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# REGIONAL ROUND-UP 2020: CHINA



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# Introduction



Throughout the year, we have been keeping you up to date on noteworthy developments across the region with our Regional Round-up Publications. As we enter 2021, we are pleased to share with you our inaugural year-in-review edition of the Regional Round-up for our Regional Offices in the Rajah & Tann Asia network.

In each jurisdiction, we recount the milestones in the path that has been travelled in 2020, as well as consider the terrain of the road that lies ahead in 2021. In the "Looking Back: 2020" section, we take stock of the past year and highlight the key legal and regulatory developments affecting each jurisdiction in 2020. In the "Gazing Into: 2021" section, we look ahead to some key areas of development that you should take note of in the year to come, referencing the legal and business trends shaping up potential legislative and regulatory changes in each jurisdiction.

We hope that this year-in-review edition of the Regional Round-up provide some perspective and insight into the legal landscape of the jurisdictions across the region. As always, please feel free to contact our lawyers in our Regional Offices if you have any queries or for further discussions.

Please click on the links below to access the full collection of our country-specific Regional Round-up 2020:

- [Cambodia](#)
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## Looking Back: 2020

2020 has been a very unusual year for China and the world. During the first quarter of 2020, after being struck by, and then having gradually recovered from, the **COVID-19 pandemic**, the central government of China and various ministries at the central governmental level have released temporary policies, reliefs and guidelines to support the enterprises affected by the pandemic. The local governments have also issued temporary policies and reliefs in accordance with the guidelines issued by the central government. These measures are aimed at helping enterprises - especially small- and medium-sized enterprises ("**SMEs**") - relieve the burden caused by the pandemic and overcome the difficulties faced during this period and resume normal production and operations as soon as possible.

On the other hand, with the growing tensions between China and the United States (as well as certain other foreign countries) over trade and technology in 2020, China has promulgated and/or amended various regulations and/or policies, which signal China's intention to enhance the **protection of its emerging technologies and intellectual properties** for reasons of both national security and strategic importance. In addition to the **PRC Foreign Investment Law** and its Implementation Regulation, both of which have come into effect since 1 January 2020, other regulations and/or policies that were introduced include, among others, the Amendment to Copyright Law, the Amendment to Patent Law, the Amendment to Antitrust Law (draft for public comments), the promulgation of **Data Security Law** (draft for public comments), the promulgation of Personal Data Protection Law (draft for public comments), the promulgation of **Regulation on Unreliable Entity List**, and the adjustments of **Catalogue of Technologies Prohibited or Restricted from Export**.

In addition, the most important change in the legal landscape in 2020 has definitely been the promulgation of the **PRC Civil Code**, which was adopted by the 13<sup>th</sup> National People's Congress and has come into effect on 1 January 2021. The PRC Civil Code consists of 1,260 articles in seven parts, including general provisions, property, contracts, personality rights, marriage and family, inheritance, tort liability, and supplementary provisions. The PRC Supreme Court issued relevant judicial interpretations for the Civil Code on 30 December 2020 and 31 December 2020 and it may be expected that more judicial interpretations and regulations will be issued. The Civil Code is the most extensive legislative document in China to date, which symbolises a milestone in the development of China's legal system.



*Summaries of the key developments relating to the above areas are provided below.*

### **PRC Foreign Investment Law and its Implementation Regulation - A New Era of Foreign Investment Regulatory Regime in China**

Further to the new PRC Foreign Investment Law ("**Foreign Investment Law**") which was passed on 15 March 2019, the State Council of China promulgated the Regulation on Implementation of the Foreign Investment Law ("**Implementation Regulation**") on 31 December 2019, all of which have come into effect since 1 January 2020. The Foreign Investment Law and the Implementation Regulation have marked a milestone change of China's foreign investment regime and a new era of foreign investment in China since the first law on foreign investment was issued in 1979. Click [here](#) and [here](#) for more information.

### **COVID-19 - Measures to Support Enterprises Affected by COVID-19 Pandemic in China**

China has released a series of control and support measures to help enterprises (especially SMEs) relieve the burden caused by the COVID-19 pandemic and overcome the difficulties during and after the pandemic. Click [here](#) for more information.

### **PRC Civil Code**

The PRC Civil Code, which was adopted by the 13<sup>th</sup> National People's Congress, has come into effect on 1 January 2021. It is the most extensive legislative document in China to date, which symbolises a milestone in the development of China's legal system. Click [here](#) for more information.

### **Protection Measures of Technologies and other IP Rights for National Security**

Several measures to protect technologies and other IP rights were introduced.

The amendment to the Catalogue of Technologies Prohibited or Restricted from Export of the PRC was issued on 28 August 2020. This is the first revision of the Catalogue in more than a decade, which was last updated in 2008. Click [here](#) for more details.

On 3 July 2020, the first draft of the Data Security Law for public comments was published following its first reading by the Standing Committee of the National People's Congress. Click [here](#) for more details.

On 19 September 2020, the Ministry of Commerce published the Regulations on Unreliable Entity List, which took effect on the same day. Click [here](#) for more details.

## Gazing Into: 2021

Given the status of the pandemic and the current geopolitical situations of the world, 2021 will continue to be a significant year. Although facing various challenges, China is still expected to continue with its market-based reform by implementing its **first Civil Code** and the **new Foreign Investment Law**, and **further eliminating foreign investment restrictions** to meet its commitments under the **Regional Comprehensive Economic Partnership Agreement**.

Five judicial interpretations on the Civil Code were released by the PRC Supreme Court on 30 December 2020 and 31 December 2020, and all of them have taken effect from 1 January 2021. The 2020 versions of the Negative Lists for Foreign Investment and the Catalogue of Industries for Encouraged Foreign Investment were released in June 2020 and December 2020, respectively.



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A number of implementation rules and regulations in relation to the Civil Code and foreign investment are expected to come in 2021.

In addition, the following key trends and/or developments are to be noted:

- facilitation of **foreign investment**;
- increased regulatory enforcement of **export control** and tightened **national security review of foreign investment**;
- **reshaping of fragmented legal framework for data protection**; and
- addressing **extraterritorial infringements**.

Summaries of some of the developments leading to the trends highlighted above are provided below.

### China-EU Comprehensive Investment Agreement

On 30 December 2020, China and the European Union ("EU") concluded the negotiation of the China-EU Comprehensive Investment Agreement ("CIA"). Although there may be a long process before the CIA is ratified by the respective parties, it shows China's intention to continue opening its markets.

### Export Control and National Security Review of Foreign Investment

With China facing escalating export control and national security review by certain other countries, 2021 is likely to see an increase in regulatory enforcement of export control following the introduction of China's first comprehensive Export Control Law, the promulgation of the Regulations on Unreliable Entity List, and the Amendment to the Catalogue of Technologies Prohibited or Restricted from Export of the PRC coming into force in 2020. 2021 is also likely to see a tightened national security review of foreign investment in those important sectors following the coming into operation of the

Measures for Security Review of Foreign Investment on 18 January 2021.

### **Reshaping the Current Legal Framework for Data Protection**

In addition, it is expected that the key draft data protection regulations such as draft Data Security Law and the draft Personal Information Protection Law may be finalised in 2021. Together with the PRC Cybersecurity Law, these rules may reshape the existing fragmented legal framework for data protection in China. It is expected that protection on personal data may be strengthened and be more in line with the General Data Protection Regulation (GDPR), and that China may impose burdensome data export restrictions and substantially increase the cost of non-compliance.

### **Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures**

On 9 January 2021, the PRC Ministry of Commerce issued its No. 1 order of 2021 named the Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures, which came into effect on the date of its promulgation. This is the first time that China has issued such type of rules. How these rules may be applied in practice is still uncertain; however, it demonstrates China's intention of providing a legal channel of redress for Chinese enterprises in the event of extraterritorial infringement by improper laws, and China's determination to maintain its national sovereignty and security.

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