



Now playing: New film law impacts the Chinese silver screen

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Introduction

On November 7, 2016, China's highest legislative body, the Standing Committee of the National People's Congress, passed the *Film Industry Promotion Law (Film Law)*. The Film Law takes effect on March 1, 2017.

The Film Law is the first comprehensive "law" in China targeting the film industry specifically and is more than 13 years in the making. Up until now, the Chinese film industry has been governed by a series of regulations and rules, but no top-level "law" in the Chinese legislative hierarchy providing an overall regime to govern the film industry. Passage of a top-level "law" now indicates that the highest levels of the Chinese government recognize the importance of guiding and stabilizing China's burgeoning film industry. Demonstrating the high-level and broad intentions of the Film Law, the Film Law requires the national and local governments to begin taking film and cinema development into account when devising formal economic and social development plans.

Broadly speaking, the Film Law is being well-received by a diverse set of business executives, Chinese film studios, academics and legislators. While no law is perfect from inception, and questions remain about how the Film Law will be interpreted and implemented, participants in the Chinese film industry are happy to see comprehensive legal guidance over the industry.

While the Film Law is a high-level statutory regime, the intention is for incremental change, not a radical overhaul, to China's film industry. The existing systems of most government approvals, censorship, and market access by foreign participants are still in place. However, the Film Law makes some tweaks to the existing rules and provides for some measures to further encourage growth in the film industry. In this note, we highlight some of the key aspects of the Film Law.

Does the Film Law apply to your film?

The Film Law's scope applies to the development, production, distribution and screening of films in China which are to be released in feature format, whether in fixed places like theaters and cinemas or on portable projection equipment.

In other words, the Film Law applies to the whole production and distribution cycle for domestically produced films intended for the big screen, whether released in China or to be exported.

As before, big screen films that will also be shown on the Internet or TV will continue to also be subject to specific regulations surrounding Internet or TV broadcasting if they are to be shown via such media.

However, the Film Law does not apply to made-for-Internet and made-for-TV films, and instead only the relevant Internet and/or TV specific regulations would apply. While the actual implementation of the Film Law may result differently, the lack of regulation over made-for-TV and made-for-Internet has been carefully watched by industry experts and Chinese film companies. In only the last three years, the number of made-for-Internet films has exploded in China, with films of variable quality and, at times, content that might otherwise be censored if the films had been made for theatrical or big screen distribution. The relative lack of censorship over made-for-Internet films caused government representatives to lobby for made-for-Internet films to be regulated on the same, more stringent basis as theatrical or big screen films. During the legislative process, equal censorship oversight over made-for-Internet films was proposed at the 3rd reading of the Film Law during the legislative process, but such a measure was not adopted in the Film Law's final text.

Initial studio / per-film production permitting to be abolished

Notably, the Film Law removes the initial permission step that Chinese companies previously had to satisfy before they could engage in film production. Before the Film Law, Chinese companies had to be approved as a "studio", or be permitted on a per-film basis, before they could engage in making films.

By removing this initial qualification requirement, the government hopes that more Chinese companies will be able to enter the film production business, and faster. This change will primarily benefit Chinese companies, but may also help foreign companies looking to engage in Sino-Foreign co-productions, as foreign companies may now have a greater range of Chinese partners to choose from.

Another potential effect will be increased use of special purpose vehicles for making films (e.g. single-purpose corporations), now that an entity itself does not need special qualifications for market entry. We expect this to be a welcome development from the perspective of structuring film finance transactions, particularly for those parties wishing to follow corporate and financing structure models commonly used in Hollywood.

Potentially decreased market access to foreign companies and personnel in co-productions

Foreign participation in the Chinese film industry is addressed by the Film Law. It is also addressed in the existing *Catalogue of Industries for Guiding Foreign Investment (2015)*, which limits foreign participation in movie production to Sino-foreign cooperative joint venture operations only (often referred to as "**Co-Productions**"); the *Administrative Provisions for Sino-Foreign Co-production of Films*, which sets the parameters for Sino-foreign Co-Productions; the *Film Administrative Regulations*, which addresses

the import of foreign films for theatres or the big screen; and the *Administrative Regulations on Radio and Television*, which addresses the import of foreign films for TV; among others.

The Film Law does not overhaul existing regulation on foreign participation in the Chinese film industry, but it may have the effect of raising the bar on which foreign companies and personnel have the right to cooperate with Chinese companies and produce films in China. Specifically, the Film Law states that foreign companies may not engage in local film production if they have ever "engaged in activities that damage China's national dignity, honor or interests; threaten social stability; or hurt the nation's people's feelings."

This new rule for foreign companies suggests that foreign studios, directors, and actors/actresses may have to be more careful in all their projects and public statements, not just in their China-specific projects, in order to ensure they have the opportunity to work on Chinese productions. This new rule shows an even greater sensitivity and desire by the Chinese government to control public expression about China, even outside the country's borders.

Domestic treatment of Sino-foreign co-produced films

The Film Law provides that Sino-foreign co-produced films shall be regarded as though they were domestically produced, provided that certain ratios for creative input, investment and profit distribution are met.

Requirements for creative input, investment and profit distribution by both the Chinese producer and foreign producer already existed before the Film Law, and it is already the case that Sino-foreign co-produced films are treated like domestic films in regards to import quotas and screen-time. However, the Film Law indicates that Sino-Foreign Co-Productions will be treated equally with domestic productions in all regards now, including, for example, in

copyright approval processes. What remains unclear, however, is whether this equal treatment of Co-Productions and domestic films requires a different ratio of creative input, investment and profit distribution than currently exists for Co-Productions. The Film Law's text is ambiguous in this regard, and it may contain an additional layer of meaning about ratios. Additional legislation is expected to follow in the near future which may clarify these points.

Simplified advance review of scripts; expert review of final products

Similar to rules already in place, under the Film Law, only the outline of a script needs to be placed on-file with the government prior to shooting, unless certain themes are raised. If the themes are "significant" or implicate national security, diplomacy, ethnicities, religion or the military, then a full script shall be submitted to the government for approval. The main differences between the new Film Law and the current rules on scripts are minor language

changes; however legislators and industry experts expect the implementation of the Film Law, in practice, to be the same as the existing process for reviewing scripts. If anything, the Film Law indicates a general trend for Chinese approval of film scripts: less government supervision and oversight at the early stages in the process in film making.

On the other hand, Chinese regulation of the film industry is also trending toward greater government supervision at the later stages of film production, particularly at the stage of final pre-release approvals. Under the Film Law, some significant changes exist regarding final pre-release approvals. First, final approval is being de-centralized, which means final approval will occur at the provincial level of the government film authority rather than at the central level. Second, the film authority (i.e. the State Administration of Press, Publication, Radio, Film and Television, "**SAPPRFT**") is being charged with producing specific standards for granting approval, which shall be released for public comment before being finalized and adopted. Third, a panel of at least five experts must be deployed to evaluate each film. Such experts will come from a pool of experts, together with any outside experts needed in relation to the specific content of a film. How these experts are chosen and the methods they should employ in evaluating films is to be decided in forthcoming regulations.

The introduction of written standards and expert participation is intended to balance the de-centralization of approvals, in order to ensure consistency and prevent forum shopping by producers. The written standards and expert involvement also likely exist to serve as an internal control function between different levels of government departments. Ultimately, producers may benefit from the increased transparency provided by written, published standards and rules for using experts.



Legislating against box-office fraud

The Film Law requires distributors and cinemas to record factually correct film sales revenue and provide truthful and accurate statistical data, forbidding them from fabricating false transactions. Failure to comply is subject to SAPPRFT levying new administrative penalties of confiscation of illegal gains and heavy fines of up to 5 times the amount of illegal gains.

The theatrical box office has greatly helped Chinese film industry by providing a needed source of revenue that is structurally less vulnerable to piracy. However, the centrality of the theatrical box office to the current Chinese film industry has led to reported abuse on occasion.

Further, foreign producers who distribute their films in China on revenue-sharing arrangements with Chinese companies have raised concerns before about falsified ticket sales figures.

Given the background of box office reporting concerns, both domestic and foreign companies are pleased with the Film Law's new rules requiring accurate reporting of box office revenue. While the way in which this aspect of the Film Law will be implemented is yet to be seen, some domestic film industry experts have questioned whether the size of the fine will act as enough of a deterrent given the potential profits involved in falsifying box office numbers. Ultimately, this aspect of the Film Law may be an issue of enforcement depending on whether enforcement only targets egregious cases but not every day, ordinary ones.

Encouraging further development in the areas of finance, insurance and tax incentives

The Film Law expresses, in a number of places, how and in which direction the Chinese government would like to see the film industry develop further. The Film Law also suggests potential areas of development and possible

incentives, including further development of regulations regarding film finance and insurance products to spread out risk in film production and distribution. The Film Law also addresses the central government's desire for local governments to provide film industry participants with access to resources, subsidies for making film accessible to rural audiences and the poor, and tax incentives.

Such provisions in the law suggest an overall favorable climate to the further promotion of the film industry, and suggest new potential areas of opportunity within the industry.

More legislation expected

The Film Law takes effect March 1, 2017. Before then, we expect further legislative activity, both to amend existing rules that now conflict with the Film Law, and to elaborate some of the concepts that appear in the Film Law. For example, some of the areas slated for further development include:

- The specific standards applicable to film approvals
- The selection process for experts in final film approval, and the methods such experts should use for evaluating films
- Revision to the Sino-Foreign Co-Production Regulations
- Film industry-specific tax incentives, and
- Further rules on how government film authorities should enforce the Film Law and apply sanctions to violators.

Conclusion

Overall, the Film Law makes important and sweeping statements about the Chinese film industry without always providing precise regulatory detail. This high-level approach is to be expected from legislation at the "law" level in China's legislative hierarchy, which is supreme to regulations and rules, but tends to be general,

serving as a general orientation rather than as a detailed guide. As noted, initial reaction by industry experts, legislators and academics has been generally positive, understanding that certain changes will have to be made and further understanding that the Film Law will have to be implemented with more particularity. Details and implementation are often left to implementing, and as discussed above, much legislative activity is expected to follow the Film Law for this reason.

If nothing else, the Film Law indicates China's intense focus on the continued development of a local film industry and local film demand. While the Film Law is not particularly oriented toward benefitting foreign players, there will be incidental benefits found in the general lift of the industry. Most notably, Sino-Foreign Co-Produced films may see the most gains by being treated equally with domestic film in more respects.

Contacts

Sheri Jeffrey

Partner, Los Angeles

sheri.jeffrey@hoganlovells.com

Kevin Garland

Senior Associate, Los Angeles

kevin.garland@hoganlovells.com

Jun Wei

Partner, Beijing

jun.wei@hoganlovells.com

Lu Zhou

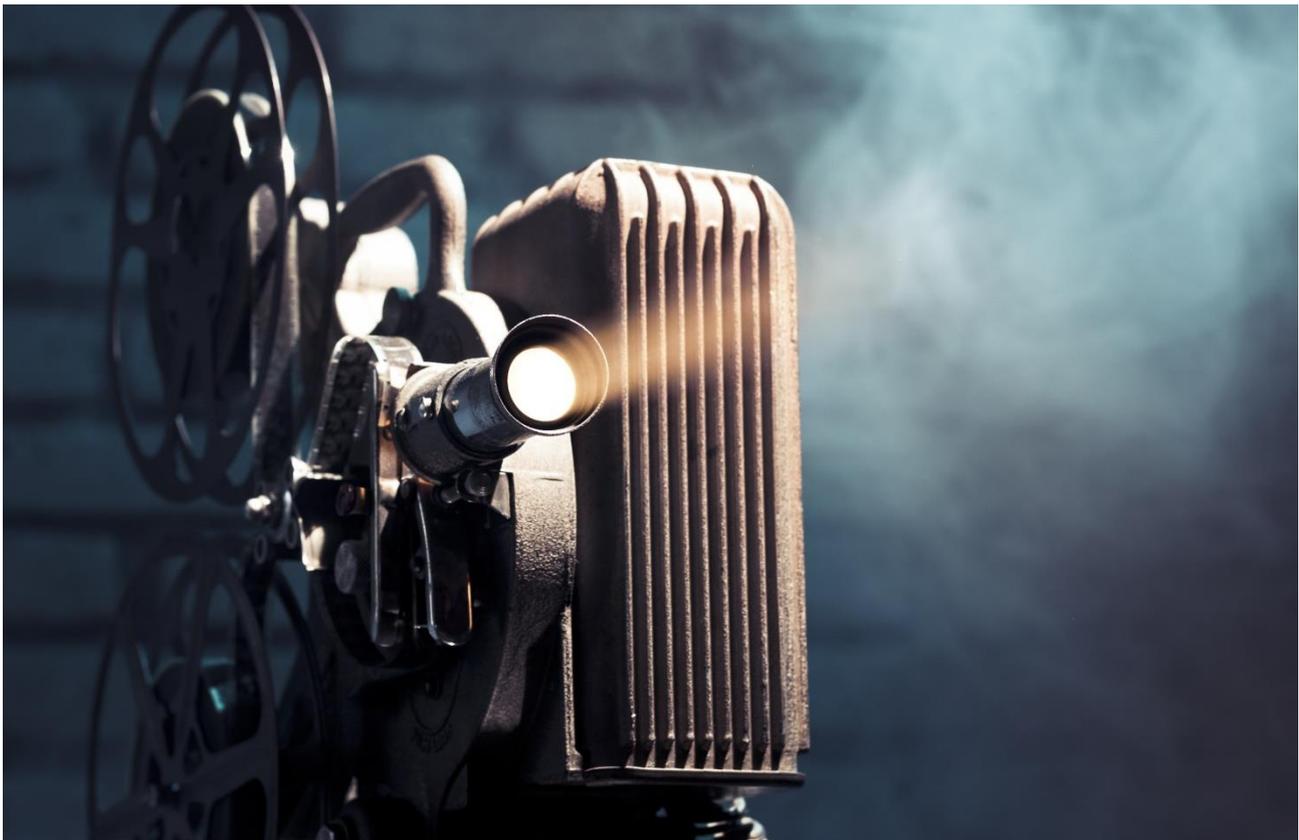
Counsel, Beijing

lu.zhou@hoganlovells.com

Nolan Shaw

Associate, Beijing

nolan.shaw@hoganlovells.com



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