

## China's Draft Foreign Investment Law

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On December 26, 2018, the Standing Committee of the 13th National People's Congress released the second draft of the Foreign Investment Law. The draft has 39 articles and provides the necessary mechanisms on the facilitation, protection and management of foreign investment. It will replace three current laws governing JV's and wholly foreign owned enterprises. The draft is open for public comment until February 24. Some key provisions are highlighted below.

- **Definition of Foreign Investment:** Any direct or indirect investment in mainland China by foreign investors, including: (1) investing in new or previous projects, or establishing foreign-invested enterprises (FIEs); (2) acquiring stock shares, stock right, property shares and other interests in Chinese domestic enterprises through mergers or acquisitions; (3) investing in mainland China through other legal means.
- **Equal Treatment:** Foreign and domestic investment will be treated equally in terms of application of business-developing policies, application of standardization requirements, and government procurement. Furthermore, FIEs will be consulted before any rule on foreign investment is made and they will be provided counseling and other services including investment guidelines. FIEs will be allowed to raise funds by issuing securities or other means.
- **Investment Protection:** Foreign investment will not be confiscated except in extreme circumstances, in which case the investment will be compensated. Forced technology transfer by administrative measures will be forbidden. A mechanism will be set up for FIEs to lodge complaints against the administration. China reserves the right to retaliate against countries that discriminate against Chinese investment with “corresponding measures.”
- **Pre-Establishment National Treatment Plus a Negative List:** The equal treatment for foreign investment will be extended to the stage of admittance. Foreign investors cannot invest in forbidden industries on the negative list and must conform to the requirements when investing in restricted industries on the same list.

The full text of the original draft law is available in Chinese [here](#).