business scope or identity of foreign controllers, that result in the FDI falling within the scope of the NSR. Likewise, if an FDI transaction has already received NSR approval but the parties contemplate making changes to the transaction, the par-

ties must seek new NSR approval before they make the changes.

## Control Determination

With regard to “Category B” investment, a foreign investor is regarded to acquire control if:

- the foreign investor and its affiliates acquire 50% interest or more in an enterprise;
- the foreign investor with another foreign investor acquires 50% interest or more in an enterprise; or
- the foreign investor acquires less than 50% interest in an enterprise but has sufficient voting rights to materially influence shareholder meeting or board of director meetings; and
- there are other factors allowing the foreign investors to exert significant influence over the enterprise’s operational decisions, human resources matters, financial matters and technology.

## Monetary Thresholds

There are no monetary thresholds for a transaction to be qualified for NSR review.

## Changes to Existing Transactions

As well as new transactions, changes to existing transactions that may affect national security (eg, changes to the foreign investor’s contractual rights, the business scope of the foreign-invested entity, or the foreign investor’s identity) may trigger NSR notification obligations afresh.

## Reviewing Authority

An interagency function called the “NSR Working Mechanism” is empowered under the NSR Measures to organise, co-ordinate and supervise the NSR review. This function, which is consensus-driven, is jointly led by NDRC and MOFCOM and, depending on the investment areas concerned, other ministries of the central government, such as the Ministry of National Defence (MOD), the Cyberspace Administration of China (CAC), the Ministry of Industry and Information Technology (MIIT) and the Ministry of Transport (MOT), may also be involved to give their opinions.

The Office of the NSR Working Mechanism (the “NSR office”), which comes under NDRC, carries out the day-to-day NSR functions, including accepting the

notifications and handling all communications with parties to the NSR process.

## Process and Timeline

The review process involves three phases, as follows.

- Notification and pre-acceptance phase (15 working days) – the transaction parties notify the NSR office by submitting the following materials:
  - (a) notification form;
  - (b) investment plan;
  - (c) explanation as to whether the foreign investment will affect Chinese national security; and
  - (d) other materials required by the NSR office.

The NSR office shall determine within 15 working days from its satisfaction regarding receipt of complete notification materials as to whether NSR review is required.

- General review phase (30 working days) – if the NSR office determines that NSR review is required, it shall conduct a general review and determine in 30 working days whether to approve the FDI or extend to the special review phase.
- Special review phase (60 working days or longer if necessary under special circumstances) – if the NSR office considers that the notified transaction may have national security concerns during the general review phase, it will launch a special review of 60 working days. The special review period may be extended if special circumstances apply. However, the NSR Measures do not specify the circumstances to trigger such extension or the time limit for the extended review period.

During the review process, the NSR office may request additional information and the review period shall be suspended (ie, stop-the-clock) while awaiting materials from the transaction parties.

## 7.2 Criteria for National Security Review

NSR review will consider the FDI's impact on national defence and security, including the production of national defence products and relevant equipment, national economic stability, basic social stability, the research and development of key technologies related to national security, national cultural safety and pub-

lic ethics and national network security. However, no specific criteria have been published for the substantive assessment.

The NSR is a highly discretionary process and is subject to the opinion of the NSR Working Mechanism, in particular the specific industrial and regulatory authorities for the invested sectors.

## 7.3 Remedies and Commitments

Foreign investors can amend the investment structure or commit to restrictive conditions to address NSR concerns. However, there are no specific rules or guidance on the types of concerns the NSR office may have and the restrictive conditions that may be required to address its concerns. The NSR is a highly discretionary process subject to the NSR office's opinions in case-by-case assessments.

In the case of approval with conditions, the parties have a continuing obligation to perform and implement the conditions imposed under the approval decision. In practice, the NSR office may together with the authorities of local governments, conduct on-site inspections over the parties subject to the conditions, to verify whether the conditions are strictly implemented.

## 7.4 National Security Review Enforcement NSR – Possibility to Block FDI

Where the FDI has impacted or will likely significantly impact national security and the effect could not be remedied by conditions, the NSR office may reject the investment. If the investment has already been implemented, the NSR office may unwind the relevant transaction.

Only a handful of investments have been blocked, according to public information.

According to the FIL, the prohibition decisions made by the NSR Office are final, which means that the parties cannot appeal the decisions through judicial review.

Consequences for Investing Without Prior Notification to the Relevant Authority

The following consequences are possible.

- Unwinding of the transaction – the NSR office may order the transaction parties to make an NSR notification if a transaction has been implemented without the requested NSR notification. Failing to follow such order may result in the transaction being unwound, even if it does not raise national security concerns. And if the NSR office identifies a national security concern which cannot be mitigated by the parties' proposed remedy measures, then it will also have the power to unwind the transaction.
- Adverse record in China's credit information system – failures to notify relevant transactions will be recorded in China's credit information system and subject to associated penalties. This will also likely result in reputational risks and an impaired relationship with the Chinese government.

Under the NSR Measures, there is no monetary penalty imposed on foreign investors for the failure-to-notify violation.

## 8. Other Review/Approvals

### 8.1 Other Regimes

#### Foreign Exchange Control Regime

China has foreign exchange control regulations administered by the State Administration of Foreign Exchange (SAFE). Cross-border transactions are classified into two categories: capital items and trade items. Capital items – capital contributions, loans and dividend distributions – are subject to stricter scrutiny than trade items. SAFE has delegated most transaction review and oversight powers to PRC banks.

#### Outbound Direct Investment Regime

PRC enterprises, no matter whether foreign or domestically owned, must obtain approvals before investing overseas (ODI approvals). These approvals include those from NDRC, MOFCOM and SAFE. The procedures to obtain these approvals may take weeks or sometimes months.

### Investment in Manufacturing

Domestic and foreign investment in manufacturing projects require additional governmental approvals, including from NDRC, which has oversight over manufacturing activities and production capacity nationwide. The project may also need to obtain EHS-related permits, zoning permits and construction permits.

## 9. Tax

### 9.1 Taxation of Business Activities

#### Enterprise Income Tax

Enterprise income tax (EIT) is levied on the taxable income obtained by enterprises. Taxable income means the balance of gross income obtained by enterprises in a tax year, after deducting non-taxable income, exemptions, various deductions and losses carried forward from the previous five years.

Taxpayers are classified into resident enterprises and non-resident enterprises. Resident enterprises include enterprises incorporated in China, and those incorporated outside China based on foreign laws but with de facto management bodies in China. Non-resident enterprises are enterprises established based on foreign laws and with their de facto management bodies outside China.

Resident enterprises are subject to EIT on income sourced both in and outside China, while non-resident enterprises are subject to EIT on income sourced in China or on income attributable to permanent establishment (PE) constituted in China.

The standard EIT rate is 25%, while beneficial rates may be applicable to certain enterprises, including but not limited to qualified high-tech enterprises.

Income derived by non-resident enterprises which do not have PE in China, or which have PE in China but the income derived is not effectively connected with the PE, is subject to EIT at 10%, unless a preferential tax rate is granted under the relevant double taxation agreement/arrangement (DTA).

If a company is organised as a partnership, the company is transparent for the purpose of EIT. Income/

loss shall be calculated at the level of the partnership, while income tax shall be paid by the partners based on the respective conditions.

## Value-Added Tax

Value-added tax (VAT), which is levied on the turnover of taxpayers, applies to sale or import of goods, provision of processing, repair and replacement services, provision of services and transfer of intangible properties and immovable properties in China.

Taxpayers of VAT are divided into small-scale and general VAT payers based on annual turnover and the tax rates are different for each type of tax payer and the nature of goods/service, which varies from 3% to 13%.

From 1 January 2026, the new VAT Law of the People's Republic of China will become effective. While largely maintaining the policies and principles rendered under the existing VAT regime, there are certain changes that should be noted.

For instance, one of the key changes pertains to the definition or determination of taxable activities, which are detailed as follows.

- Sale of goods – the place of shipment or the location of the goods is within China.
- Sale/Lease of immovable properties or transfer of the use right of natural resources – the property or natural resources are located within China.
- Sale of financial products – the financial product is issued within China, or the seller is a domestic entity or individual.
- Provision of services or transfer of intangible assets – the services or intangible assets are received or consumed within China, or the seller is a domestic entity or individual.

## Other Taxes

Enterprises may also be subject to other taxes such as consumption tax, land appreciation tax, real estate tax, stamp duty, etc, depending on the goods manufactured or sold, business activities or transactions carried out in China.

## 9.2 Withholding Taxes on Dividends, Interest, Etc

Non-resident enterprises are subject to EIT on dividends, interest and royalties obtained from resident enterprises, and the resident enterprises are obligated to withhold such EIT at 10% (as well as VAT, if applicable) from the relevant payments made to the non-resident enterprises (withholding taxes).

Preferential income tax rates may be provided by the DTAs concluded by China with other countries or regions, which may reduce tax rates to 5% or 7% depending on applicable DTAs.

For dividends, DATs may provide for minimum level of stock ownership (usually 25%) and holding period.

## 9.3 Tax Mitigation Strategies

### Income Tax Deferral

Restructuring transactions, including but not limited to debt-to-equity conversion, mergers and acquisitions, and spin-offs, conducted by enterprises, upon fulfilment of the prescribed conditions, may be eligible for tax deferral treatment.

Reinvestments of dividends obtained by non-resident enterprises from resident enterprises may be eligible for tax credit and/or tax deferral. For this purpose, the scope of resident enterprises excludes public listed companies.

### Super-Deduction of R&D Expenses

Expenses incurred by enterprises for R&D activities, upon fulfilment of the prescribed conditions, may be eligible for super-deduction at 200% of such expenses; intangible assets generated by R&D activities undertaken by enterprises may be amortised at 200% of the costs and expenses capitalised.

### Accelerated Depreciation of Fixed Assets

Newly purchased equipment and appliances (excluding buildings and structures) with a unit value of no more than CNY5 million are allowed for quick deduction in a lump sum during the current period.

As to newly purchased equipment and appliances (excluding buildings and structures) with a unit value of more than CNY5 million, enterprises may opt for a

reduced depreciation period or other eligible accelerated depreciation methods.

## VAT Credits Refunds

Under qualified conditions, enterprises may apply to the tax authorities for refund of VAT credits that could not be recovered through sales.

## 9.4 Tax on Sale or Other Dispositions of FDI

Non-resident enterprises are subject to EIT at 10% on the capital gains derived from the transfer of equity interests in resident enterprises.

Special treatments may be specified by DTAs for such capital gains. Under most DTAs, China would not levy income tax on the capital gains derived by non-resident enterprises if they hold less than 25% equity interest in the resident enterprises transferred for the 12 months prior to the transfer; under certain DTAs, China would not levy income tax on the capital gains derived by non-resident enterprises.

## 9.5 Anti-Evasion Regimes

Under the EIT regime, there are specific tax rules and regulations pertaining, respectively, to transfer pricing for related-party transactions, cost-sharing arrangements, advanced pricing arrangements, thin capitalisation and general anti-avoidance.

### Transfer Pricing

Business transactions between related parties must be made on an arm's length basis; otherwise, the tax authority may apply special tax adjustments to the transactions by reasonable methods.

### Thin Capitalisation

If an enterprise's debt-to-equity ratio for related parties exceeds 2:1 (5:1 for financial institutions), the excessive interest expenditure will not be allowed for deduction when calculating EIT, unless the enterprise could prepare transfer pricing documentation to justify the arm's length nature of the expense.

### General Anti-Avoidance Rules (GAAR)

The tax authorities shall have the discretion to make tax adjustments on arrangements adopted by enterprises that do not have reasonable commercial purposes but are mainly for the purpose of tax avoidance.

Specifically, arrangements adopted by non-resident enterprises for the indirect transfer of taxable assets in China, including equity interests of resident enterprises, immovable properties situated in China, if deemed to be lacking in sufficient commercial substance, will be subject to EIT at 10%, pursuant to the State Administration of Taxation Public Notice Regarding Certain Enterprise Income Tax Matters on Indirect Transfer of Properties by Non Resident Enterprises (Bulletin [2015] No 7).

## 10. Employment and Labour

### 10.1 Employment and Labour Framework

In China, the employment relationship between an employer and an employee is mainly governed by:

- national laws including the PRC Labour Law, PRC Employment Contract Law, PRC Social Insurance Law, PRC Law on Mediation and Arbitration of Labour Disputes, and certain provisions on the implementation of these national laws;
- interpretations by the PRC Supreme Court on the Application of Law in the Trial of Labour Dispute Cases (I) and (II);
- national regulations and policies issued by relevant governmental authorities, particularly the Ministry of Human Resources and Social Security; and
- local regulations and policies issued by local governmental authorities.

Under the PRC Trade Union Law, a basic-level trade union committee should be established in any enterprise with 25 or more members but, in practice, not all enterprises establish these trade union committees. Even in enterprises with trade union committees, collective bargaining is not common in practice in China.

Foreign investors should also pay attention to the immigration regulations in China, including work visa, work permit and residence permit requirements at national and local levels. Foreign investors who wish to initially establish representative offices instead of companies should note that PRC laws restrict representative offices of foreign enterprises from directly hiring local employees and require them to hire local employees through labour dispatch service providers.



## 10.2 Employee Compensation

Typically, employees in China are entitled to salary payments, statutory social insurance and housing fund contributions. Statutory social insurance contributions comprise basic pension, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance.

Other benefits include statutory annual leave and certain benefits applicable to certain classes of workers. In addition, in tech and other start-up companies, equity-incentive compensation has also become rather common through employee stock options and restricted share awards.

Under PRC law, a change in the controlling investor or shareholder of an employer does not affect the validity or effectiveness of the employer's employment contracts. Neither does it entitle employees to additional compensation as a matter of law unless employment is terminated, in which case severance based on law and mutual consultation may apply.

## 10.3 Employment Protection

Generally speaking, unless there are changes to the employment relationship or arrangements following an acquisition, change-of-control or other investment transaction, employees will not be entitled to additional rights or severance payments. However, if the employer wishes to terminate an employee, the employee will be entitled at minimum to the statutorily prescribed severance based on the duration of employment and, in most cases, 30 days' prior written notice. The employee's salary and benefits terminate as of the termination date unless both parties agree otherwise.

The transfer of employment from one employing entity to a new entity requires mutual agreement between the employer and employee. In an asset or business sale, the employer and purchaser often offer employees the opportunity to transfer employment to the purchaser. If the employee agrees to the transfer, either the employer (ie, the seller) will pay the transferred employee's severance based on the employee's service years, with the employee then being deemed a new hire of the purchaser, or the purchaser will recog-

nise the employee's previously accumulated service years in the new employment contract.

Employers deciding matters directly affecting the immediate interests of employees are required to comply with consultation and notification procedures prescribed in the labour laws. These consultation and notification procedures include seeking comments from the employee representatives' congress or all employees, discussing the comments with the trade union or the representatives nominated by the employees, and notifying all employees of the final decision.

## 11. Intellectual Property and Data Protection

### 11.1 Intellectual Property Considerations for Approval of FDI

In 2025, China continued to successively promulgate a series of policies, which distinctly showcase its evolving openness and receptiveness towards foreign investment, specifically in bolstering the integration of advanced intellectual property. Such policies, among others, include the Administrative Measures for Strategic Investment in Listed Companies by Foreign Investors.

From the perspective of intellectual property, on 21 March 2025, the China National Intellectual Property Administration (CNIPA), together with other relevant authorities, issued the Opinions on Further Optimising the Business Environment in the Field of Intellectual Property. The document expressly supports eligible Technology and Innovation Support Centers (TISCs) in conducting international exchanges on public intellectual property information services. It also encourages high-level foreign institutions to establish a presence in China and provide intellectual property-related services, reflecting China's continued openness and commitment to fostering an internationalised, service-oriented IP ecosystem.

In the field of Artificial Intelligence Generated Content (AIGC), the Interim Measures for the Administration of Generative Artificial Intelligence Services (the "Interim Measures"), which came into effect on 15 August

2023, generally stipulate that foreign investment in the AIGC sector must comply with laws and regulations related to foreign investment.

Meanwhile, the PRC Ministry of Commerce updated the Catalogue for the Negative List on Foreign Investment Access on 1 November 2024. The updated Catalogue reduces the number of restrictive measures from 31 to 29, with all restrictions in the manufacturing sector completely removed. This marks a significant step toward high-level opening up and demonstrates China's commitment to further liberalising market access for foreign investors.

## 11.2 Intellectual Property Protections

In 2024, China continued with its development of knowledge innovation overall. Compared with 2023, granted invention patents in China increased by 13.5% in 2024, and those of foreign applicants increased by 3.4%. The overall active number of registered trade marks increased by 8.1%, and the active approved registrations of foreign trade marks increased by 2.7%. In 2024, the total number of patent assignment and licensing records nationwide reached 613,000, representing a year-on-year increase of 29.9%.

In the past year, several amendments to regulations related to intellectual property (IP) were promulgated, demonstrating China's overall legislative inclination towards stronger protection. In the realm of patents, the CNIPA in 2025 released draft Patent Examination Guidelines that address issues such as “dual filing” of invention and utility model applications, exceptions to novelty for public interest disclosures, and interlocutory review in re-examination. With regard to trade marks, on 7 July 2025, the Trade Mark Office of National Intellectual Property Administration released the Measures for the Expedited Review of Trade Mark Registration Applications, further enhancing the facilitation of trade mark registration and strengthening the protection of intellectual property rights. In terms of anti-unfair competition, the National People's Congress Standing Committee adopted a new amendment to the Anti-Unfair Competition Law on 27 June 2025, which came into effect on 15 October 2025, specifying certain types of unfair competition practices in the digital economy and providing for extra-territorial jurisdiction over acts harming the domestic

market. This move reflects the Chinese government's commitment to establish a healthier business environment.

In judicial practices, influential cases of IP infringement or unfair competition can be seen from time to time with substantially large amounts of damages granted by the PRC courts. For instance, in a recent case concerning AI-generated images, Chinese courts recognised that the creative process involving artificial intelligence – reflecting elements of conception, artistic techniques and aesthetic judgment – could qualify as a “work” protected under copyright law. In the area of trade secrets, the Supreme People's Procuratorate reported in 2025 on the Zunpai-Huawei HiSilicon semiconductor trade secret case, which became a landmark decision for the protection of chip-related technical trade secrets, underscoring China's judicial determination to safeguard enterprises' confidential technologies.

In the field of AIGC, China has demonstrated openness in its legislative and judicial practices. For instance, on 10 October 2025, China issued the Guidelines on Intellectual Property Protection for Generative Artificial Intelligence, which provide comprehensive guidance for enterprises on protecting generative AI from the perspectives of copyright, trade marks, patents and trade secrets. The Guidelines aim to promote the healthy development of the generative AI industry and to encourage the practical application of generative AI technologies. This reflects China's intent to foster the development of the generative AI sector.

In judicial practice, Chinese courts have further clarified the platform liability of generative AI service providers. When a service provider offers generative AI technology services, whether such conduct constitutes contributory infringement should be assessed comprehensively, taking into account factors such as the provider's profit model, the fame and influence of the right-holder's work, the apparent nature of the infringing act, the technological maturity of AI, the feasibility and cost of alternative designs to prevent harm, the necessity and effectiveness of preventive measures, and the potential impact of liability on the industry. It can therefore be seen that China maintains a cautiously open stance towards generative AI, seek-

ing to promote the sound and sustainable development of the related industry.

It is also worth noting that China has shown an increasingly open and supportive attitude toward foreign-related intellectual property. In 2025, the National Development and Reform Commission, together with the Ministry of Commerce and the State Administration for Market Regulation, revised the Negative List for Market Access (2025), reducing the number of restricted sectors from 117 to 106. This reform signifies China's continued efforts to liberalise market access at the institutional level and to foster a more transparent, predictable and equitable business environment for foreign investors.

## 11.3 Data Protection and Privacy Considerations

### Overview of Data Protection Legislation

Currently, China's legal regime for data protection comprises four main pieces of legislation, namely the Personal Information Protection Law (PIPL), the Data Security Law (DSL), the Cyber Security Law (CSL) and the Regulations on Network Data Security Management (RND SM) which provide detailed operational guidelines for the implementation of the PIPL, DSL and CSL.

The PIPL regulates the processing and protection of personal data, providing several core principles and requirements for personal data processing, such as requirements around lawful basis, transparency, data minimisation, purpose limitation, data completeness and accuracy, and security protection. Under the PIPL, individuals are granted a wide range of rights related to their personal data. Different from the EU General Data Protection Regulation, the PIPL has a strong focus on consent by individuals as to how their personal data is processed, and the concept of "legitimate interest" for processing personal data is not recognised in the PIPL.

Several newly promulgated subordinated rules are also worth noting.

- The Administrative Measures on Personal Information Protection Compliance Audit, effective since 1 May 2025, provide the procedures and audit items

for compliance audit under the PIPL. Companies processing personal data of more than ten million individuals are required to conduct the audit every two years.

- The Measures for the Administration of the Reporting of Cybersecurity Incidents, effective since 1 November 2025, further detail the reporting of cybersecurity incidents under the CSL. Data breach involving personal data of one million individuals or more shall be notified to competent authorities within four hours upon discovery.

### Extraterritorial Effect of Data Protection Laws

Both the PIPL and the DSL propose clear extraterritorial applicability to data processing activities that take place outside China, which has been substantially followed by the newly promulgated RND SM.

- The PIPL applies extraterritorially to the processing of the personal data of data subjects in China that takes place outside China if such processing is (i) for the purpose of provision of goods and/or services to data subjects in China; (ii) for analysing or assessing the behaviour of data subjects in China; or (iii) in other circumstances as provided by Chinese laws and regulations. Foreign companies subject to PIPL's extraterritorial effect shall set up an organisation or appoint a representative in China dedicated to data protection and file the name and contact information of any appointed organisation or representative with competent regulators.
- The DSL applies extraterritorially where the data processing activities which have taken place outside of China harm the national security, public interests or the legal rights and interests of citizens or organisations of China.

### Regulation of Cross-Border Data Transfer

The DSL, PIPL, RND SM and certain supporting rules issued by CAC – ie, the Measures on the Security Assessment of Cross-Border Data Transfer, the Provisions on the Standard Contract on Cross-Border Transfer of Personal Data and the Standard Contract on Cross-Border Transfer of Personal Data (China SCC), the Measures on Certification on Cross-Border Transfer of Personal Data and the Rules for Implementation of Personal Information Protection Certification, and the Provisions on Promoting and Standardising

Cross-Border Data Flows, establish the integrated regulatory framework on cross-border data transfer (CBDT).

Specifically, in addition to other CBDT compliance requirements under the PIPL (such as engaging in personal information protection impact assessment), companies need to rely on any of the following pre-requisites when transferring personal data outside of China:

- passing the security assessment for CBDT organised by the CAC (Security Assessment);
- obtaining a certification on personal data protection issued by a licensed agency;
- concluding an agreement with the overseas recipient using the China SCC and filing such agreement with the provincial CAC;
- where the CBDT of personal data is necessary to conclude or perform a contract to which the individual is a party;
- where the CBDT of employees' personal data is necessary for human resources management in accordance with the employment rules and regulations developed in accordance with the law and collective contracts concluded in accordance with the law;
- where the CBDT of personal data is necessary to perform statutory duties or fulfil statutory obligations;
- where the CBDT of personal data is necessary to protect the life, health and property security of a natural person in an emergency;
- where a data handler who is not a Critical Information Infrastructure Operator transfers the personal data (excluding sensitive personal data) of fewer than 100,000 individuals overseas as of January 1 of the current year; or
- where the CBDT of personal data falls outside the scope of the negative list to be formulated by and applicable limited to the free trade zones.

In any event, a company shall pass the Security Assessment before transferring important data outside of China.

## Penalties and Enforcement of Violation

Violation of the CSL, DSL or PIPL will result in criminal, administrative and civil penalties. In particular, data handlers found to be in serious breach of the PIPL may be imposed fines of up to 5% of a company's revenue during the preceding year or CNY50 million. The regulators also have the power to suspend or terminate any mobile app or online service that illegally processes personal data. Those who are responsible for causing the violation may be disqualified from being directors, supervisors, general managers or personal data protection officers.

Multiple Chinese regulators have been actively enforcing the data protection laws and their implementation measures. Among others, the enforcement against illegal processing of personal data by mobile applications, mini-apps on WeChat and Alipay, and third-party SDKs deployed in mobile applications has been a continuous and routine broad-sweeping law enforcement campaign. In addition, data breaches can trigger regulators' scrutiny and inspection of the companies' compliance with relevant data protection laws.

Privacy litigation has been on the rise in China, which may continue to be the case – particularly with PIPL lowering the bar for data subjects to bring claims against companies by shifting the burden of proof to defendant companies. In addition, procuratorial organs, as authorised by the PIPL, can also actively bring up public interest litigation on personal information.

## Trends and Developments

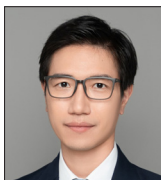
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**Fangda Partners** has over 800 lawyers across its seven offices in Beijing, Guangzhou, Hong Kong, Shanghai, Shenzhen, Nanjing and Singapore. The firm is widely acknowledged as having the leading foreign direct investment (FDI) practice in China, with extensive experience in advising foreign investors on making their investments in China, including green-field investments, joint ventures, and share and cash acquisitions. Its FDI expertise also extends to equity and asset restructuring of foreign-invested entities,

as well as liquidation and deregistration. Clients also benefit from the firm's transactional capabilities integrated with its unparalleled expertise in antitrust, IP, employment and data compliance in their FDI transactions. The firm has vast experience in the full range of strategic and private equity M&A and commercial transactions, with international clients including GE, Honeywell, ABB, Hershey, Cargotec, Ford, Lear, Boeing, AMD and Philips.

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## Foreign Investors Now Have Easier Market Access but Higher Compliance Costs

With the Foreign Investment Law taking effect at the beginning of 2020, China's foreign investment regime has officially evolved from a case-by-case approval system – in place for over three decades – to a new system where foreign-invested companies and domestic companies are treated almost equally in terms of their establishment and corporate changes, with the exception of a small number of sectors under the negative list.

However, as China's legal system has been evolving, compliance costs for many market players, including domestic enterprises and foreign-invested enterprises, have also increased. For example, the Chinese government is more serious about enforcing environmental and labour regulations. As a result, high-pollution industries and labour-intensive industries have been relocating to South Asia where compliance and labour costs are lower.

In 2025, substantial legislative developments were made to strengthen the protection of older employees, refine competition restrictions in the employment context, and improve data protection regulations. These new pieces of legislation, accompanied by tightened law enforcement, suggest increasing compliance costs for companies in the future. Some foreign-invested manufacturing companies have been relocated to Southeast Asia due to lower costs and to avoid geopolitical risks and export control measures, while the majority of foreign-invested companies have chosen to remain in China to stay close to the market and supply chain.

Local policies on foreign direct investment (FDI) have also become more selective on technology and new investment sectors in order to promote high-tech industries, representing a shift from quantity to quality.

## New Trend of Investment

In the context of a challenging global economy, foreign investment in China showed strong resilience in 2025. According to data from China's central government, FDI in the first nine months of 2025 grew by 16.2% compared to the previous year, reflecting not only the continued attractiveness of the Chinese mar-

ket but also the steady confidence of foreign investors in China's long-term economic prospects.

Encouraged by the government's recent policies to further open up high-end manufacturing, green development and digital industries, a number of multinational corporations have expanded or reinvested in their China operations.

However, under a tightening regulatory environment, some M&A financings in the TMT sector were temporarily suspended. Investors, especially those from overseas, have become more selective, tending to focus on more established targets and prioritising investments in semiconductors and intelligent hardware, EV OEM and related industries, newly emerging Metaverse and Web 3.0 fields, and the new energy sector. This trend is consistent with the government's commitment to steering China's economy toward more innovative and sustainable growth.

China's goal of achieving "carbon peak and carbon neutrality" has also generated new opportunities, such as green finance. More green, blue (financing ocean-related conservation projects) and sustainable development bonds have come to the market, expanding the range of products on China's domestic debt markets. The promulgation of new panda bond guidelines and the roll-out of the pilot programme for social and sustainability panda bonds are expected to channel more funding into the green, social, sustainability (GSS) sectors and further open up the bond market.

## Trends in Merger Control

On 1 August 2022, China's revision of the Anti-Monopoly Law (AML) came into effect, introducing significant changes to the country's merger control landscape. In March 2023, the State Administration for Market Regulation (SAMR) finalised the Regulation on Review of Concentration of Business Operators, further clarifying the law's implementation. On 26 January 2024, the Provisions of the State Council on Thresholds for Prior Notification of Concentration of Undertakings (the "Amended Thresholds") came into effect. The Amended Thresholds represent a significant increase in these thresholds, particularly in China turnover.

## *Predictable timelines for no-issue cases and extended review periods persist for remedy cases*

Since mid-2022, SAMR has delegated merger review of cases that qualify for the simplified procedure (simple cases) to five of its local branches. The support of local officials lent predictability to review timelines for no-issue cases: simple cases typically take around six to eight weeks, while no-issue cases that fall under the normal review procedure take approximately four to six months.

The 2022 AML revisions introduced a “stop-the-clock” mechanism, which may be triggered:

- when parties fail to submit the required information on time;
- when new facts are discovered during the review process; or
- upon the parties’ request during remedy discussions.

Based on SAMR’s decisions, the “stop-the-clock” mechanism was employed in three conditional cases in 2023, namely *MaxLinear/Silicon Motion*, *Simcere/Tobishi* and *Broadcom/VMware* one conditional case in 2024, namely *JX Advanced Metals/Tatsuta Electric* and all four conditional cases in 2025 (as of the end of October), namely *Synopsys/Ansys*, *Bunge/Viterra*, *Keysight/Spirent* and *ANA/NCA*.

While this mechanism reduced the administrative burden where parties had to withdraw and refile their filing once the statutory timeline expired, it appeared not to have an actual impact on the overall review timeline for remedy cases. The review process for remedy cases remained a marathon, with timelines being long and unpredictable. As two out of four conditional cases as of October 2025, *Bunge/Viterra* took 503 days for clearance and *ANA/NCA* took 631 days for clearance, which is significantly longer compared to 2024’s only remedy case *JX Advanced Metals/Tatsuta Electric*, which took 475 days, and the average review timeline of 363 days in 2023 and 364 days in 2022. This trend underscored the unpredictable and lengthy nature of China’s review timeline for complex cases. However, it is also noteworthy that the two below-the-threshold cases this year, namely *Keysight/Spirent* and *Synopsys/Ansys*, only took 223 days and

221 days respectively for clearance. This may indicate that below-the-threshold cases may get conditional approval relatively more quickly.

## *The merger threshold was raised and the number of cases dropped*

The Amended Thresholds represent a significant increase in China merger control’s thresholds:

- raising the aggregate global turnover of all the undertakings to the concentration from CNY10 billion to CNY12 billion;
- raising the aggregate Chinese turnover of all the undertakings to the concentration from CNY2 billion to CNY4 billion; and
- raising the turnover in China of each of at least two of the undertakings to the concentration from CNY400 million to CNY800 million.

The increased threshold is expected to substantially reduce the number of merger control cases reviewed by Chinese authorities. According to the data publicly released by SAMR, a total of 519 merger control cases were reviewed in the first three-quarters of 2025, and while the number of cases reviewed in the whole of 2024 and 2023 was 643 and 797 respectively, it is already possible to discern a downward trend in the number of cases.

## *Six failure-to-notify or gun-jumping cases were fined under the revised AML*

The Revised AML increased the maximum fine for failure to notify and gun-jumping from CNY500,000 to CNY5 million where the transaction has no anti-competitive effect. Where the transaction has or may have an anti-competitive effect, the maximum fine is 10% of the party’s turnover in the preceding year.

As of the end of October 2025, SAMR had imposed penalties on six failure-to-notify and gun-jumping cases with no anti-competitive effect under the revised AML, with the highest fine reaching CNY1.75 million.

## **Trends in Strengthened Protection for Older Employees and Refined Competition Restrictions** *Gradual retirement age increase drives new protections*

China is gradually raising its statutory retirement age, following a decision by the National People's Congress Standing Committee in September 2024. This reform has led to new measures protecting older workers who continue employment beyond retirement age. Employers now face clearer obligations to ensure fair treatment and legal certainty.

A draft of Interim Provisions on the Protection of Basic Rights and Interests of Older Workers was released for public comment in 2025. These Provisions aim to require employers to sign written agreements with such workers, specifying terms for pay, rest, safety and insurance. Overtime is generally discouraged, and work-related injury insurance contribution remains mandatory for employers.

The Judicial Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (II) ("Judicial Interpretation II"), effective 1 September 2025, has removed prior guidance that disputes involving pension recipients are only service relationships. This shift may sustain debates over the legal status for employees over the retirement age but not yet eligible for a pension. It will fall to future judicial practice to determine whether an employment relationship can be established for this group.

### ***New guidelines on non-compete restrictions***

The Judicial Interpretation II refines competition restrictions by invalidating clauses applied to employees without access to trade secrets. Overly broad restrictions may be partially void, and violations can trigger both penalties and repayment of compensation received.

In September 2025, the Ministry of Human Resources and Social Security issued the Compliance Guidelines for Enterprises on the Implementation of Post-Employment Competition Restrictions, which further emphasise the requirement for necessity and reasonableness in respect of non-compete restrictions. Employers are cautioned against excessive scope in

relation to clauses around personnel, business activities or geography. In addition, non-compete compensation must be paid monthly in cash during the non-compete period and cannot be offset by prior wages or bonuses.

These updates signal a maturing framework balancing employer interests in talent retention and trade secret protection with the fundamental employment rights of employees, especially for an ageing workforce.

Companies should promptly review HR policies, employment templates and competition agreements to align with the new standards. Accurate role classification and proactive management of older employees will help ensure compliance and reduce risks.

## **Trends in Taxation**

In general, the trends and developments in taxation are characterised by key words such as digitisation, intelligence and globalisation, and taxpayers need to constantly learn and adapt to these changes to ensure tax compliance in an efficient and effective manner. Specifically, the following should be noted.

- Through the application and evolution of digital tax administration systems and big data analysis, tax authorities have stepped up efforts in comparing data, analysing issues, assessing cases and identifying compliance issues of taxpayers, thus improving the efficiency and effectiveness of tax collection and administration.
- The widespread application of artificial intelligence has led to continuous improvement in tax supervision and administration, and made it possible for tax authorities to detect and take precautionary measures against cases involving fraud.
- With the further development of global economic integration, international organisations and governments of various countries/regions have strengthened tax information exchange and co-operate to jointly combat cross-border tax evasion. The formulation and implementation of international tax rules is an important part of global tax co-operation.
- The State Taxation Administration adopts an open and co-operative approach to such international tax co-operation projects as the "Two-Pillar Solu-

tion” initiated by OECD as well as those promoted by the United Nations, by proactively participating in technical discussions, addressing China’s position, and taking a leading role in international tax reform in the face of economic transition and transformation.

## Trends in Data Protection

On 1 January 2025, the Regulations on Network Data Security Management (RNDSM), which provide detailed operational guidelines for the implementation of the Cyber Security Law (CSL), the Personal Information Protection Law (PIPL) and the Data Security Law (DSL), came into effect. The Cyberspace Administration of China (CAC), which is China’s primary regulator for data protection, as well as other regulators in China continued publishing implementing rules and standards on specific issues such as personal information protection compliance audits, data breach notifications and generative AI compliance, as well as carrying out influential law enforcement campaigns.

## Personal information protection

The Administrative Measures on Personal Information Protection Compliance Audit came into effect on 1 May 2025. According to these measures, companies processing personal information of over ten million people shall undergo a compliance audit every two years. If CAC finds that personal information processing activities have relatively high risks or there are any personal information security incidents, it may require the companies concerned to:

- entrust a third-party audit agency upon CAC’s approval to carry out compliance audits within a prescribed time limit; and
- submit the audit report to CAC. The compliance audits will become an important regulatory tool in personal information protection in the coming years.

In addition, the CAC has published the Measures on Certification on Cross-Border Transfer of Personal Data which will be effective from 1 January 2026 and which have completed the last piece in the puzzle of China’s cross-border data transfer regulatory tools.

## Data breach and other cybersecurity incidents

The CAC has published the Measures for the Administration of the Reporting of Cybersecurity Incidents, which provide detailed rules on the mechanism of cybersecurity incident reporting under the CSL and took effect on 1 November 2025. According to these measures, data breaches involving the personal data of one million individuals or more shall be notified to competent authorities within four hours upon discovery.

In September 2025, a multinational luxury company was penalised by the CAC and public security department due to its data breach that involved the personal information of Chinese consumers. In practice, data breaches or other cybersecurity incidents can trigger regulators’ scrutiny and inspection of companies’ overall compliance with relevant data protection laws, and companies (especially those which possess large amounts of personal information or even important data) should therefore attach importance to data security matters.

## AI compliance

To implement the primary regulatory rules concerning generative AI – ie, Administrative Measures for Generative AI Services, the Administrative Measures for Deep Synthesis of Internet-Based Information Services, and the Administrative Measures for Algorithm-generated Recommendations for Internet Information Services, CAC further promulgated the Measures on the Labelling of AI Generated and Synthesised Content, detailing labelling requirements on content generated by AI during generative AI service provision to the public within China.

CAC has increased its enforcement of AI regulations since 2025. Based on the statistics publicly available, as of 10 September 2025, CAC disclosed 538 recorded generative-AI services and 263 registered applications – indicating a substantial scale-up from prior years.

In April 2025, CAC launched a three-month action plan titled “Clear and Bright Crackdown on AI Technology Abuse”, which is being implemented in two phases. This law enforcement campaign suggests that broad-sweeping and proactive enforcement



actions and penalties are anticipated in the coming months, where:

- the first phase targets six key issues, including the circulation of illegal AI products, the teaching and selling of such products, poor management of training materials, inadequate safety measures, failure to implement content labelling requirements and safety risks in critical areas; and
- the second phase focuses on seven major issues, such as using AI to generate rumours, false information and pornographic content, impersonating others, engaging in online manipulation activities and infringing on the rights of minors.

### *Important data protection*

The DSL formulates a national data classification regime and provides that the processing of important data is subject to more stringent rules. The RNDSM released in 2024 reiterates the rules on the identification and protection of important data under the DSL.

In 2024 and 2025, many sectoral and regional regulators are carrying out the campaign for important data identification in their sectors or regions. For example, the Ministry of Industry and Information Technology issued guidelines on the identification of important data in the industrial and telecommunication sectors and required companies to submit their categories of important data; and the Tianjin, Beijing, Shanghai, Hainan, Zhejiang, Guangxi, Jiangsu and Chongqing Pilot Free Trade Zones published the categories of important data in the respective regions.

As data protection regulations become more defined, companies should monitor the progress of critical data identification across relevant sectors and regions and implement compliance measures promptly.

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