

An Institutionalized Guarantee

New legislation allays concerns, creates climate for greater foreign investor confidence By Nie Pingxiang



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China's first Foreign Investment Law, adopted by the country's top legislature in March, aims to promote, protect and manage foreign investment in today's economic circumstances. The new law, which will take effect on Jan. 1, 2020, is expected to enhance the confidence of foreign-funded enterprises in China.

A level playing field

The law eliminates case-by-case approval and makes fundamental changes to foreign investment management. It is poised to promote China's opening up by establishing a legal guarantee for its open economic system.

It states that foreign investment shall be managed according to pre-establishment national treatment plus a negative list of restrictions on foreign investment. Government policies supporting enterprise development will apply equally to foreign investments, and they will be on par with domestic enterprises regarding government procurement.

The law cracks down on extra-legal curbs on foreign investment, and governments and relevant departments at all levels are required to formulate foreign investment-related regulatory documents in accordance with laws and regulations. The

law also contains provisions stating that the authorities may not impede foreign-invested enterprises' lawful rights or impose unlawful obligations, and shall not set market entry and exit conditions or interfere with or influence foreign-invested enterprises' normal business activities in violation of laws.

In addition, the law stresses improving investment-related services and simplifying management procedures, demonstrating the government's commitment to a fair and equitable market mechanism and an

open and transparent investment environment.

A phased approach

China's current legal system to manage foreign investment—consisting of the Law on Chinese-Foreign Equity Joint Ventures, the Law on Chinese-Foreign Contractual Joint Ventures and the Law on Wholly Foreign-Owned Enterprises—was put in place in the initial phase of reform and opening up, which began in



Sarai Nietvelt, a doctor from Belgium, interacts with a nurse in a foreign-funded hospital in Shanghai in October 2018.

1978. Foreign investment projects are subject to administrative approval and normally enjoy preferential treatment, which has given foreign investors an edge over their domestic peers.

After it joined the World Trade Organization in 2001, China focused on developing its legal system in line with international standards, and the laws and regulations on foreign investment were amended substantially. Still, there are inconsistencies between the three existing laws—which will be replaced by the Foreign Investment Law—and other laws, such as the Company Law.

Since the global financial crisis in 2008, the United States and other developed countries have accelerated negotiations on free-trade agreements and created new rules of global trade and investment. China aims to restructure its domestic economic system and create new driving forces through a higher level of opening up, as its economy has shifted from high-speed to high-quality growth.

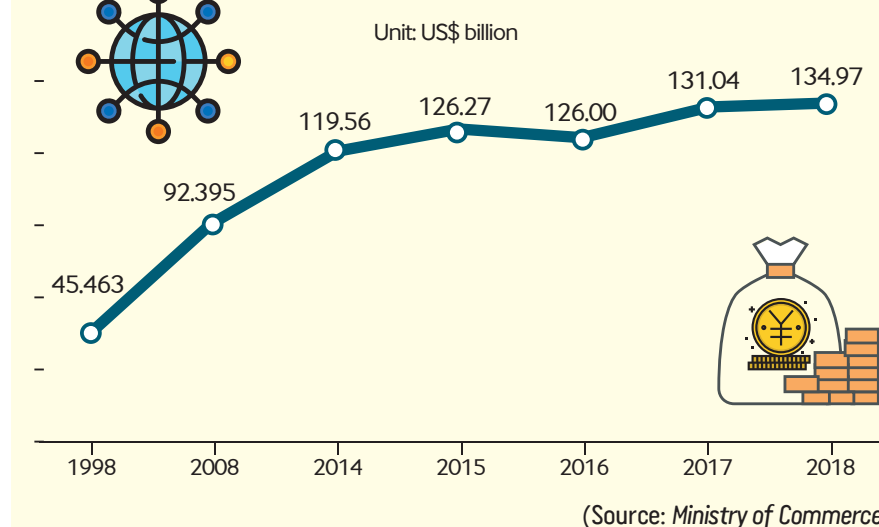
A new round of opening up started in 2013, focusing on establishing pilot free-trade zones (FTZs). The China (Shanghai) Pilot FTZ was founded that year, and China began to explore a pre-establishment national treatment plus negative list system for managing foreign investment. After a negative list—which specifies the sectors off-limits to foreign investors—was implemented in the Shanghai FTZ, relevant laws on foreign investment management were suspended in the zone for a three-year trial period.

In 2016, the pre-establishment national treatment plus negative list system was expanded across China based on the experience of pilot FTZs and trial reforms. That same year, the Ministry of Commerce (MOFCOM) issued interim policies specifying that foreign-funded enterprises no longer need approval to invest in areas not designated in the negative list.

In June 2018, a shortened negative list for foreign investment came into effect, containing just 48 items, down from 63 in the previous version. The new negative list, known as the Special Administrative Measures on Access to Foreign Investment, was jointly released by MOFCOM and the National Development and Reform Commission.

In November 2018, Chinese President Xi Jinping gave his assurance at the First China International Import Expo in Shanghai that China will speed up new foreign investment legislation, fully implement the pre-establishment national treatment plus

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negative list system and develop a world-class business environment.

As China is shifting the focus of its opening up from the flow of goods and factors of production to rules and institutions, the case-by-case approval system fails to meet the needs of the new open economic system and wider opening up. There is a need for a more favorable legal environment for institutional openness. The new law meets that need, creating a more transparent, stable and predictable policy environment for foreign investors.

Doing business in China

Global direct investment has shrunk with the rise of trade and investment protectionism. China's original advantages for attracting investment have been weakened by the rising cost of domestic labor and other factors. There are also higher demands on China's investment environment, such as opening up more sectors, treating foreign investors on par with domestic enterprises, strengthening protection of intellectual property rights and banning forced technology transfer.

Faced with these considerations, China has been committed to following international standards, enhancing government services, streamlining approval procedures and improving its business environment.

China's ranking in the World Bank's Doing Business 2019 report's ease-of-doing-business index improved to 46 last year, from 78 in 2017. Against the sharp decline

in global direct investment, China maintained steady growth, with the paid-in amount reaching a record high of \$134.97 billion.

In 2018, Singapore accounted for 53.4 percent of the Chinese mainland's total foreign investment, an increase of 10.6 percent from a year earlier. The investment primarily went to industrial parks, including demonstration projects such as the Suzhou Industrial Park in East China's coastal Jiangsu Province that began as a bilateral project with Singapore, and the China-Singapore Tianjin Eco-city in North China. Besides capital, Singapore also exports advanced management expertise to China. Investment from European Union countries maintained rapid growth: In 2018, their investment amounted to \$11.86 billion, up 35 percent from 2017.

The adoption of the Foreign Investment Law reflects China's resolve to widen opening up and provide a more fair, open and institutionalized business environment based on the rule of law for long-term development of foreign-funded enterprises. Notably, it will promote utilization of premium overseas capital, technologies and professionals on a larger scale, and give full play to resources from the domestic and international markets to ensure steady growth of foreign investment. ■



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