
Legal updates on PRC legal environment

CFO CLUB - CCIFC

October 25, 2019



PRESENTATION AGENDA

Morning 8:00

- **Brief introduction**
- **The end of the WFOE and the JV**
- **The social credit system for companies**

THE END OF THE WFOE & JV

On December 31, 2019

THE END OF THE WFOE & JV

From **January 1, 2020** - Repelled by **New Foreign Investment Law**

- *Law on Sino-foreign Equity JV*
- *Law on WFOE*
- *Law of on Sino-foreign Cooperative JV*

Investors can no longer set up a new WFOE or JV after December 31st, 2019.

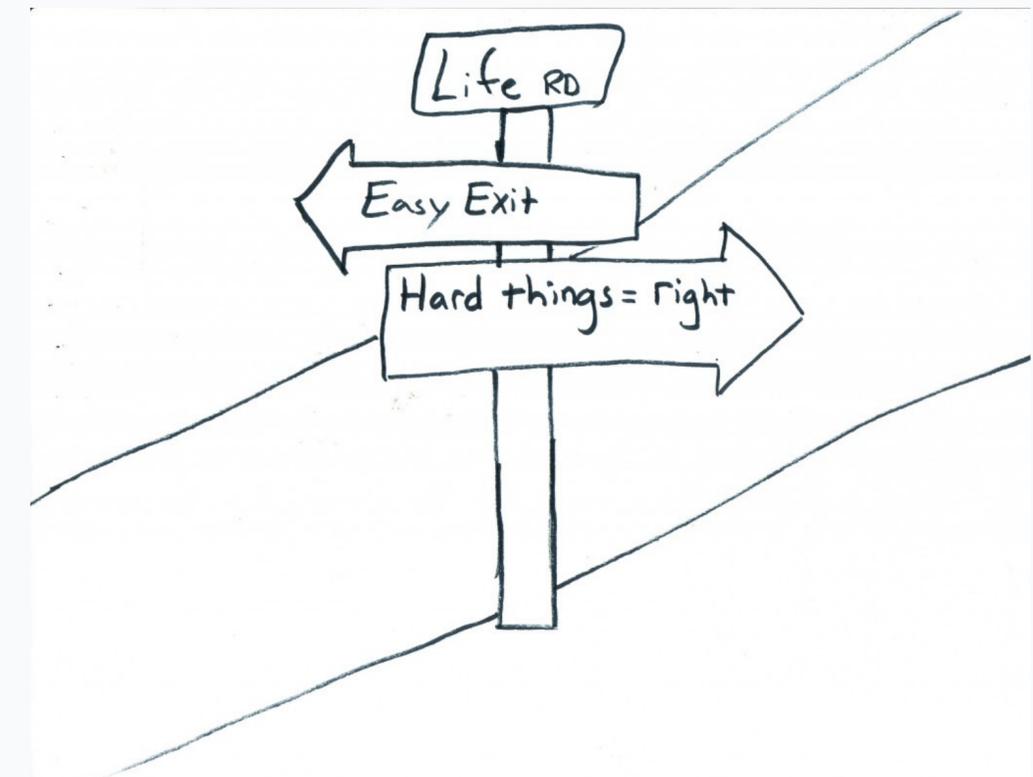
« PRC Company Law will rule them all » .

5 YEARS REDEMPTION TERM

Article 42: the WFOE and JV, established before January 1, 2020, may keep their original organizational forms for **5 years (December 31, 2025)**.

- Possible to change it within 5 years
- Possible to wait for 5 additional years

Just wait ! Implementation rules are on the way



WFOE - JV - CHINESE COMPANY

Subjects	Under EJV Law	Under CJV Law	Under PRC Company Law WFOE
Highest authority	Board of director	Board of director or Joint Management Committee	Shareholders
Powers and duties of highest authority	All major issues such as change of AOA , increase and decrease of registered capital ,merger or spin-off and dissolution	All major issues such as change of AOA, increase and decrease of registered capital, ,merger or spin-off and dissolution	More detailed than those under the JV Laws
Voting rules for major issues	Unanimous consent of all directors present at a Board meeting	Unanimous consent of all directors or members of the Joint Management Committee present at the meeting	Favorable votes of shareholders holding two-third or more of the voting rights
Number of director	No less than 3 directors	No less than 3 directors or members of the Joint Management Committee	3-13 directors for a Board or one executive director
Quorum	Two-third or more of all directors	Two-third or more of all directors or members of the Joint Management Committee	Free to be agreed by shareholders
Term of director	4 years	No more than 3 years	No more than 3 years
Legal representative	Chairman of the Board	Chairman of the Board or the director of the Joint Management Committee	Chairman of the Board, executive director or general manager

WFOE - JV - CHINESE COMPANY

Impact on corporate governance?

- WFOE: limited

Governed by Company Law since 2006

- JV: huge and in favor of majority shareholder

What about the JV contract ?

HOW TO BE READY?

Priority: to review AOA according to PRC Company Law (AIC withdraw)

- a) highest authority
- b) voting rules for major issues
- c) quorum
- d) share transfer mechanism
- e) dividend distribution

HOW TO BE READY?

Evaluating your bargaining power and considering your core interests

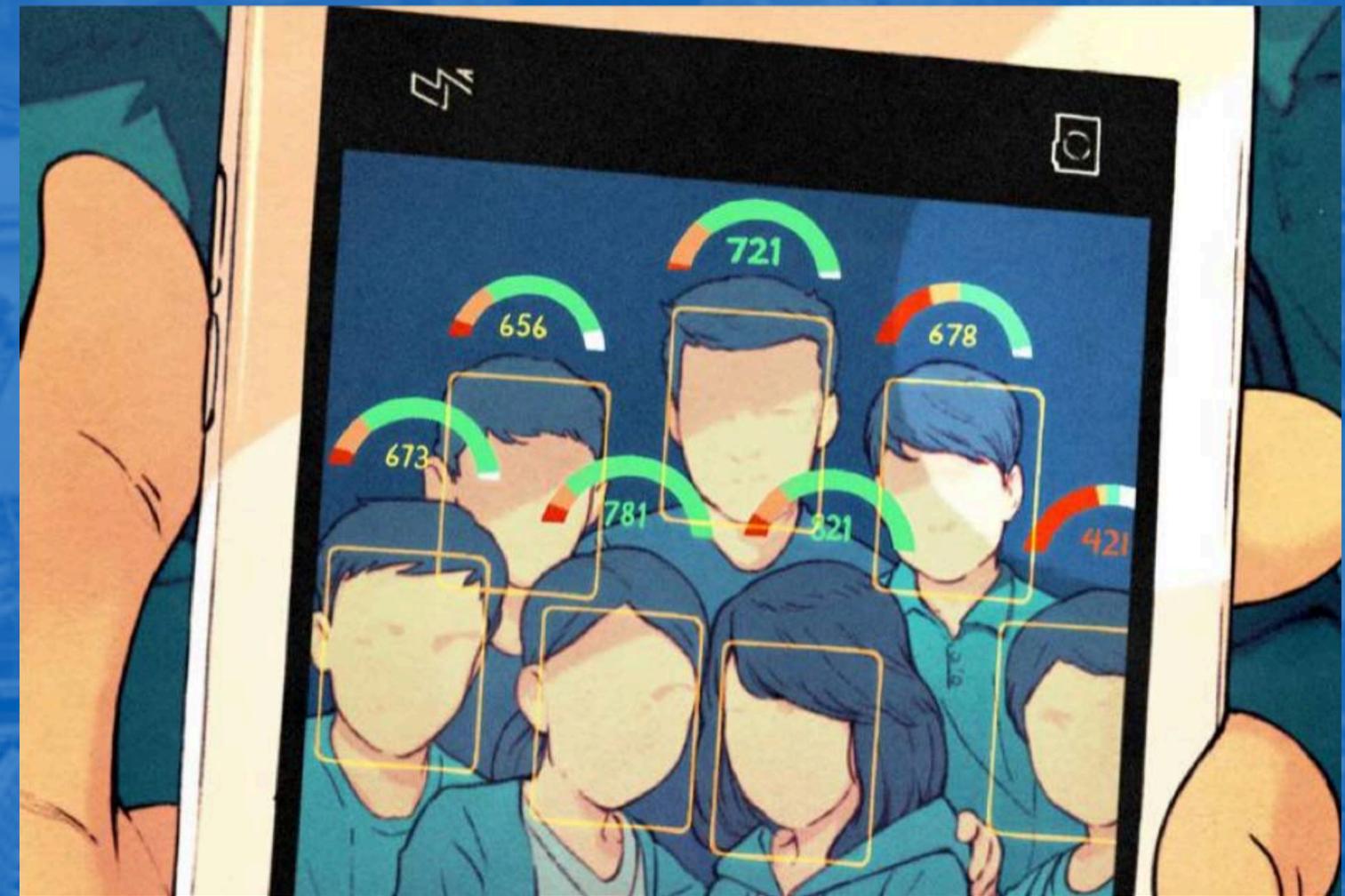
For majority shareholders:

- a) to reduce the restrictions of unanimous consents mechanism;
- b) to take the advantage of voting rights.

For minority shareholder:

- a) to keep the unanimous consents mechanism;
- b) to consider the possibility of buyout of the shares of the other party if needed.

INTERNET+ MONITORING SYSTEM



NEW SOCIAL CREDIT SYSTEM

ALREADY IN PLACE - ATOMIZED

- Rating companies according to compliance with regulations
- Sharing “blacklists” of corporations found to have violated rules (tax office - SS) - Beijing 2015 unique code for recording credit scores & central database of ratings

Beijing plans to combine those ratings into a single database that could be operational current 2020

« The corporate social credit system could mean life or death for individual companies »

Jörg Wuttke, the European chamber’s president.



OTHER EXAMPLES

- SUPREME PEOPLE'S COURT OF CHINA ISSUED ON 2013 A NATIONAL BLACKLIST OF DEBTORS WITH RESTRICTIONS SUCH AS PROHIBITIONS OF TAKING A FLIGHT, HIGH SPEED TRAINS, TRAVELING, ENROLLING CHILDREN IN A PRIVATE SCHOOL, ETC.
- THE CUSTOMS INTERIM MEASURES ON ENTERPRISE CREDIT MANAGEMENT ON 8 OCTOBER 2014 CLASSIFIED COMPANIES INTO THREE CATEGORIES, COMPANIES WITH HIGH SCORE CAN BENEFIT FROM SIMPLIFIED CUSTOM REVIEW WHEREAS COMPANIES WITH LOW SCORE WILL BE SUBJECTED TO STRICTER CONTROLS
- THE STATE ADMINISTRATION FOR INDUSTRY AND COMMERCE ISSUED THE INTERIM ADMINISTRATIVE MEASURES FOR THE LIST OF DISHONEST ENTERPRISES COMMITTING SERIOUS ILLEGALITIES ON 30 DECEMBER 2015 : BLACKLIST OF COMPANIES SANCTIONED TO OPERATIONAL AND LICENSING RESTRICTIONS.
- BEIJING GOVERNMENT ANNOUNCED ON JANUARY 2019 ITS PERSONAL CREDIT SCORE PLAN WITH THE AIM OF ASSIGNING A SCORE TO ALL ITS RESIDENTS AND COMPANIES WITHIN THE NEXT THREE YEARS.



NEW SOCIAL CREDIT SYSTEM

- **State Council June 2019:** to establish a credit record system for « market players » and « institutions » that would reward and punish « acts of good and bad faith » and tie them to a company's registration number
- Early development stage - not fully ready for 2020 - test version in process called the National "Internet+Monitoring" System
- Aims to improve enforcement
- 3 parts: a master database, a blacklisting system and a punishment/reward system
- **Areas :** safety to e-commerce, cybersecurity, labour law, tax law, national security... / up to 300 specific rules
- **Sanctions:** fines, targeted audits, restricted issuance of government approvals and exclusion from preferential policies and public procurement contracts, heavily distrusted entities



NEW SOCIAL CREDIT SYSTEM

IMPLICATIONS FOR BUSINESSES

- Compliance is the key for subsidiary and foreign investor: No new burden
- Internally collect data and submit them to the government. Authorities will also conduct inspections to gather data, according to the report.
- Right to forget - term / right to rectify / transparency ???
- Unified social credit is not guarantee: State Administration for Market Regulation (anti-monopoly practices and market entity registration) - list for “heavily distrusted” market entities / Ministry of Commerce - « unreliable entities list » OUT
- Trade secret issue - M&A -
- Penalty raising for this working with partners involved with fraudulent activity, including employees in fine



NEW SOCIAL CREDIT SYSTEM

How it is done ?

5 major technology companies involved.

Bidding for the project opened on March 19 and the winning bid was 52.78 millions yuan

- Beijing-based Taiji Computer - leading the consortium
- Huawei - server and cloud infrastructure
- Alibaba's cloud (Sesame Credit rating system): analysis of the ratings and records of companies
- Tencent: analysis work
- VisionVera: video surveillance data



TAIJI
太极



CONCLUSION



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BUSINESS

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CHINESE GOVERNEMENT

GET IN TOUCH



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