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— CHINA —  
**LEGAL BULLETIN**



## China's New Foreign Investment Law

On March 15, 2019, after a long-awaited outcome, an overwhelming majority of deputies (2,929 of 2,945) at the second session of the 13<sup>th</sup> National People's Congress (NPC) voted in favor of the new Foreign Investment Law, ushering in a new legislation aimed at improving the current foreign investment market in China, and signifying China's movement towards greater transparency and reform.

As stated in Article 1 of the new law:

*"This Law is formulated on the basis of the Constitution to further expand the scope of opening-up, to actively promote foreign investment, to protect the lawful rights and interests of foreign investment, to standardize the regulation of foreign investment, to make new grounds in opening up on all fronts, and to promote the healthy development of the socialist market economy."*

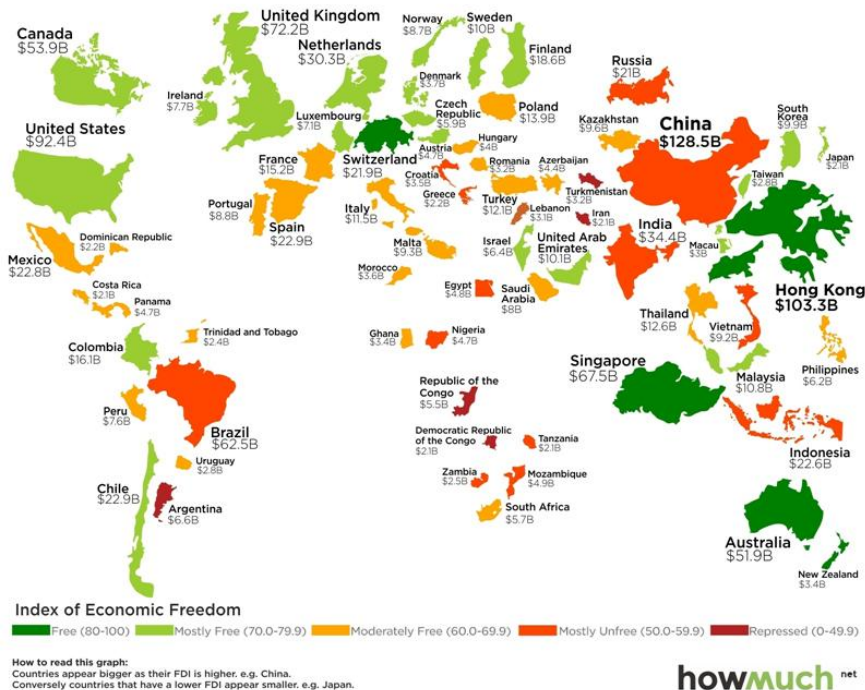
**"This is a fundamental change in China's foreign investment management system, and helps create a more open, transparent, and predictable environment for investors."**

*Zhang Yesui, NPC Spokesman*

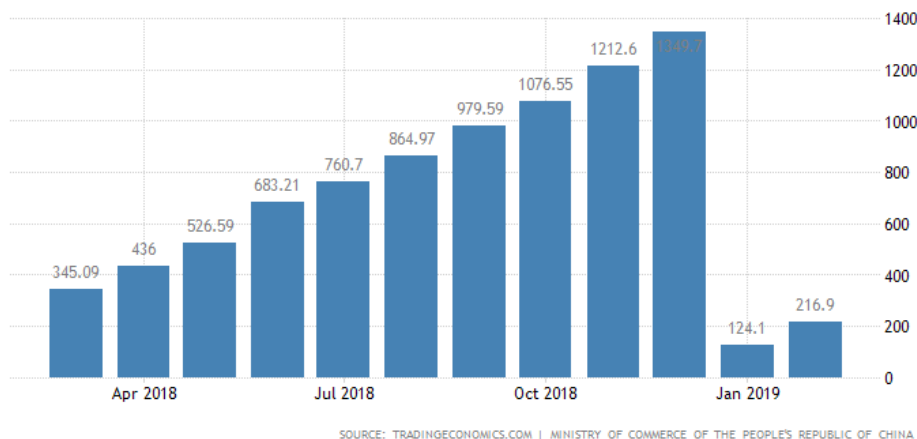
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China has long been a leading investment destination in the world. The United Nations Conference on Trade and Development reported that foreign direct investment into China has ranked first amongst developing countries for 27 consecutive years. And market indices show China has averaged \$444 billion USD in foreign direct investments since 1999 to 2019, reaching an all-time high in 2018.

### Countries that Receive the Most Investment from Abroad



At the end of 2018, approximately 960,000 foreign-invested enterprises had been set-up in China, with the accumulated foreign direct investment exceeding \$2.1 trillion USD. China’s law-makers hope the new law will provide a stronger and better business environment for foreign investors.



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Mr. Huang Yushan, a local law-maker, voted in favor of the new law, explaining that “the new law will create a more stable, transparent, and fair competition environment for foreign investment, and will become a strong legal guarantee for China to achieve a higher level of opening up and promoting foreign investment in the new era.” And it appears many of the foreign investors agree - - according to leaders in the foreign chambers of commerce, the new law will “level the playing field” for foreign companies and investors, and will instill a lot more confidence in future investment in China. And while skeptics believe that the language of the new law remains too general, and simply seeks to pacify United States’ concern and ease the trade dispute, China’s push to fast track the law and address international criticism is still noteworthy. China is responding to the changing global realities and poised to promote its policy of “opening up” to greater foreign investment and protection. For many current and potential investors, the future of foreign investment in China is bright, certainly brighter than it was before.

**This law will “help push China to a higher level of opening up [and] promoting high level foreign investment.”**

*Li Zhanshu, Legislator*



### Overview:

The new law will replace three previous laws on foreign investment:

- Ø The Chinese-Foreign Equity Joint Ventures Law
- Ø The Wholly Foreign-Owned Enterprises Law
- Ø The Chinese-Foreign Contractual Joint Ventures Law

The new law is outlined as follows:

- Chapter 1: General Provisions (Articles 1-8)
- Chapter 2: Investment Promotion (Articles 9-19)
- Chapter 3: Investment Protection (Articles 20-27)
- Chapter 4: Investment Management (Articles 28-35)
- Chapter 5: Legal Responsibility (Articles 36-39)
- Chapter 6: Supplementary Provisions (Articles 40-42)

Under the new law, intellectual property rights are explicitly protected (Articles 21-22), as well as the trade secrets of the foreign-invested enterprises (Article 23 and 39). The new law will also implement a management scheme of pre-establishment national treatment, thereby allowing foreign investors to be treated as the same as their Chinese counterparts in areas outside of the country’s negative list (Article 4). Moreover, the new law will facilitate foreign investors’ participation in standard-setting and government procurement, and will establish a mechanism to effectively resolve complaints by foreign investors (Article 25-26).

### F.A.Q.:

Q: When will the new Foreign Investment Law come into effect?

A: The new law is set to become effective on January 1, 2020 ([Article 42](#)).

Q: When will the three previous laws on foreign investment (see: Overview box above) be repealed?

A: The three previous laws on foreign investment will simultaneously be repealed on January 1, 2020 ([Article 42](#)).

Q: What happens for foreign-invested enterprises that have been established in accordance with the three previous laws on foreign investment?

A: Those foreign-invested enterprises may retain their current corporate organizational forms for five years after the new Foreign Investment Law comes into effect ([Article 42](#)).

Last but not the least, the specific implementation measures will be formulated by the State Council ([Article 42](#)), and the organizational forms, institutional frameworks, and standards of conduct for foreign-invested enterprises could be regulated by the relevant provisions of the PRC Company Law and the PRC Partnership Enterprises Law ([Article 31](#)). Therefore, this article does not touch on those specific areas. Please feel free to contact the authors for further information.

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