the brief

TRUSTIICS™
RealTime Global Counsel

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The Trustiics Journey

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About us

trustiics.com is an online platform where international businesses and individuals such as expats can access direct, convenient and affordable legal services provided by well-trained English-speaking legal professionals from China.

We seek to improve, through the use of information technology and the Internet, the efficiency of the legal services market for the benefit of international SMEs doing business in China and elsewhere. We want to break down geographic, linguistic and financial barriers for businesses looking for top-notch legal counsel.

Our Best Wishes

As China combats the novel coronavirus, or COVID-19, we pray for the good health and peace of the Chinese people and people around the world!

The Trustiics Journey

The world is in fast-change mode, and our lives are full of unexpected events. The only certain thing is that, if we work hard with hope and vision, we can make the world around us a little better.

When I sent my first application letters to American law schools in the late 1990s, I could not believe that something called "electronic mail" could reach the desks of people across the Pacific Ocean in the blink of an eye. In the mid 1980s, when my mom studied in the U.S., I missed her every day. But I was speechless when I heard her voice over the phone for the first time. Today, my son can have facetime on WeChat with his grandparents at any time they want without feeling they are thousands of miles away.

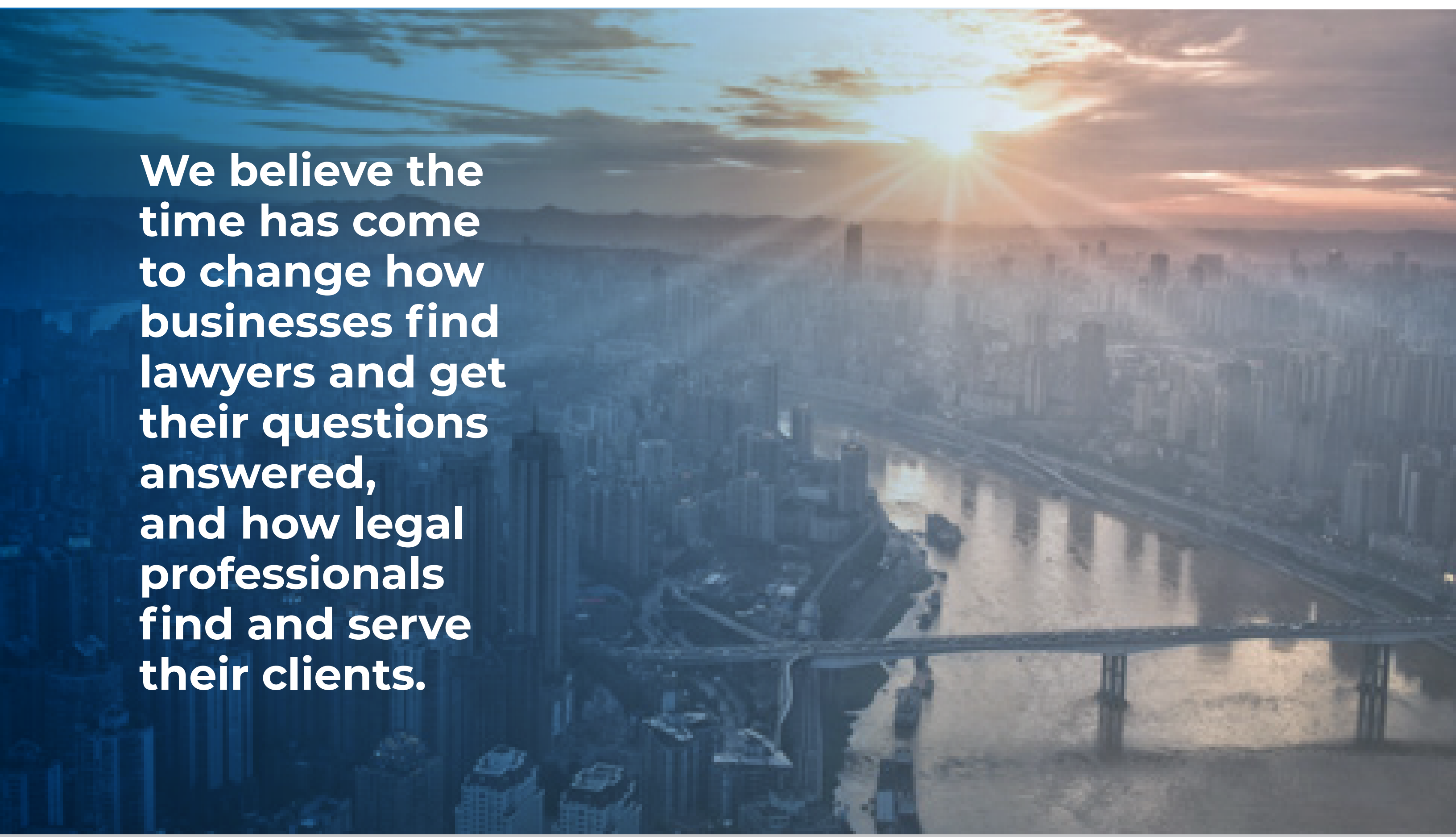
When Wiley, my Trustiics co-founder, and I left our boarding school after 3 years on that peninsula in South China, heading for universities in Beijing, we could not imagine that 25 years later we would start a venture together to make the best use of our experience as an international business lawyer and a veteran software architect.

It is exciting to build something that we believe can help people and make their lives easier and more convenient. As a lawyer with over a decade of experience working in large international law

Tianpeng Wang
CEO and Co-Founder of Trustiics

firms advising Fortune 500 companies, I have always wanted to make the same level of high-quality legal service more available and affordable to small and medium-sized international businesses, especially when they need such service in a foreign jurisdiction.

Looking around, we see that technology has changed the way people travel, where people stay, how we make payments, and how we shop, communicate and conduct all kinds of business. We believe the time has come to change how businesses find lawyers and get their questions answered, and how legal professionals find and serve their clients. We believe the professional world is heading towards being more directly connected in a more transparent way, and we are happy to be at the forefront of that trend.



What have our advisors said about our journey?

"I am extremely proud of what Tianpeng has already achieved. Trustiics is providing a very valuable service and we will provide all the help required to make it an international success."

Bernie Zeisig

Managing Partner, Mistral Venture Partners

"China is a market with great potential and some challenges if you are not familiar with their rapidly evolving systems. I believe Trustiics is bringing to the market what international SMEs need when they do business in China."

Dane Bedward

CEO, NeuroBot Inc.

"It's exciting to see how Trustiics can help Canadian companies reach lawyers in China easily!"

Andre Garber

Partner at Fasken

"In our globalized and digital era, an online platform like Trustiics can really help businesses in a foreign jurisdiction."

Mychelle Mollot

CMO, Solace

"As CEO of a start-up having business clients in China, it was a struggle to find fast and affordable legal advice for our activities in China. We needed a service like Trustiics, but none existed at the time unfortunately. This is why I am excited to be an advisor to Trustiics today! I know first hand the needs that Trustiics solve and I know that many business people will find it very valuable."

Fred Chanay

Managing Partner and co-founder, Notik.ai

"As a software engineer turned CEO and VC in Silicon Valley, I am always eager to help visionary entrepreneurs like Tianpeng build an exciting platform!"

Mike Scanlin

CEO, Born to Sell

Featured Counsel

Counsels registered on Trustiics are among the best English-speaking lawyers and legal translators you can possibly find in China. They have worked at the most reputable legal service firms and legal departments in China and around the world.

Each issue we will promote one legal expert as our "Featured Counsel".

Our first featured counsel is Daniel Lee (Chinese name: Li Zhuoru), an international business lawyer in Shanghai. Daniel was born in Taiwan and obtained his law degrees from the top university in Taiwan (Taiwan National University) and one of the best universities in the U.S. (Harvard University). He is a qualified lawyer in the following legal jurisdictions: mainland China, State of New York, the U.S., and Taiwan. In the past two decades, Daniel has practiced law in the most prestigious American law firms' China offices including Davis Polk & Wardwell, Morrison & Foerster and Weil, Gotshal & Manges. Since 2012, Daniel has been a partner at Jingtian & Gongcheng Shanghai Office, and his practice is focused on foreign direct investment in China, mergers & acquisitions, capital markets and general corporate matters. Jingtian & Gongcheng is one of the most respected Chinese law firms and is one of the top 8 so-called "red circle" firms.

Daniel Lee
Partner of Jingtian & Gongcheng, Shanghai Office
Registered Counsel and Member of Quality Assurance Panel on Trustiics

Expert Insight

National Treatment and Stronger Protection/Reassurance:
What you need to know about China's new foreign investment regulations

(by Daniel Lee, Partner at Jingtian & Gongcheng)

As of January 1st, 2020, foreign-invested enterprises ("FIEs") in China have come into a new era due to the implementation of a number of laws and regulations on foreign investment; these include the Foreign Investment Law, Implementing Regulations of the Foreign Investment Law, Measures for Reporting of Information on Foreign Investment, Circular of the State Administration for Market Regulation on Effective Work on Registration of Foreign-invested Enterprises for the Implementation of the Foreign Investment Law, and Interpretations of the Supreme People's Court on Several Issues Concerning the Application of the Foreign Investment Law of the People's Republic of China (the above will be referred to below as the new Foreign Investment Law).

Some highlights/take-aways of this new regulatory regime:

1. "National Treatment" - FIEs are now generally treated as domestic companies

Originally, FIEs (foreign-invested entities) were treated differently from domestic companies (i.e., companies incorporated by Chinese citizens) under the three separately promulgated "FIE Laws" (i.e., Wholly Foreign-owned Enterprise Law, Sino-Foreign Equity Joint Venture Law, and Sino-Foreign Cooperative Joint Venture Law) and their relevant implementation regulations. These FIE Laws were enacted several decades ago, and were more restrictive in nature compared to the Company Law enacted more recently, regulating domestic companies. Take a Sino-Foreign JV for instance: under the three FIE Laws, (a) the highest authority of a Sino-Foreign JV was its board, and certain matters needed a unanimous consent of all the directors, which could easily trigger a dilemma between the foreign and the Chinese JV partners in practice; (b) the share transfer of the equity interest in the Sino-Foreign JV required the other non-transferring shareholder's approval, which created difficulties for M&A transactions or a foreign partner's exit; (c) the distribution of profits could only be in proportion to the shareholder's

actual capital contribution, which made it impossible to agree upon a more innovative profit-sharing mechanism between the shareholders to address their commercial needs. With the repealing of the three old "FIE Laws," FIEs now will be regulated in the same manner as domestic companies under the unified Company Law, and FIEs will now be able to enjoy a more liberal and commercially oriented legal regime in terms of corporate governance.

For FIEs already in existence, the Foreign Investment Law gives a five-year transition period to make the required adjustments in their corporate governance-related documents. However, it is advisable to initiate a compliance review of the current articles/ constitutional documents sooner, and although these changes may seem to be made to comply with mandatory legal requirements on the face of things, it can be expected that in some cases, the already-delicate balance or tension between the foreign investors and their Chinese partners may be disrupted. It is thus advisable for the foreign investor to think things through thoroughly and strategically before discussing with their Chinese partner.

2. MOFCOM pre-approval/ filing is replaced by new "Information Reporting" mechanism

Prior to the Foreign Investment Law, setting up an FIE engaging in "restricted business" as set forth in the "Negative List" promulgated by the commerce department of the PRC (i.e., the MOFCOM) would be closely examined by MOFCOM before an approval would be granted. In order to receive such approval, all the required constitutional documents were put under strict scrutiny by local offices of MOFCOM where the FIE would be set up, and in practice, a different local office of MOFCOM might hold its own discretional view when granting the approval,

which created practical issues or difficulties for foreign investors. FIEs not engaging in the restricted business in the Negative List would also be required to file a registration with MOFCOM post-establishment.

The above-mentioned MOFCOM approval/registration requirements have all been eliminated by the new Foreign Investment Law; now, the setup of FIEs (not within a restricted area of business) will, like domestic companies, be required to go through only the routine registration process with the corporate registration authorities. We believe this revision will guarantee new foreign investors a more transparent, predictable and quicker set-up process.

Unlike under the old approval regime, FIEs are now regulated via clearly defined and more comprehensive/market-oriented disclosure requirements. FIEs shall submit certain required corporate information, including some basic information about the corporation and its shareholders, corporate investments, and certain operating and financial information. This information will be submitted to MOFCOM via an "enterprise registration system" and "enterprise credit information disclosure system," and will be made publicly available.

3. National Security Review introduced and codified in law

In addition to the "Negative List" setting forth what can and can not be invested in by foreign investors, the new Foreign Investment Law also introduced a national security review regime to review foreign investments in order to protect national security. However, the law omits the details of how this review regime will be established; comprehensive regulations may be issued in due course. What is clear is that China's National Development and Reform Commission (NDRC) announced that it will take over responsibility from MOFCOM for the conduct of the review process.

4. More reassurance for foreign investor protection, including IP protection

The new Foreign Investment Law also addresses some of the discriminatory issues that have long been complained about by foreign investors. These issues have not always resulted from the law being discriminatory, but have been the result of a weak or selective enforcement of the law, or of some other practical reasons, including the following:
i. foreign investors should be able to participate in the government procurement (in practice, Chinese government at various levels or localities might set some conditions so that domestic companies would have more chance to win the bid);
ii. an assurance as to the ability of a foreign investor to remit income, including dividends paid by an FIE, or royalty payments under a cross-border licensing agreement, outside of China (in practice, especially in recent years, foreign investors have occasionally complained that some offshore remittance was unduly delayed due to the "lack of quota" held by the remittance bank);
iii. a restriction on expropriation.
Among other things, foreign investors have long expressed concerns regarding the protection of their intellectual property in China. The new law reiterates a prohibition against the use of administrative measures to force transfers of technology, a recognition that the terms of any intellectual property licensing arrangement shall be a commercial matter for negotiation between the parties based on

fairness, and the infringement of IPs shall be punished strictly according to law. Whether all these long-standing issues can effectively be solved will depend on corresponding amendments in other implementation laws or regulations, as well as whether the law-enforcement authorities and the judicial systems will duly perform their duties to adapt to the new regime.

Despite the above, there are still certain unresolved issues lingering in the new Foreign Investment Law that will either need to be further supplemented by implementation rules (such as point #4 above), or be further addressed. One of the questions that stands out the most is what the authorities are going to do about the so-called "VIE" structure (or "contractual arrangements" in lieu of equity control), commonly used by companies in restricted businesses aiming for offshore listing. In particular, the issue is whether an investment using a VIE structure shall be deemed as a foreign investment and therefore one that should be regulated by the Negative List, and how to deal with those companies using this structure that have already been listed in the offshore securities market, etc. Although an attempt has been made to address this issue in an earlier draft of this law (which caused tremendous attention from both the business and legal communities), the final Foreign Investment Law chose to be silent on this issue due to its complexity and the profound and far-reaching implications for the business world not only domestically but also globally. Before any concrete conclusion is made, the use of an VIE structure for IPO purpose will still be risky and challenging.

This article simply functions as a very brief introduction to the new Foreign Investment Law which came into effect January 1, 2020. If you have any specific issues or questions, you can ask Daniel directly on Trustiics or drop him an email at li.zhuoru@jingtian.com.

Market News

China central bank released record-high liquidity to stabilize the market

From February 3 to February 17, 2020, the People's Bank of China has taken a series of actions, including reverse repo operations and cutting interest rate for one-year medium-term loans, and injected a total amount of 3 trillion yuan (about 430 billion USD) worth of liquidity into the markets. This higher-than-expected liquidity is aimed to "push down interest rates in the money market and bond market, and will further drive down interest rates in the loan market, which will help reduce capital costs, ease financial pressure on enterprises, especially small and micro enterprises." (Written by Trustiics Team)

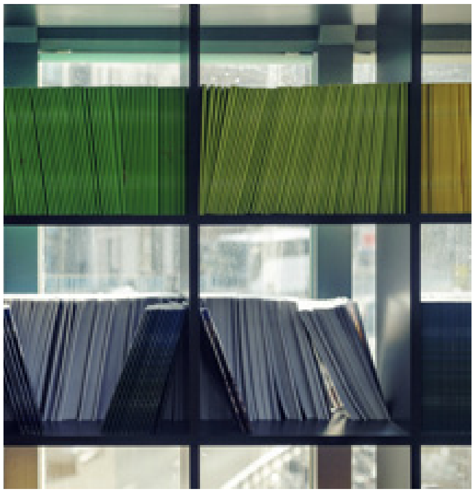
How much will COVID-19 impact China's and the world's economy?

According to the survey released by Reuters on February 14, 40 international economists predicted that China's economy will grow by only 4.5% year-on-year in Q1 2020, and the growth rate of China's GDP will be 5.5% throughout the year. Last year, the world's second-largest economy grew at 6.1%. Similarly, Deutsche Bank predicted that China's economic growth in the first quarter of 2020 will be 1.5 percentage points lower than the same period in 2019 to 4.6%. Global economic growth is expected to decline by 0.5 percentage points. Oxford Economics has a more pessimistic prediction that China's economic growth will be more affected and has cut its forecast for global economic growth in 2020 from 2.5% to 2.3%, which will be the weakest since 2009 annual economic growth.

The following industries are under the most serious impact in China due to the epidemic outbreak: wholesale and retail, accommodation and catering, logistics and transportation, tourism and other offline services. For the international markets, some other industries are expected to feel the negative impact to the greatest extent: the auto industry including parts and accessories, electrical and electronic components, industrial raw materials such as metals and ores, crude oil and natural gas.

(Edited by the Trustiics Team based on news and analysis published on international media between February 1 and February 17, including the Chinese language websites of RFI and Deutsche Welle)

Your Free Template



This issue we are providing a template confidentiality agreement for the reference of our registered users.

Confidentiality is critical in international business transactions involving multiple parties. Business executives should take proactive measures to protect any non-public information that may have value to your business. One of the most important and easiest actions to take is to request a counter-party to sign a confidentiality agreement, or non-disclosure agreement (aka NDA). There are various types of NDAs to be used in different situations and/or by different parties.

We are providing here a very simple and standard NDA which was used by one of our registered counsels in some of his transactions in China. Please note that this document is for your reference only and you should always consult an experienced lawyer who is qualified in China before you sign a NDA for your business in China. Many clauses such as definition of confidential information and exceptions, governing law and dispute resolution can all become issues of negotiation. In addition, you are advised to have a professional to review the consistency if you are asked to sign an NDA in dual languages (English and Chinese) because legal translation is a very special type of translation requiring years of training and practice.

Click here to download the free confidentiality agreement template

Contact information

If you have any questions or comments, please send email to the attention of the following people:

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