

## CUSEF EXPLAINER

# CHINA'S NEW FOREIGN INVESTMENT LAW

CHINA-UNITED STATES EXCHANGE FOUNDATION



PHOTO: ASIAN LEGAL BUSINESS

China's new Foreign Investment Law has been taken into effect on January 1 this year, marking a significant improvement of the country's market opening.

## KEY FACTS ABOUT THE FOREIGN INVESTMENT LAW

- Full name of the law: **Foreign Investment Law of the People's Republic of China** (FIL, 《中華人民共和國外商投資法》)
- Applied with its implementing regulations (《外商投資法實施條例》) since **January 1, 2020**
- **A replacement of “three laws on foreign investment”** (外資三法): the Law of Chinese-foreign Equity Joint Ventures (《中外合資經營企業法》), the Law of Wholly Foreign-owned Enterprises (《外資企業法》), and the Law of Contractual Joint Ventures (《中外合作經營企業法》)
- Highlights of the foreign investment law:
  - Making the **pre-entry national treatment plus negative list administration** for foreign-invested enterprises **into law**
  - Implementing the principle of **equal treatment to both domestic and foreign investment** in the post-establishment phase to a broader extent
  - **Enhancing the protection** of foreign-invested enterprises

### Full text of the Foreign Investment Law:

- [Chinese version](#)
- [English version \(unofficial\)](#)

### Implementing regulations of the Foreign Investment Law:

- [Chinese version](#)
- [English version \(unofficial\)](#)

# BREAKING DOWN THE FIL

Below listed are the highlights of the new Foreign Investment Law.

## CHAPTER I—GENERAL PROVISIONS

- "The State maintains **a system of pre-entry national treatment plus a negative list management** for foreign investment."

## CHAPTER II—INVESTMENT PROMOTION

- "Foreign-invested enterprises may, in accordance with the law, **equally enjoy the State policies** concerning the support of enterprise development."
- "The State ensures that **foreign-invested enterprises have equal access to the standard-setting work** according to law..."
- "Products and services provided by foreign-invested enterprises within the territory of China **are equally treated in government procurement** in accordance with law"

## CHAPTER III—INVESTMENT PROTECTION

- "The State does not expropriate foreign investment...Under extraordinary circumstances, **...expropriation and requisition shall be conducted in accordance with legal procedures and timely and reasonable compensation shall be given.**"
- "Foreign investors' capital contribution, profits, capital gains,...etc., **may be freely remitted to overseas in RMB or foreign exchange** according to law."
- "The State...**holds intellectual property rights infringers legally accountable** in strict accordance with the law."
- "Administrative agencies and their staff are **prohibited to use administrative means to force any technology transfer.**"
- "The administrative organs and their staff shall **keep confidential the business secrets** known to them..."
- "The people's governments at all levels and their relevant departments shall **be in compliance with the provisions of laws and regulations in formulating normative documents** concerning foreign investment"

## CHAPTER IV—INVESTMENT MANAGEMENT

- "Management of foreign investment in the **areas beyond the negative list** shall be implemented **in accordance with the principle of equality between domestic and foreign investment.**"

## CHAPTER V—LEGAL LIABILITY

- This chapter lists the punishments for violating the State's laws.

## CHAPTER VI—SUPPLEMENTARY PROVISIONS

- "**If any country or region adopts discriminatory prohibitions, restrictions or other similar measures** on the People's Republic of China, the People's Republic of China **may take corresponding measures against the country or the region** according to actual conditions."

# CHINA'S PROGRESS IN MARKET OPENING

## EARLY DAYS OF REFORM AND OPENING-UP (1978-2000)

- China **kicked off reform and opening-up** in 1978 in an effort to get the country back on track after it was derailed by the decades-long social movements.
- The country's first law on foreign investment—the **Law of Chinese-foreign Equity Joint Ventures** was enacted in 1979.
- Opening to the outside world (對外開放) became a **basic State policy** in 1984.
- The **Law of Wholly Foreign-owned Enterprises** was enacted in 1986.
- The **Law of Contractual Joint Ventures** was enacted in 1988.
- The idea of building a "**socialist market economy**" was raised and upheld in 1992. The concept merges two things which were previously seen as incompatible into one. Chinese economy took off since then and has been maintaining a strong momentum.

## CHINA'S ENTRY INTO WTO STARTED A NEW CHAPTER (2001-2007)

- China **joined the World Trade Organization** on December 11, 2001, a monumental event that has changed China's relationship with the world.
- Around 2001, China **significantly lowered its trade and investment barriers**.
- During this period, the government vehemently encouraged enterprises to invest outside the country. This is known as "**Go Out policy**" (or *Zouchuqu* Policy "走出去"政策).

## ATTEMPTS TO LEVEL THE PLAYING FIELD (2008-2012)

- The **income tax** for foreign-invested companies was raised to the same level as that for domestic companies at the rate of 25% since 2008. The move is so-called "unification of two sets of tax system" (or *Liangshui Binggui* "兩稅並軌").
- The **Anti-Monopoly Law** came into force in the same year.
- Chinese authorities adjusted its investment policy from emphasizing "going out" to encouraging both "**going out**" and "**inviting in**" (or *Yinjinlai* "引進來")

## EXPERIMENTING WITH PILOT FREE TRADE ZONES (2013-2019)

- In 2013, China rolled out its first **Pilot Free Trade Zone (FTZ)** in Shanghai. The policy then expanded to 18 provinces and municipalities across the country.
- **Negative lists** and other **foreign trade and investment policies**, as well as some **financial innovations** were experimented in these areas.
- A series of policies were introduced to **further open the market to foreign investors**:
  - 國務院關於擴大對外開放積極利用外資若干措施的通知 (2017年国发5号)
  - 國務院關於促進外資增長若干措施的通知 (2017年国发39号)
  - 國務院關於積極有效利用外資推動經濟高質量發展若干措施的通知 (2018年国发19号)
  - 國務院關於進一步做好利用外資工作的意見 (2019年国发23号)

## THE ERA OF FOREIGN INVESTMENT LAW (2020-)

- The "three laws on foreign investment" were replaced by **Foreign Investment Law** since January 2020
- The law is adopted in response to some new features of the country's development:
  - China's **growing domestic market** has outweighed cheap labor as the major driving force of foreign investment.
  - China is seeking **further institutional reform** and **deepening its engagement with the rest of the world**.

## SELECTED COMMENTS

### Joerg Wuttke

*President of the European Union Chamber of Commerce in China*

It is surprisingly accommodating to concerns that we had. (2019-10-21)

We are entering a phase of economic headwinds. These matters (improving environment for foreign business in China) are of great importance to make sure foreign investors find China attractive. (2019-10-21)

### Erin Ennis

*Senior Vice President of the U.S.-China Business Council*

We would view it as part of a solution. It won't be the solution in and of itself. (2019-03-15)

### Jake Parker

*Vice President at the U.S.-China Business Council*

We've reviewed the final draft of the [law] and are pleased with the last-minute addition of new language to further protect foreign company commercial information and trade secrets. (2019-03-15)

### Walker Wallace

*Managing Partner of O'Melveny's Shanghai office*

It's actually an improvement that there was a consultative period at all. I remember the days when it came out of a bureaucrat's black box. Nobody had ever seen it before it came out, and everybody said it was totally impractical. (2019-03-15)

### Ulla Nurmenniemi

*Executive Director of Finnish Business Council in Beijing*

The Chinese government has made great efforts to improve the business environment for foreign companies. Technology transfer and foreign investment will increase in China in the future if the law's implementation reaches expectations. (2020-01-11)

### Kobus Van Der Wath

*CEO of Axis Group International*

I think the new law sends a strong signal that intellectual property is crucial and will receive more attention and protection [from the Chinese government]. We're now expanding our business in China, and the law will help us incorporate new entities in China. (2020-01-11)

### Tom Tan

*Vice President of BorgWarner Inc.*

For foreign investors, our biggest concern is the complexity of entering and leaving the Chinese market freely. The new law has ensured our free access to the Chinese market, allowing us to freely remit our profits, which has strengthened our confidence in doing business in China (2020-01-11)

### U.S. Chamber of Commerce, American Chamber of Commerce in China, and U.S. Information Technology Office

The reality remains that the Draft Implementing Regulations do not address clear differences between the treatment of China's state-owned enterprises and the private sector. (2019-11-04)

### Derek Scissors

*Senior Fellow at the American Enterprise Institute*

If you thought the foreign investment law was going to allow multinational companies to compete with state-owned enterprises, you're a fool. What the Chinese are saying is, 'We will treat you better subject to the condition that with any sector the state thinks is important we will take your technology and give you nothing. (2019-11-04)

# GLOSSARY

- **foreign-invested enterprise (FIE) 外商投資企業/外資企業**

*In China, FIEs are companies with 25% or more foreign shareholdings, including*

- **wholly foreign-owned enterprises (WFOE) 外商獨資企業**

*A Chinese limited liability company that is 100% owned by the foreign investor(s), giving them full control.*

- **Sino-foreign equity joint venture company (EJV) 中外合資企業**

*A joint venture (in the form of a limited liability company) between a Chinese and a foreign company within the territory of China. Both companies invest in the joint venture. The foreign company generally invests at least 25% of the registered capital.*

- **Sino-foreign cooperative joint venture company (CJV) 中外合作企業**

*A contractual joint venture between a Chinese company and either a foreign company within Chinese territory, or a legal person that can provide for dividends that are not strictly in proportion to the parties' percentage contributions to the registered capital. In a contractual CJV the Chinese company generally provides the labour, land use rights and factory buildings, while the foreign company usually brings in the necessary technology and key equipment, as well as the capital.*

- **foreign-invested company limited by share (FICLS) 外商投資股份有限公司**

*An FICLS (or joint stock company) can be set up by foreign investors and it is the only form of FIEs whose shares can be listed on a China stock exchange (the Shanghai Stock Exchange or the Shenzhen Stock Exchange). Capital is divided into shares and an FICLS must have a minimum of two and maximum of 200 initial shareholders (or promoters), which must include at least one foreign investor. The minimum registered capital required is RMB30 million. An FICLS is more commonly used when expanding an existing business, converting a Sino-foreign equity joint venture company (EJV) into an FICLS or when acquiring a China based company, rather than when setting up a new business.*

- **foreign-invested partnership (FIP) 外商投資合夥企業**

*An investment structure governed by the Administrative Regulations for the Registration of Foreign-invested Partnership Enterprises 2014. An FIP is particularly attractive in the private equity and venture capital industries for establishing Renminbi (RMB) denominated funds. An FIP:*

- *Does not require approval from the Ministry of Commerce (MOFCOM).*
- *Offers more opportunities for tax planning.*
- *Can be partly or wholly owned by foreign investors.*

- **foreign-invested holding companies (FIHCs) 外商投資控股公司**

*A wholly foreign-owned enterprise (WFOE) that is holding interests in other foreign-invested enterprises (FIEs).*

- **foreign-invested venture capital enterprises (FIVCEs) 外商投資創業投資企業**

*A fund that is a Chinese entity with its investments denominated in Renminbi. FIVCEs are expected to be phased out as FIPs become more popular.*

*\*Source: [Thomson Reuters](#)*

- **negative list 負面清單**

- **post-establishment phase 准入後階段**

- **pre-entry national treatment/national treatment before admission 准入前國民待遇**



CHINA-UNITED STATES  
EXCHANGE FOUNDATION  
中美交流基金會

## About CUSEF

The China-United States Exchange Foundation is an independent, non-profit and non-governmental foundation committed to the belief that a positive and peaceful relationship between the strongest developed nation and the most populous, fast-developing nation is essential for global wellbeing. Founded in Hong Kong in 2008 and privately funded, CUSEF builds platforms to encourage constructive dialogue and diverse exchanges between the people of the U.S. and China.

## Disclaimer

The China-United States Exchange Foundation ("CUSEF") has prepared this report identified herein ("Report") solely for informational purposes and does not intend to address the circumstances of any particular individual or entity. CUSEF does not represent, warrant, or guarantee the accuracy of the Report. CUSEF disclaims liability for any direct, indirect, punitive, special, consequential, or incidental damages related to the Report or the use of materials in the Report. Reproduction or redistribution of the materials in the Report without prior written consent of CUSEF is prohibited.