



## PRESS RELEASE

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**Top Multinational and China SOE In-House Lawyers and Heavyweight Chinese and International Law Firms Join Forces with LegalTech Start-up docQbot and The In-House Community™ to Help Create New Bilingual Standard Templates for China's New Foreign Investment Regime**

Senior in-house lawyers from the law departments of Sinopec, China Resources, Accenture Greater China and Bayer China have teamed up with China-based lawyers from Herbert Smith Freehills, Latham & Watkins and O'Melveny & Myers have teamed up with top partners from Red Circle law firms King & Wood Mallesons and Zhong Lun to participate in the preparation of a suite of updated bilingual standard templates that comply with the requirements of China's new Foreign Investment Law (FIL) that will take effect on 1 January 2020.

The template initiative is being spearheaded by Robert Lewis, co-founder of China-based legal-tech start-up docQbot, which produces fully automated bilingual contracts for the China market. The In-House Community, a platform comprised of more than 20,000 individual members with responsibility for legal and compliance issues in the Asia-MENA region, is co-sponsoring the new FIL template initiative with docQbot.

### *Background of New Foreign Investment Law*

To date, foreign investment in China has been governed principally by a set of three laws. In July 1979, the People's Republic of China promulgated the Equity Joint Venture Law (EJV Law). This was China's first law on foreign investment, and was one of the earliest steps in China's reform and opening up. This was followed by the adoption of the Wholly Foreign-Owned Enterprise Law (WFOE Law) in 1986 and the Cooperative Joint Venture Law (CJV Law) in 1988.

In March of this year, almost 40 years after the adoption of the EJV Law, China passed the new FIL, replacing the EJV Law, the CJV Law and the WFOE Law, all of which will be repealed as of the end of this year.

While the FIL was in large part passed to address several key issues in the context of the ongoing Sino-US trade negotiations, for lawyers doing inbound investment deals in China, the most important legacy of the FIL will be that it represents a fundamental change in the legal basis for foreign-invested enterprises (FIEs) in China.

Going forward all new FIEs will be set up under and governed by the Company Law, and all 500,000-plus existing FIEs (almost 375,000 of which are wholly foreign-owned

enterprises or WFOEs) will need to convert into limited liability companies (LLCs) or other permitted entity forms under the Company Law by the end of 2024.

This will introduce a dramatic shift in the corporate governance for FIEs, and will also change the nature of the corporate documentation for FIEs dramatically, more especially for joint ventures. Consequently, the adoption of the FIL is predicted to give rise to the wholesale renegotiation of existing joint venture contracts for the more than 125,000 Sino-foreign joint venture companies currently in existence.

The joint venture contracts which have been in use since the opening up of China to foreign investment had been drafted to reflect the requirements set out in the EJV Law, many of which reflected government policies, administrative procedures and market conditions which no longer apply. Under the Company Law, Sino-foreign joint ventures will no longer be required to use the traditional legacy joint venture contract and under the Company Law will now have greater flexibility to adopt a shareholders' agreement or a joint venture agreement that is more consistent with international practice.

docQbot's Robert Lewis, who has worked in China for top US, UK and Chinese law firms for more than 25 years, noted, *"The absence of a set of standard foreign investment templates conforming to the requirements of the Company Law threatened to create a free-for-all in the market, which would result in the creation of a proliferation of multiple competing forms, some excellent, some substandard, and all mutually inconsistent. This in turn would engender a battle of the forms on every deal, which would prove to massively inefficient."*

#### *Formation of the working group*

Lewis proposed to create a working group of senior lawyers from leading Chinese and international law firms as well as in-house law departments of top multinational and domestic companies. He approached the In-House Community, which was keen to support this initiative.

Patrick Dransfield, Director of the In-House Community commented, *"When Robert invited us to take a lead role in the formation of the new Foreign Investment Law working group, we immediately agreed as it felt very much a part of our DNA and fitted the platform we deliver. Our mission at the In-House Community is to empower in-house counsel and provide a community of practice. Helping to assemble a group of expert lawyers and business people from diverse backgrounds and perspectives to create a dynamic think-tank to provide in-put regarding the drafting of new templates to meet the requirements of this new and crucial law that will fundamentally change Chinese / Foreign relations positively was very much in line with our mission."*

Lewis added, *"We were very pleased with the quick affirmative responses to the invitations extended and with the final composition of the expert committee. [See box.] All of the core members of the expert committee are highly experienced in both inbound and outbound investment projects. Collectively, the members of the group have worked on literally thousands of joint venture and WFOE projects in China over the last three decades. Our work also benefited greatly from the fact that we have had a good balance between Chinese and foreign lawyers, in-house lawyers and law firm lawyers."*

## **Key Members of the New FIL Forms Expert Committee**

### **Co-Sponsors**

docQbot: Robert Lewis (Chief Expert), Adam Channer (VP Product Development), Sara Yu (VP Product Development & Strategic Partnerships), Zhou Zimin (Senior Manager Product Development)

In-House Community: Patrick Dransfield (Co-director)

### **Law Firm Participants**

Herbert Smith Freehills: Nanda Lau (Partner), Angela Zhao (Senior Associate), Alizee Zheng (Senior Associate)

King & Wood Mallesons: Xiong Jin (International Partner) Luo Hai (Foreign Legal Consultant)

Latham & Watkins: Frank Sun (Partner)

O'Melveny & Myers: Walker Wallace (Managing Partner, Shanghai office)

Zhong Lun Law Firm: Scott Yu (Partner), Scott Guan (Partner), Rachel Li (Partner), Aaron Yu (Partner)

### **Law Dept Participants**

Accenture, Greater China: Andy See (former Managing Director, Asia Pacific), Yan Zhiyong (Senior Counsel, Greater China)

Bayer (China): Max Zhang (Head of Law Corporate), Zhang Xi (Head of LPC (VP))

China Resources: Li Ge (Deputy Group General Counsel), Yvonne Yao, (Senior Group Legal Counsel)

Sinopec Group: Li Chi (Legal Counsel, Contract Management Division)

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### *The Work Process and the Work Product*

The expert committee conducted its principal work over a period of three months, from June to August of this year. In all, more than 1,000 hours of professional time have been invested by the members of the Expert Committee, principally by the docQbot team, which took the laboring oar.

The suite of sample templates being produced by the working group included a greenfield joint venture agreement and articles of association for a Sino-foreign joint venture as well as set of articles of association for a greenfield WFOE. All of the templates are being produced in both English and Chinese and are accompanied by full annotations. In total, the bilingual templates and annotations will comprise almost 250 pages of content.

This project involved a multi-stage process.

1. The initial joint venture template drafts were developed on an international base incorporating best practices drawn from more than a dozen publicly-available templates from multiple jurisdictions around the world.
2. Various legacy provisions in traditional Sino-foreign joint venture contracts which were required under the EJV Law but which were no longer required under the Company Law, were intentionally omitted.
3. The corporate governance provisions required under the Company Law were then layered in. This was a pains-taking exercise as scores of related changes had to be made throughout the base template.
4. Members of the expert committee then compared these international templates against best practices in connection with both legacy Sino-foreign joint venture contracts as well as representative shareholder agreement templates for domestic Chinese companies in order to ensure that these new JV templates are consistent with local market expectations as well.
5. The templates then passed through multiple rounds of drafts and comments in order to achieve, where possible, a consensus view of the expert committee members.
6. Divergent views on various topics were reflected in the annotations to present alternative approaches that ultimately were not incorporated into the sample templates.

#### *Next steps*

The new FIL sample templates will make their debut at events hosted by the In-House Community to be held in Hong Kong on October 3 and in Shanghai on October 30.

In addition, docQbot is working with Law Press China to publish these materials and other related content in book form prior to year end. These materials will be published in English and Chinese so will be a useful reference for both Chinese and foreign legal professionals and investors.

Electronic copies of the sample templates in English and Chinese will be made available on the docQbot website after October 1st. Access to and use of these sample templates will be subject to standard conditions. See [www.docqbot.com/en](http://www.docqbot.com/en) for more details.

Separately, fully automated versions of these and other related FIL-compliant bilingual templates will be available to subscribers on the docQbot website starting from early October. These automated templates will incorporate almost all of the alternative clauses which are referenced in the annotations but not included in the sample templates.

Using the docQbot platform, legal practitioners inside and outside of China will be able to go online, answer some basic questions, and in 15 minutes or less produce a highly customized bilingual draft joint venture agreement. One base template will be able to produce trillions of unique iterations just based on the user's online responses.

The implementation regulations for the new FIL are expected to be issued prior to the end of the year, ahead of the FIL taking effect. The expert committee will update the materials to reflect the new guidance to be included in the implementation regulations.

### **Comments from Members of the Expert Committee**

*"During the 5-year transition period from 1 January 2020, Sino-foreign joint ventures are required to reform its corporate governance structure (including decision-making mechanism, voting, quorum, management nomination and share transfer) in order to comply with the PRC Company Law requirements. This would likely open the gate for re-negotiation between the joint venture partners and have a major impact on the dynamics of their relationship. Joint venture partners should weigh their positions in the joint venture and get themselves ready for the changing landscape."* Nanda Lau, Partner, Herbert Smith Freehills, Shanghai.

*"We expect foreign investors will welcome many of the innovations of the FIL, including establishment of foreign-invested enterprises under the structure and governance provisions of the Company Law instead of under separate laws, as well as the FIL's enumeration of certain rights, protections, and access to be enjoyed by foreign-invested entities, including equal opportunity to participate in the formulation of standards (Article 15), equal treatment in government procurement for their products which are produced within China (Article 16), access according to law to China's capital markets (Article 17), IP protection (Article 22), and others. Undoubtedly, there will be great interest among foreign investors in seeing how such provisions will be given full effect as China continues to work to promote foreign investment and "create a stable, transparent, and foreseeable investment environment" (Article 3)." Walker Wallace, Managing Partner, O'Melveny & Myers, Shanghai*

*"Sino-foreign joint ventures will become a much more attractive option under the FIL, allowing foreign investors to tap into the burgeoning Chinese market by partnering with well-established Chinese partners. Thanks to removal of many prior rigid restrictions, foreign investors will be able to use more sophisticated offshore joint venture terms and techniques which they are familiar (and comfortable) with." Jin Xiong, International Partner, King & Wood Mallesons, Beijing*

*"In addition to an improved corporate governance framework under the Company Law, the transition from the old FDI laws will also do away with the current "thin capital" rules and should also open up downstream investments by FIEs which have continued to be artificially constrained as a practical matter under the legacy legal regime. This will allow a significant opportunity for foreign investors to regularize their capital and corporate structures for their entities in China." Scott Yu, Partner, Zhong Lun, Beijing*

*"For me, participating on this new FIL templates project was like going back in time to when I was at Clifford Chance in Hong Kong doing a lot of FDI work in the mid 90's. At that time, we actually used the Shareholders Agreement template from Clifford Chance's London office to convert it into a Sino-Foreign Equity Joint Venture Contract*

*based on the law at the time as well as the very short template from the then Ministry of Foreign Trade and Economic Cooperation. I am confident that the work of the Expert Committee will spearhead the standardization of the JVA template and Articles of Association so that all the players (whether foreign investors, local Chinese JV partners, international law firms or local Chinese law firms) will have access to international quality templates that are FIL-compliant, that set out the rights and obligations of the JV parties clearly, comprehensive and fairly. This will drive up the quality whilst driving down the costs and time for all.* “ Andy See, former Managing Director, Accenture Asia Pacific Geography Compliance, Operations, Regulatory & Ethics [Andy left Accenture at the end of August 2019, but because the core work of the expert committee had concluded by that point, Andy is still listed above in his former capacity at Accenture, where he was during the applicable periods of time.]

*“Having access to new bilingual joint venture templates that conform to the Company Law while also incorporating international best practices will be extremely valuable in connection with new Sino-foreign joint ventures as well as with conversion of existing joint ventures. We hope that these templates will achieve a high level of acceptance in the market in order to reduce time and costs.”* Li Chi, Legal Counsel in the Contract Management Division of the law department of Sinopec Group

*“It will be very valuable to have all of the Company Law corporate governance provisions already integrated into the base bilingual templates as that would then provide a roadmap for amendment of joint venture contracts and articles of association for existing FIEs.”* Max Zhang of Bayer China

*“The FIL will have a profound impact on foreign investors in China. Many of our clients are already preparing for this change. We believe that what the Expert Committee has been able to produce will prove to be extremely useful for the entire legal community in China. It is a great honor and privilege to be part of this important initiative.”* Angela Zhao, Senior Associate with Herbert Smith Freehills in Shanghai

*“We have had an unprecedented number of responses from clients to our updates on the new FIL, and many have already instructed us to help guide them through the practical implications. We anticipate that once the FIL implementation regulations are issued, there will be another significant uptick in requests from our clients for FIL-related guidance. This is a major reason that we were so keen to join this initiative. We wanted to be on the cutting edge of all the practical aspects of this new change in law.”* Scott Guan, Partner in the Shanghai office of Zhong Lun

*“This has been a very worthwhile project. I think that the work of the expert committee will result in a product that is truly valuable to the Chinese legal community on many different levels. We were pleased to be invited and happy to make a contribution.”* Walker Wallace, Managing Partner of the Shanghai office of O’Melveny & Myers

*“The detailed annotations to the templates can be used as a valuable reference guide to the applicable provisions of the Company Law, while at the same time also provide practical guidance on alternative clauses. We will be able to use these annotations as a guide for possible alternative positions we can take in negotiations.”* Zhiyong Yan, Senior Counsel for Accenture Greater China,

*“It is my hope that these templates can be adopted by relevant government departments and lawyers associations as a semi-official or at least recommended set of templates in order to encourage broad acceptance and facilitate negotiations of foreign investment projects going forward.”* Xi Zhang, VP and Head of LPC for Bayer China

*“Mr. Lewis made a presentation to a group of in-house counsel from all of the first-tier subsidiaries of China Resources a few months back, and as part of that presentation he mentioned the work the expert committee was doing on the new FIL forms project. After his presentation I sought him out to ask how China Resources could join the expert committee, explaining that since China Resources is headquartered in Hong Kong, all of its entities in China are WFOEs or joint ventures. Moreover, I had a personal interest in this initiative since I had previously worked for the Ministry of Commerce and had been responsible in the early days for review and approval of joint venture contracts, so I was keen to participate in the development of the new templates for this new era of FDI in China. We were pleased to participate in this ground-breaking project.”* Li Ge, Deputy Group General Counsel for China Resources

### **About docQbot**

docQbot is China's first online/offline cross-border bilingual cloud-based AI contract service platform.

docQbot's mission is to help corporations and professionals by providing legal forms and content that comply with international standards and domestic practices, as well as business and legal support in domestic and international transactions, and doing it all more efficiently and at a lower cost.

Using docQbot's automated contract drafting tool (powered by HotDocs), just by answering a few commercially-focused questions, both non-lawyers and lawyers alike can draft a highly-customized contract in English and/or Chinese, usually in just 15 minutes or less! In addition, docQbot's automated contract review tool uses LegalSifter's leading natural language processing and machine learning AI technology to help both non-lawyers and lawyers to review China-related English-language international trade contracts. And if you need offline legal assistance, docQbot can refer you to a qualified lawyer in more than 100 countries around the world and across all key regions of China.

For more information on docQbot please go to [www.docqbot.com](http://www.docqbot.com).

## **About In-House Community™**

The In-House Community is a mutually supportive community of in-house legal and compliance professionals helping each other meet their ethical, legal and business commitments and responsibilities within their organizations. The In-House Community is comprised of 20,000+ individual members with a responsibility for legal and compliance issues in the Asia-MENA region, who are engaged via 17 annual events in 13 jurisdictions with over 3,000 attendees each year, magazine and e-updates for the In-House Community and those who serve them, and articles, updates, news and webinars at the online home of the In-House Community.

The mission of the In-House Community is to empower in-house counsel to more easily fulfill their ethical, legal, compliance and business responsibilities and improve legal & ethical compliance for the benefit of all. The In-House Community does this by providing a variety of platforms for professional discourse, building supporting relationships and sharing knowledge for the benefit of anyone fulfilling an in-house legal or compliance function.

For more on the community, please visit <https://www.inhousecommunity.com/>.

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### **For more information please contact:**

#### docQbot

Joanna Zhang (Director of Marketing)

[zhangying@docqbot.com](mailto:zhangying@docqbot.com)

#### In-House Community

Yvette Tan (Development Manager)

[yvette.tan@inhousecommunity.com](mailto:yvette.tan@inhousecommunity.com)

#### Herbert Smith Freehills LLP

Holly Zhou (Business Development Manager)

[holly.zhou@hsf.com](mailto:holly.zhou@hsf.com)

#### King & Wood Mallesons

Xiong Jin (International Partner)

[xiongjin@cn.kwm.com](mailto:xiongjin@cn.kwm.com)

#### Latham & Watkins LLP

Alex Shao (Business Development Manager)

[alex.shao@lw.com](mailto:alex.shao@lw.com)

#### O'Melveny & Myers LLP

Chris Schob (Director of Asia Practice Management & Business Development)

[cschob@omm.com](mailto:cschob@omm.com)

#### Zhong Lun Law Firm

Scott Guan (Partner)

[scottguan@zhonglun.com](mailto:scottguan@zhonglun.com)

Scott Yu (Partner)

[scottyu@zhonglun.com](mailto:scottyu@zhonglun.com)