



**I. Legal News: PRC Adopted the Export Control Law<sup>1</sup>**

On October 17, 2020, the PRC Export Control Law (the "ECL") was adopted and will take effect on December 1, 2020. This legislation is understood as greatly affecting foreign companies and foreign invested enterprises (the "FIEs") in China due to its intensive coverage and extraterritorial jurisdiction.

The straightforward impacts on FIEs include:

- FIEs need to modify their internal communication mechanism between employees base in China and overseas regarding technology materials;
- Trading FIEs bear more expense to comply with export license requirements;
- Trading FIEs bear more burden to monitor their business partners, suppliers, customers, agents, end-users etc. and check whether they are subject to trade sanction in China;
- FIEs need to streamline the engaged international trade business and spot the compliance duty under PRC ECL for risk management.

We summarize some of the most interesting contents for your reference.

Title	Contents	Compliance Hints
<b>Controlled Items<sup>2</sup></b>	<ul style="list-style-type: none"> <li>• Dual-use items,<sup>3</sup> military products, nuclear materials;</li> <li>• Goods, technologies, services and items that are related to national security and interest, international obligations;</li> <li>• Technology materials and other data that are related to controlled item.</li> </ul>	<ul style="list-style-type: none"> <li>• FIEs engaging cross-border R&amp;D or technology transfer may be regulated by the ECL.</li> </ul>
<b>Controlled Subjects<sup>4</sup></b>	<ul style="list-style-type: none"> <li>• Exporters;</li> <li>• Intermediaries providing agency, freight, delivery, customs declaration, third-party e-commerce trading platform and financial services to illegal exporters;</li> <li>• Importers listed;</li> <li>• End-users listed.</li> </ul>	<ul style="list-style-type: none"> <li>• FIEs engaging in international trade shall strengthen the compliance mechanism and procedures to fulfill its compliance obligations under ECL.</li> <li>• Foreign companies located outside of China may be subject to PRC ECL as well.</li> </ul>
<b>Controlled Activities<sup>5</sup></b>	<ul style="list-style-type: none"> <li>• Cross-border transfer: transferring controlled items from inside to outside of China;</li> <li>• Deemed export: PRC individuals or entities proving controlled items to foreign entities or individuals;</li> <li>• Re-export, transit, transshipment, transportation of controlled items;</li> </ul>	<ul style="list-style-type: none"> <li>• The FIEs may be regulated by ECL by transferring controlled items to foreign parties even <b>within</b> the territory of China.</li> </ul>
<b>Control Measures</b>	<ul style="list-style-type: none"> <li>• Export control list;</li> <li>• Temporary control of items not listed<sup>6</sup></li> <li>• Embargo<sup>7</sup></li> <li>• Catch-all<sup>8</sup></li> <li>• Importer and end-user list<sup>9</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Exporters shall apply for export license when exporting items under export control list, temporary control.<sup>10</sup></li> </ul>
<b>Administrative Liabilities</b>	<ul style="list-style-type: none"> <li>• warning, order to stop illegal activities, confiscation of illegal income, fine, order to suspend business for rectification;</li> <li>• revocation of export license, revocation of export business qualification of related controlled items;</li> <li>• Rejection of its export license application for five years;</li> <li>• persons directly responsible are prohibited from engaging in export business activities (for five years or for life);</li> <li>• bad credit record</li> </ul>	

The ECL raises wide concern by international companies due to the lack of predictable and standardized implementing instructions, and Asiallians will track the forthcoming practices and metrics.

**II. Legal News: PRC Amended the Patent Law<sup>11</sup>**

On October 17, 2020, the PRC Patent Law (the "PL") was amended by the fourth amendment and will come into force as of June 1, 2021. We summarize the most interesting amendments for your reference:

1. The term of design patent is extended from 10 years to 15 years.<sup>12</sup>
2. The scope of protection of design patent is enlarged by embracing **part** of the product, while previously the scope merely included the whole product.<sup>13</sup>
3. Maximum statutory compensation for patent infringement is increased to RMB 5 million from previous RMB 1 million.

**Specifically, the statutory compensation regime is extended from "RMB 10,000 – RMB 1 million" to "RMB 30,000 - RMB 5 million".<sup>14</sup>**

4. For calculating the compensation, the infringer may bear the burden of proof for providing accounting books, etc. to prove the benefit derived by the infringer.

**Specifically, if the accounting books, etc. are mainly in the possession of the infringer, the court can order the infringer to provide such accounting books, etc. to further calculate the compensation. If the infringer refused to provide or provide false materials, the infringer shall bear the adverse consequences and the court may determine the amount of compensation with reference to the right holder's claim and evidence submitted.<sup>15</sup>**

Asiallians will soon issue a comprehensive analysis in the new PRC Patent Law.

**III. Hot Topic: China Opens New Free Trade Zones<sup>16</sup>**

On September 21, 2020, the State Council of People's Republic of China rolled out a policy announcing to establish three new pilot free trade zones (Pilot FTZs) which respectively are the Beijing Pilot FTZ, the Hunan Pilot FTZ, and the Anhui Pilot FTZ, and to expand the Zhejiang Pilot FTZ.

The policy aims to further facilitate trade and investment by promoting diversified and high-level opening-up in China. Generally, the three new Pilot FTZs will implement more robust measures and attempts to effectively cut investment costs and loosen restrictions imposed on trade and investment. Further, the policy is expected to offer more chances for foreign investors.

The policies outline the general plan and are far from practically specific.

We summarize the most catching contents related to three new Pilot FTZs for your reference:

**1. Beijing Pilot FTZ**

<b>Layout</b>	It covers three areas of science-tech innovation, international commerce services and high-end industries, adding up to 119.68 square kilometers.
<b>Goal</b>	It aims to promote the development of the Beijing-Tianjin-Hebei region as a science and technology innovation center with global influence.
<b>Main Measures &amp; Attempts</b>	<ol style="list-style-type: none"> <li>1. Improving the mechanism for foreign investment promotion, project tracking services, and complaints process;</li> <li>2. Carrying out the pilot work of cross-border e-commerce retail import drugs.</li> <li>3. Trying out the negative list management on cross-border service trade.</li> <li>4. Exploring the establishment of fair IP evaluation mechanism, perfecting IP pledge registration system, IP pledge financing risk allocation mechanism, setting up IP trading center, prudently regulating IP securitization.</li> <li>5. Carrying out the pilot work of establishing permanent representative offices for foreign patent agencies.</li> <li>6. Exploring the construction of an IP protection system for patents, copyrights, and trade secrets of digital products.</li> <li>7. Allowing well-known overseas arbitration and dispute settlement institutions to set up agencies.</li> <li>8. Carrying out arbitration on civil and commercial disputes in international business, investment, and supporting the interim measures such as property preservation, evidence preservation, and behavior preservation of Chinese and foreign parties.</li> </ol>

**2. Hunan Pilot FTZ**

<b>Layout</b>	It covers three parts in Changsha, Yueyang and Chenzhou, totals up to 119.76 square kilometers.
<b>Goal</b>	It aims to promote the Central China region and the corridor between the Yangtze River Economic Belt and the Greater Bay area in Southern China as a cluster of world-class advanced manufacturing industries.
<b>Main Measures &amp; Attempts</b>	<ol style="list-style-type: none"> <li>1. Promoting the pilot reform of electric and further reducing the electric cost of enterprises.</li> <li>2. Attracting multinational companies to set up regional headquarters in the region.</li> <li>3. Supporting the establishment of an international commercial arbitration platform.</li> <li>4. Simplifying the temporary registration and verification procedures for overseas food exhibits.</li> </ol>

**3. Anhui Pilot FTZ**

<b>Layout</b>	It covers three areas in Hefei, Wuhu and Bengbu, which aggregate 119.86 square kilometers.
<b>Goal</b>	It aims to push forward the construction of the Belt and Road Initiative and the integrated development of the Yangtze River Economic Belt, especially focus on high-quality manufacturing.
<b>Main Measures &amp; Attempts</b>	<ol style="list-style-type: none"> <li>1. Establishing the whole process service system for foreign investment and implementing the guarantee service mechanism for major foreign investment projects.</li> <li>2. Improving the complaint mechanism for foreign investors and protect their legitimate rights and interests.</li> <li>3. Expanding the functions and coverage of China-Europe train (Hefei).</li> </ol>

**IV. Hot Topic: China Unveils Plan to Pilot Reforms in Shenzhen on Building Socialist Demonstration Area<sup>18</sup>**

On October 11, 2020, the State Council of People's Republic of China rolled out a plan on implementing pilot reforms in Shenzhen to build the city into a demonstration area of socialism with Chinese characteristics in the next five years. In short, the plan is understood as a remarkable step to advance Shenzhen's opening-up.

We summarize the contents might interest foreign investors for your reference:

1. Relaxing restrictions on sectors including energy, telecommunication, public service, transport and education based on the nationwide negative list.
2. Further loosening limits on foreign investment in cutting-edge technologies.
3. Piloting the legal protection of new intellectual property rights, especially, compensation system for IP infringements.
4. Encouraging foreign institutions to set up securities and fund management companies.
5. Helping foreign talent to obtain Chinese permanent residence permits and attend professional qualification examinations.
6. Improving the foreign exchange management system.

Asiallians will keep a close eye on the practical implementation and operation measures and keep you posted timely.

Should you have any inquiry about the policies and laws, please contact us at [asiallians@asiallians.com](mailto:asiallians@asiallians.com). As always, Asiallians remains at your service and our teams are currently mobilized in all our offices in Mainland China, in Hong Kong and in Taipei.

1. <http://www.npc.gov.cn/npc/c30834/202010/cf4e0455f6424a38b5aef8001712c43.shtml>

2. Article 2 of ECL

3. "Dual-use items" refer to the items possessing civil and military applications.

4. Article 12, 17, 18, 19, 20 of ECL

5. Article 2, 45 of ECL

6. The State Council, the Central Military Commission and other relevant PRC authorities (the "PRC authorities") timely issue export control list and adopt temporary control of items not listed. Article 9 of the ECL

7. Article 10 of the ECL

8. Article 12 of the ECL

9. The PRC authorities may issue importer and end-user list to protect national interest or regulate the end use. Article 18 of the ECL

10. Article 12 of the ECL

11. [http://www.xinhuanet.com/2020-10/18/c\\_1126624476.htm](http://www.xinhuanet.com/2020-10/18/c_1126624476.htm)

12. Article 42 of the PL

13. Article 2 of the PL

14. Article 71 paragraph 1 and 2 of the PL

15. Article 71 paragraph 4 of the PL

16. [http://www.gov.cn/zhengce/content/2020-09/21/content\\_5544926.htm](http://www.gov.cn/zhengce/content/2020-09/21/content_5544926.htm)

17. With the increase the total number of Pilot FTZs in China is 21.

18. [http://www.gov.cn/zhengce/2020-10/11/content\\_5550408.htm](http://www.gov.cn/zhengce/2020-10/11/content_5550408.htm)

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