



MANNHEIMER SWARTLING



The New Foreign Investment Law & Corporate Social Credit System

Swedish Chamber of Commerce

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Mannheimer Swartling in short

Mannheimer Swartling today

- Leading law firm in the Nordics
- Roots dating back to 1877
- Some 550 employees
- Some 400 lawyers worldwide
- Owned and run by 81 partners
- Lawyers supported by specialised professionals
- Offices in Stockholm, Gothenburg, Malmö, Shanghai, Hong Kong, Moscow, Brussels and New York

A full-service law firm

- Combining and specialising in all areas of business law
- Executing regional and international deals seamlessly
- A broad international network and close co-operation with other leading law firms around the world
- Quality and guidance adapted for every market, tailored to suit our clients' requirements and challenges
- Highly relevant speaking partner, sounding board and advisor



The China practice

The China practice

Strong presence and position in the Chinese market

- On the ground since 2007
- Only Nordic law firm with actual presence in both mainland China and Hong Kong
- Chinese offices integrated as one with the entire firm; working seamlessly
- Currently some 10 lawyers, both Chinese and Swedish, whereof 2 partners
- Strong local expertise with well-experienced Chinese professionals
- Unique experience and understanding of both the Nordics/Europe and China
- Strong local network of local lawyers and complementing service providers

Long and continuous experience in China

Core capability

- Corporate and commercial matters
- M&A
- International arbitrations
- Corporate sustainability and risk management
- Labour and employment
- Intellectual property rights
- Banking and finance



The New Foreign Investment Law

Basics

- Passed by National People's Congress on 15 March 2019
- Effective Date: 1 January 2020
- Very different compared to first draft from 2015 (detailed 170 provisions)
- A framework with general and broad principles (general 42 provisions)
- A unified law to replace Sino-Foreign Equity JV law, Cooperative JV law and WFOE law
- Transitional period of 5+ years (June 2025)
- Implementation regulations recently circulated; public consultation on-going

Definition of foreign investment

- “**Foreign investor**”; natural person, enterprise or organization
- Direct and indirect establishment of foreign invested enterprise
- Acquisition of shares, equities, property, *etc.*
- Investment in new project in China
- Any other investment as stipulated by laws and regulations

Key issues

- Replaces previously mentioned laws
 - 5+ year implementation; challenging for JV:s. Effects of non-compliance with updating existing JV contracts unclear
 - Highest corporate body to change from board to shareholders in JV
 - Company/Partnership law; majority decisions change and unproportioned distribution of profit
 - Governing law
- National treatment and negative list administrative system
 - National treatment (pre-establishment) and free to invest, except for Negative List
 - Registration rather than approval

Key issues

- Promotion and protection of foreign investment
 - Local governments/authorities to comply
 - Right to participate in standardization and procurement
 - Financing through public funding / free to transfer funds cross border
 - Protection of IPR / trade secrets / no expropriation
- Management of foreign investment
 - Foreign investment reporting system
 - National security review; "influencing or probably influencing state security"
- Tit-for-tat

Unification of Corporate Governance of FIEs

	Before FIL	After FIL
EJV	Special EJV governance rules	Governance rules under Company Law
CJV	Incorporated: special CJV governance rules	Governance rules under Company Law
	Unincorporated: special CJV governance rules (rare in practice)	Governance rules under Company Law or Partnership Enterprise Law
WFOE	No material change	

Unification of Corporate Governance of FIEs

EJV	Before FIL	After FIL
Chinese JV partner in greenfield	No Chinese natural-person (except in selected areas in China)	No limit
The highest authority	Board / executive director	Shareholders' meeting / sole shareholder
Chairman & vice-chairman / general manager & deputy general manager	The two posts split between the JV parties	As agreed
Legal representative	Chairman of board	Chairman of the board, executive director or general manager
Distribution of profit	In proportion to shareholding ratio	Agreed ratio
Voting on important matters of the JV	Statutory matters to be <u>unanimously</u> agreed upon by the directors present at the board meeting: <ul style="list-style-type: none"> • Amendment to the Articles of association • Increase or reduction of the registered capital • Suspension or dissolution of the JV • Merger or division of the JV 	Statutory matters to be agreed upon by shareholders representing <u>two thirds or more</u> of the voting rights: <ul style="list-style-type: none"> • Amendment to the Articles of association • Increase or reduction of the registered capital • Dissolution or transformation of the company • Merger or division of the company
Equity transfer	Subject to consent of all other shareholders	Subject to the consent of a majority of the other shareholders

Removal of key restrictions

SAFE introduced broad reforms on 25 October 2019, e.g.

- “Investment” in business scope for FIE
- Inbound capital flows encouraged (paying in FX, direct conversion to RMB)
- Inbound foreign debt encouraged (easier to utilize and repay foreign debt)
- Accelerating credit asset transfers
- Promoting e-commerce
- Facilitating FX cross-border payments

More to come...

Many open issues and blanks

- Total investment regime; foreign debt / registered capital; total investment
- Definition of indirect investment
- M&A approvals (MOFCOM and AMR)
- Round trip investments/VIE
- Implementation rules
- Extensive legal and commercial negotiations with partners to be expected
- Still not a level playing field...



Corporate Social Credit System

Background

- In June 2014, State Council announced 5 year plan to establish a comprehensive social credit system
- Many different governments departments have since announced rules and platforms
- Not a single piece of legislation
- Government's plan to use technology to monitor and guide market participants' behaviour
- A fundamental shift in governance; from market entry restrictions to post-market supervision
- Implementation by end of 2020, but it is already here

The idea...

"A system where everything is convenient for the trustworthy, and the untrustworthy are unable to move even a single step."

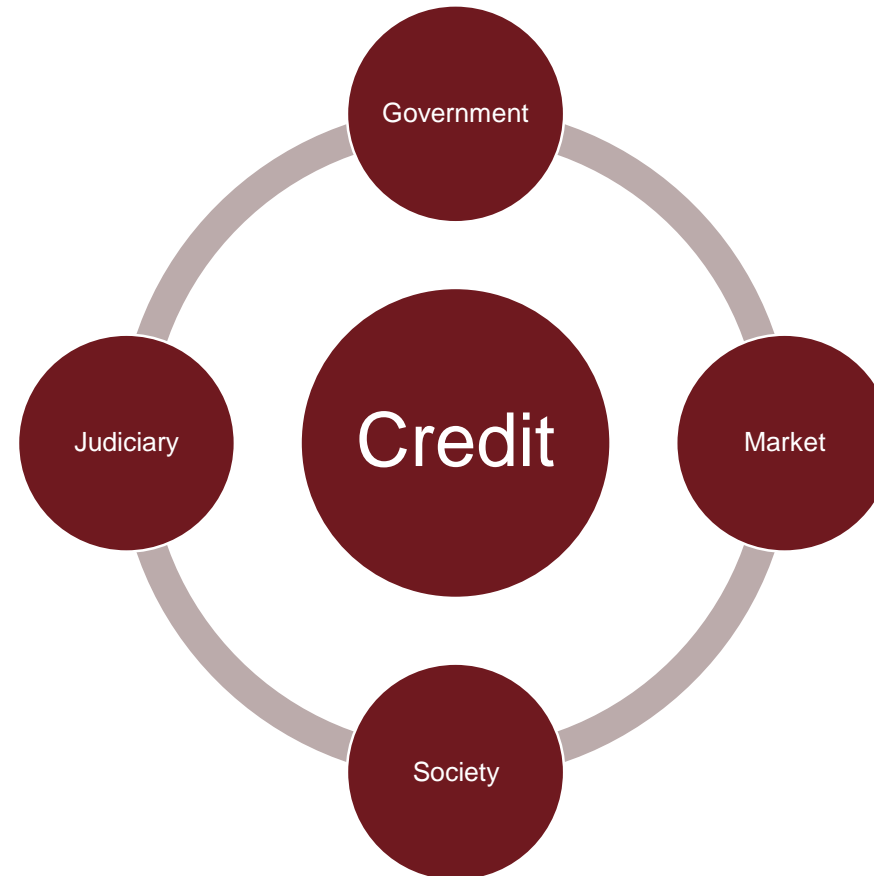
- Xi Jinping



What is CSCS?

- A governance and enforcement tool
- Credit based regulatory mechanism; Individuals, government and companies
- Assesses and monitors performance and behaviour
- Covers all fields and parts of business operations in China
- Evolving system of fragmented initiatives with shared objectives
- Internet + Monitoring; non-contact supervision through big data
- From market entry restrictions to post-market supervision
- Can profoundly affect companies' ability to operate in China

A credit based eco-system



Myths and truth

It is NOT:

- A big data driven algorithmic database with predictive functions (yet)
- A secret government database with no room for input from the public or companies themselves
- A point-based score within a numerical range, similar to a credit system
- A system which only applies to Chinese domestic companies and no impact to foreign companies core

It is:

- Mostly non-advanced data, collected manually and stored in Excel sheets
- Public disclosure of information is a key aspect of the system, and remarks (or mistakes) can be changed
- A unified record listing all positive and negative remarks
- Foreign companies are affected, and there are specific policies for foreign companies

Components

- Databases
 - National Credit Information Sharing Platform (NDRC and State Information Center)
 - CreditChina, web portal of NCISP
 - National Enterprise Credit Information Publicity System (SAMR)
 - Private credit information platforms
 - Third-party rating agencies
- Blacklists/Redlists
- Rewards/Punishments

Rewards

- A nice diploma and easier life...
- Fast-tracked ways to import goods
- Less frequent inspections
- Priority custom clearance
- Preferential consideration for government procurements
- Easier access to credit and financing
- Preferential access to land supply
- Direct help from tax office staff

Punishments

- "Misconduct somewhere, restrictions everywhere"
- Joint sanctions
 - Blacklisting
 - Reputational damage
 - More frequent inspections
 - Difficulty obtaining permits
 - Banning from public tenders
 - ...and so forth

Recommendations and risk mitigation

- Health check on your own business operation to identify key risks
- Monitor credit/compliance records and take prompt remedial actions
- Monitor credit/compliance records of existing and potential partners (and employees)
- Closely follow regulatory and enforcement development
- Compliance with existing laws and regulations will take you a long way...

Q&A



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