
CHINA'S NEW FOREIGN INVESTMENT LAW: AN OPEN-AND-SHUT CASE FOR FOREIGN INVESTORS?

ZHANG XIAOYANG

Law School, Beijing Foreign Studies University

Abstract

China's legal framework for governing foreign investment has recently been considerably streamlined in comparison to its former self. The newly promulgated Foreign Investment Law of the People's Republic tends to level the investment playing field in the country so that foreign investors can no longer enjoy significant privileges that have been unavailable to domestic firms and entrepreneurs. Operating a relatively non-discriminatory mechanism, such as has been introduced, will in practice mean reliance on a negative list approach to confine inflows of overseas capital to specifically identify sensitive sectors. As China has committed its market to opening up on a much grander scale in the foreseeable future, the new foreign investment regime and accompanying ideology may not necessarily deter foreign investors from looking for opportunities in the foreseeable future.

Keywords: China; foreign investment; negative list; market opening-up

[A] THE NEW FOREIGN INVESTMENT LAW

China's Foreign Investment Law finally came into force on 1 January 2020,¹ after its draft version experienced an approximately five-year course of public consultation, amendment and formal legislation.

China's erstwhile legal landscape in foreign investment matters emerged in the late 1970s. It was then prodigiously amplified and consolidated throughout the 1980s. Essentially, three representative codes (i.e. the Sino-Foreign Equity Joint Venture Enterprise Law; the

¹ The National People's Congress (China's national legislature) passed the Foreign Investment Law on 15 March 2019.

Sino-Foreign Cooperative (Contractual) Joint Venture Enterprise Law; the Wholly Foreign-Owned Enterprise Law) then played a dominant role throughout the past four decades or so. They delivered, among other things, the primary legal ground rules for foreign investors to deploy and utilize these three prescribed types of business vehicles in China's inward investment arena, mostly from a technical, operationally oriented standpoint (Zhang 2016: 73). By reference to the three specific codes, a vast number of multi-pronged regulatory decrees, administrative guidelines and context-sensitive government policies/directives simultaneously and subsequently emerged, leading to the creation and development of a virtually separate legal framework exclusively applicable to foreign investment and to overseas investors launching various direct investment projects in the China market at the time. Against such a backdrop, needless to say, overseas investors and their Chinese counterparts have not been held to the same standards for an astonishingly long time period, justifiably or otherwise not able to compete on a level playing field, at least from a legal and institutional perspective.

Such legal groundwork has now been immensely reshaped. With the Foreign Investment Law brought into full effect, the preceding three specific laws have concomitantly been abrogated (Foreign Investment Law, Article 42, paragraph 1), meaning that they could no longer be executed in practice nor enforced in the courts. And apart from the Foreign Investment Law, China's current legal framework for overseeing inward investment matters also includes the Implementation Code of the Foreign Investment Law, as well as China's Supreme Court's Judicial Explanation on applying the Foreign Investment Law in practice (hereinafter referred to as 'Judicial Explanation'), both promulgated in December 2019 and effective on 1 January 2020, alongside an earlier Administrative Manifesto for registration of foreign investment enterprises (hereinafter referred to as 'Administrative Manifesto'), which was promulgated in December 2019 by China's State Administration for Market Regulation, a ministerial-level government agency having made its first appearance just a couple of years back in 2018.

While the Foreign Investment Law does not openly say so, enjoying concretely prescribed prerogatives is now legislatively denied to foreign investors and their businesses stationed in the China market. Theoretically speaking, there will no longer be any inequalities in the regulation of foreign investment and Chinese investment. In this respect, the most drastic change having come about in the past years is perhaps the abolition of foreign investors' once highly lucrative tax benefits (effective from 2008 with China's two separate enterprise income tax laws

unified into a single taxing code applicable to both foreign and domestic businesses in an undifferentiated fashion, especially in terms of tax rates and available impetus) (Zhang 2007: 79-103). On the face of it, we may say that long gone are those days when enjoying special privileges on a substantial basis in various ways could statutorily or simply administratively be determined, becoming solely available to foreign investors and their business concerns active in the China market. Now the three cornerstone codes are explicitly stated in the law to have accomplished their historic mission, thus dismantling the old regime and establishing the leading role to be played by a new system, especially the freshly formed Foreign Investment Law.

The Foreign Investment Law has made it quite clear that China will continue with its firm market opening-up stance as one of the country's basic national strategies and will encourage foreign investors to legitimately invest and engage in investment-related activities in the country (Foreign Investment Law, Article 3, paragraph 1). In this sense, China is committed to relying on a more liberalized approach to facilitating foreign investment transactions and a predictable market environment where fair competition between all market players can be realized (Foreign Investment Law, Article 3, paragraph 2). And as far as foreign investors are concerned, unless they venture to test the water in any restricted industry or banned sector included in China's prescribed negative lists, they will be treated equally, being subject to the same laws, regulations and government policies as those to be applied to their domestic counterparts in the same market (Foreign Investment Law, Articles 4 and 9). On the other hand, the Foreign Investment Law sets great store on maintaining a two-way equal treatment of foreign investment with a view to preventing Chinese outward investors' legitimate rights and interests overseas from being unfairly infringed and intentionally singled out (Foreign Investment Law, Article 40).

On the whole, China's new Foreign Investment Law, as it is now written, is a fairly short statute containing 42 Articles grouped into six chapters, namely: (1) 'General Provisions'; (2) 'Promotion of Foreign Investment'; (3) 'Protection of Foreign Investment'; (4) 'Regulation of Foreign Investment'; (5) 'Legal Responsibilities'; and (6) 'Supplementary Provisions'. In contrast, the draft version initially circulated in 2015 was a more lengthy piece, embracing 170 Articles divided into 11 chapters, which are characterized as: (1) 'General Provisions'; (2) 'Foreign Investors and Foreign Investment'; (3) 'Market Access Regulation'; (4) 'State-Security-Based Examinations'; (5) 'Information Returns'; (6) 'Promotion of Foreign Investment'; (7) 'Protection of Foreign Investment'; (8) 'Coordinating the Handling of

Complaints and Grievances’; (9) ‘Supervision and Inspection’; (10) ‘Legal Responsibilities’; and (11) ‘Supplementary Provisions’ (Zhang 2016: 74).

Taking a closer look at these two versions may simply suggest a conclusion that the draft law does not stand comparison with the final version, in terms of appropriateness, intelligibility, or pithiness of legislative style and substance. This might be due to the fact that a new generation of China’s law-makers in today’s times have acquired a much better command of legislative techniques and become more professionally experienced. Compared to the former statutes and regulatory codes in regard to governing foreign investment, the overall layout of and the key themes demonstrated in the Foreign Investment Law now appear far more succinct. They are in general fairly cogently designed and reasonably well presented, giving rise to an overhauled institutionalized framework offering enhanced competence.

[B] ‘FOREIGN INVESTMENT ENTERPRISES’ AND ‘FOREIGN INVESTORS’

The newly created Foreign Investment Law has substantively taken the place of the relevant predecessor laws and regulations, though in a rather general vein. However, the old term ‘foreign investment enterprise(s)’ is not shelved or abandoned under the new regime. It has permeated China’s laws and regulations in the field of foreign direct investment over the long period of the past 40 years, and now the new law characterizes the legal position of ‘foreign investment enterprises’ as those firms registered in China under Chinese law wholly or partially capitalized by foreign investors (Foreign Investment Law, Article 2, paragraph 3). By doing so, first of all this practically ensures non-stoppage of such a designation’s current shelf life, which in theory may continue to be sustained for an inestimably long, drawn-out period of time. Moreover, such a change clearly suggests the retention of categorizing this sort of business organization (which can unquestionably substantiate its overseas ownership ingredients in one way or another) as something distinguishable from its Chinese peers which are, on the other hand, deemed able to stand out as of an unmixed indigenous nature.

What the Foreign Investment Law mostly zeroes in on is cementing ‘a framework that will emphasize equal national treatment of foreign investment, putting foreign investors on equal footing with domestic investors in the China market and giving them equal protections’ (Zhang & Tsoi 2019). Nevertheless, foreign investment enterprises are still being

characterized under today's Chinese judicial system as a special type of business organization, and that is an important reality.

Also, the compulsorily highlighted business registration particulars pertinent to foreign investment enterprises will likely perpetuate how foreign investment transactions are carried on in the Chinese market. The Implementation Code of the Foreign Investment Law indicates that new businesses additionally created by many of the existing foreign investment enterprises, which have already established or furthered their presence in the China market from the ground up—provided that the new businesses concerned are not to be located outside Chinese territory—may still be classified as foreign investment enterprises, in the same way as their funders and/or their parent companies (Implementation Code of Foreign Investment Law, Article 47).

It should be realized that, in practice, the terms 'foreign investment enterprises' and 'foreign investors' may become interchangeable if they are used when a multinational conglomerate carries out its Chinese business. Particular attention therefore needs to be drawn to the present version of the transliteration of the title 'Foreign Investment Law'. Here, the draft version literally denotes 'foreign investment law'. But a translation of the final version of the law points to a law regulating foreign commercial organizations and business persons more generally who conduct inward investment activities in the country. While a subtle difference might be hard to uncover at first glance, its outcome has in effect recalibrated the focus of the Foreign Investment Law in practice, making it somewhat tilted towards foreign investors, rather than specifically targeting inward foreign investment as such.

Regardless, it can be unmistakably recognized under the Foreign Investment Law that foreign investors currently consist of the following three sorts of market player: 'foreign natural persons', 'foreign firms' and 'other organizations', who directly or indirectly carry on investment activities in China (Foreign Investment Law, Article 2, paragraph 2). Here, the first two categories 'foreign natural persons' and 'foreign firms' can easily be understood in most circumstances as referring to individual entrepreneurs and business enterprises, respectively. Nevertheless, the Foreign Investment Law is silent on the denotation of the third category 'other organizations'. In the draft version of the Foreign Investment Law, it is explicitly acknowledged that two extra types of entities are classifiable into the general grouping of foreign investors under Chinese law, i.e. (i) 'the government of another country or jurisdiction, or that government's affiliated agency/organization'; and (ii) 'a recognized international

organization' (Zhang 2016: 75). But the wording of the finally enacted and promulgated Foreign Investment Law shows that these two additional types have been deleted.

It is difficult to assess at this moment as to whether the third category 'other organizations' currently listed in the final version encompasses in practical terms those two additional types of entities identified in the draft law. Hazarding a guess may arrive at offering an answer that is negative. This is because there are worries about the possibility of inadvertently entrapping the Foreign Investment Law (a law formulated supposedly to cope with international commerce in that particular area mostly involving Chinese authorities vis-à-vis numerous foreign companies as civil subjects of equal legal status in a primarily private law context) through its implementation in practice in issues falling within the realm of public international law (other than in a nationally contextualized economic law sense). The Chinese authorities look to concentrate their efforts on foreign private investment, instead of paying much heed to, for example, financial assistance programmes found in mainstream international financial organizations, influential non-governmental bodies, or foreign governments' loan schemes (unless resort to such sources is absolutely necessary).

[C] OLD WINE IN NEW BOTTLES?

Over the preceding 40 years or so, China has endeavoured to maintain a cohort of thoughtfully devised foreign investment-related legal rules. China's former laws and regulations governing foreign investment issues, before the new Foreign Investment Law was enacted as a comprehensive statute, were commonly known chiefly to embrace a series of relevant laws, legal principles and regulatory rules (also including countless government policies/advice shaped at different times and/or applicable to different localities). They were primarily based on the key contents of the three specific laws noted earlier, the promulgation of which had been prioritized over many of China's other laws in order to speedily architect a legal environment where foreign investors could feel assured that their investment in the China market had safeguards, especially as the development of China's general legal system at the time was still rather limited. Content-wise, the focal points of the three specific laws were of several types: Chinese-foreign joint ventures as well as solely owned foreign subsidiaries, i.e. 'equity joint ventures'; 'co-operative (contractual) joint ventures'; and 'wholly foreign-owned enterprises' (Zhang 2016: 73). These three kinds of business vehicles are generally known as 'foreign

investment enterprises', in the form of which they used to be both regulated and otherwise provided for in the China market. They must register with the Chinese authorities, although they may continue to operate, being run either in the form of an incorporated body or a simple partnership without an independent legal personality, depending on the circumstances and subject to the foreign investors' choice.

The new Foreign Investment Law and its Implementation Code are watershed legal developments. The three earlier laws, together with their prescribed implementation rules and other detailed normative documents, have now been repealed (Foreign Investment Law, Article 42, paragraph 1; Implementation Code of Foreign Investment Law, Article 49, paragraph 1). The Foreign Investment Law proclaims that foreign investment enterprises' 'organizational structure', '[internal] organizational bodies' and protocols that have a binding force shall follow the relevant provisions stipulated in China's Company Law, Partnership Law, etc. (Foreign Investment Law, Article 31). But foreign investment enterprises which have lawfully come into being and operated in accordance with the provisions of the three specific laws and their implementation rules and other normative provisions are permitted a grace period of five years commencing from the start of 2020 during which they may keep their original 'organizational structure' and '[internal] organizational bodies' unchanged (Foreign Investment Law, Article 42, paragraph 2; Implementation Code of Foreign Investment Law, Article 44, paragraph 1). Alternatively, they may choose to revise their 'organizational structure' or reshape their '[internal] organizational bodies', by doing so in accordance with the provisions in China's Company Law or Partnership Law, and then procedurally have their prior registration particulars in this respect legally modified to conform with those in the new law. Thus, they will be able to have themselves repackaged, coming into line with the category of general business entities (e.g. those in the most ordinary form of companies or partnerships) (Implementation Code of Foreign Investment Law, Article 44, paragraph 1).

But what is meant by the second term '[internal] organizational bodies'? While this should not be too difficult to comprehend, what may become potentially problematic is the rather general term 'organizational structure'. Neither the provisions of the Foreign Investment Law nor those in its Implementation Code offer assistance to our understanding.

Since the late 1970s, China has gone to great lengths to attract foreign investment. The history of the evolution of Chinese law over the past 40 years or so unarguably attests to the fact that the buildup of China's

general business law regime (which is most closely connected to the conventional forms of companies, partnerships, or sole traders) obviously lagged behind the regime for absorbing foreign investment and regulating foreign investors making inroads into the China market through their various investments. This was especially the case during the best part of the 1980s and 1990s. Accordingly, as per the Implementation Code of the Foreign Investment Law, starting from 1 January 2025, any existing foreign investment enterprise, as long as it has not yet revised its 'organizational structure' in order to be consistent with China's Company Law or Partnership Law, will be denied by the Chinese authorities should it seek to alter any of its other registration particulars previously documented (for example, particulars registered in connection to some critical capitalization matters) (Implementation Code of Foreign Investment Law, Article 44, paragraph 2).

Further, notwithstanding either an accomplished establishment of or conversion into China's ordinary forms of companies or partnerships, pursuant to the Administrative Manifesto, from 1 January 2020 onwards, both brand new foreign investment enterprises and also existing bodies need to continue to have their registration or re-registration indicate formally their link with foreign investment, either being characterized as 'foreign investment' or more specifically 'investment from Hong Kong, Macau or Taiwan' as the situation warrants. Also, in accordance with the Administrative Manifesto, notarization of overseas investors' particulars has now been made a mandatory condition for registration and re-registration purposes. This was not the case under the previous legal framework. However, it is provided in the Administrative Manifesto that personal investors coming from Hong Kong, Macau or Taiwan can dispense with meeting this requirement. In effect this exemption may most probably serve as a form of special treatment for residents living in jurisdictions covered by the 'one country, two systems' formula, such as Hong Kong.

Traces of 'equity joint ventures', 'co-operative (contractual) joint ventures' and 'wholly foreign-owned enterprises' (i.e. those three core business vehicles depicted in China's three specific laws on foreign investment, though now all annulled) can nonetheless be detected in the newly promulgated Foreign Investment Law. In this regard, the Foreign Investment Law first and foremost points to the following four scenarios where foreign investment is characterized as taking place in the China market: (1) a foreign investor either solely or in conjunction with 'other investors' jointly establishing a foreign investment enterprise in China; (2) a foreign investor procuring stocks, shareholdings, assets allocated or other equivalent rights and interests in China; (3) a foreign investor alone or

together with 'other investors' jointly investing in a newly launched project in China; and (4) any other mode of investment (counting as foreign investment) as stipulated in the relevant Chinese laws, administrative regulations or China's State Council's decrees/guidelines (Foreign Investment Law, Article 2, paragraph 2). And according to the Implementation Code, the term 'other investors' does comprise Chinese natural persons (Implementation Code of Foreign Investment Law, Article 3), to say nothing of embodying Chinese business organizations (which can be registered either as legal or non-legal persons) joining those Chinese-foreign joint ventures in their capacity as foreign investors' local partners (as has kept on happening in the past for many years under the old regime).

Hence, it can be perceived in the context of the Foreign Investment Law that various Chinese-foreign joint ventures or foreign corporations' fully held subsidiaries incorporated in China may still exist and continue to function in the China market at the present time and in the not-too-distant future as well. What is perplexing to foreign investors is that the former three specific laws and those other rules and policies formulated on the basis of these three cornerstones may not appear to be in exact congruence with what is prescribed in China's Company Law and Partnership Law currently in force. For instance, China's Company Law has rescinded any minimum capital contribution requirement and deadline (with exceptions in certain specialized fields, mostly pertaining to the financial markets), no matter whether it relates to a small private company or a sizable corporation that goes public. China's former laws and regulations on foreign investment issues, however, set great store by the capital contributions made by foreign investors (or together with their Chinese partners) through foreign enterprises, in terms of volume, deadline, ratios between overseas and indigenous capitalization, or limitations on capital contributions in kind etc. So, literally adhering to China's new Foreign Investment Law and China's Company Law or Partnership Law, in the process of restructuring (within the five-year grace period granted) existing foreign investment enterprises may to a certain extent confuse foreign investors and their deputies or proxies.

[D] NEGATIVE LISTS—A LEGAL BASIS OR AN IMPROVISED MAKESHIFT?

Conventionally, many of China's laws and regulations on foreign investment matters, irrespective of whether at the national level or on a local basis, are characterized as being government policy-oriented in

nature, even though in theory they should occupy a paramount position. This is true also of the Foreign Investment Law. The conclusive enactment of China's Foreign Investment Law came about during the course of a ferocious US–China trade war, particularly in 2018 (Wong & Koty 2020). An official tone has been set in an authoritative assertion that the Foreign Investment Law 'aims to improve the transparency of foreign investment policies and ensure domestic and foreign enterprises are subject to a unified set of rules and compete on a level playing field' (State Council of PRC 2019). To that end, Chinese authorities have engineered a negative list approach in order to eliminate, or at least to curb, unsuitable inflows of overseas capital if they are deemed discordant with China's market access policies administered at the present time. The prescribed negative lists are fluid in character. Both political and economic benefits might be made out of adroitly marshalling the use of such an adaptive policy tool.

However, it is still uncertain what are the real origins of resorting to a negative list approach on an international arena, given that we know this is ammunition for the host country's authorities when needed. As a matter of fact, China and the USA have disagreed over the lengthiness of the negative list, especially in 2016 when the two sides got bogged down in the negotiations on their proposed Bilateral Investment Treaty. The latter eventually stalled without apparent advancement (Zhang 2016: 76–77). But in today's circumstances, relying in practice on an array of negative lists can be portrayed as perhaps the most distinctive feature of the Foreign Investment Law, the promulgation of which may have been put on hold for quite some time due to such considerations. Nevertheless, the Foreign Investment Law now unequivocally provides that China is relying on a pre-admission national treatment and negative list system to handle foreign investment (Foreign Investment Law, Article 4, paragraph 1). So, only those foreign investors making their investment in the fields outside the designated negative lists will be able to enjoy general national treatment—that is, a treatment that is not inferior compared to Chinese domestic investors (Foreign Investment Law, Article 4, paragraph 2). In this regard, China's State Council is mandated to be responsible for releasing from time to time the required negative lists and/or sanctioning their issuing by authorized government agencies (Foreign Investment Law, Article 4, paragraph 3).

Looked at as a whole, China's negative lists are sector-specific, composed of 'prohibited industries' and 'restricted industries' (Dezan Shira & Associates 2019). Prohibited industries are categorically off-limits to foreign investors (Dezan Shira & Associates 2019). Restricted industries are not entirely out of bounds, so foreign investors are not completely

forbidden from tapping into them, as long as those intending foreign investors can satisfy certain preconditions indicated in the negative lists (e.g. being bound by the mandatory proportion requirement of adhering to 'shareholding limits' imposed on foreign capital in certain financial industries), and subject to obtaining 'prior approval from the government' (Dezan Shira & Associates 2019). Also pursuant to China's Judicial Explanation, in the case of a foreign investor launching an investment project in a prohibited industry, the court will support any claim that a contract entered into on the basis of such an investment is void. In the event of a foreign investor investing in a restricted industry, according to the Judicial Explanation, the court will support any assertion that a contract formed because of such an investment is void on the ground of being in violation of the relevant restrictive market access criteria.

In normal circumstances, prospective foreign investors may come across two types of negative lists issued by Chinese authorities: (i) the negative lists tailored for foreign investors only; and (ii) the negative lists applicable to all kinds of investors, including both foreign investors and their indigenous Chinese counterparts (Dezan Shira & Associates 2019). The first type covers the following two lists applicable to foreign investors exclusively: (1) 'The Special Administrative Measures on Access to Foreign Investment (2019 edition)', applicable to foreign investment projects carried out outside China's Free Trade Zones (Dezan Shira & Associates 2019); and (2) 'The Free Trade Zone Special Administrative Measures on Access to Foreign Investment (2019 edition)'. This is a less restrictive list applicable to foreign investment projects conducted within China's Free Trade Zones (Dezan Shira & Associates 2019), i.e. a group of specifically designated enclaves visibly or otherwise cordoned off where bracing for foreign investment is supposedly far more unhindered, in comparison with local jurisdictions at various levels outside those Free Trade Zones. In June 2020, China's National Development and Reform Commission and Ministry of Commerce issued to the public the 2020 version of the negative lists, and this is the latest version. The second type comprises the following two lists applicable to all investors (regardless of whether they are foreign or domestic in terms of nationality or ownership): (1) 'The Negative List for Market Access (2018 edition)' (Dezan Shira & Associates 2019); and (2) 'The Guidance Catalogue of Industrial Structure Adjustment (2011 edition) (2013 amendment)' (Dezan Shira & Associates 2019). On the other hand, adopting a negative list approach may in reality have to yield to the relevant international conventions or agreements, if there are indeed such conventions or agreements in existence to which China currently happens to be a party. That is to say, in the case of China

having joined an international convention or agreement, under which barriers to market entry can be entirely eliminated or partly reduced in favour of foreign investors in certain circumstances even though doing so obviously departs from what is dictated in China's prevailing negative lists, the international convention or agreement concerned will prevail (Foreign Investment Law, Article 4, paragraph 4).

But, generally speaking, the very existence of such negative lists and some necessary adjustments likely to be made to them at varying intervals will likely exacerbate foreign investors' scepticism about the value of investing in China, with its new inward investment environment.

As reported by an official source, 'China is set to become the world's largest national market' and one which foreign investors might continue to focus on, particularly in respect of industries that are internet-based, relating to 'information technology' and 'artificial intelligence' where China's innovation capability is fast expanding (MOFCOM 2020). Such a macro-background may allow for China's market opening-up to continue at a rapid pace, with the current negative lists to be further trimmed (MOFCOM 2020), especially during the periods of tailwinds. Foreign firms and entrepreneurs continue to encourage the Chinese authorities to roll out a new programme of market liberalization. But nevertheless, Chinese authorities are also not reluctant to air their concerns about '[s]ecurity, standards, consistency with international norms' (MOFCOM 2019), when facing the pressing issue of enabling foreign private investment to enjoy greater market access, especially in those fields strategically important for China's national wellbeing and safety (Foreign Investment Law, Article 35; Implementation Code of Foreign Investment Law, Article 40).

In addition, there are several major worries in foreign investors' minds which might be usefully addressed. This may perhaps be long overdue, and it is best to get them ironed out quickly. So, where might foreign investment fit in a bustling Chinese economy with such a colossal market peopled by 1.4 billion consumers and which is increasingly more competitive and selective? Are there any new manufacturing or service-sector hot spots where foreign companies might invest, given that China now possesses a fully comprehensive manufacturing base and a good supply chain system that is very cost effective (though regrettably perhaps not so competitive in terms of craftsmanship, and also high profit margins)? The dust-up between China and the US in their trade war is centering on China's further opening-up, especially in the financial fields. Other Western countries (e.g. mature economies based in the EU) which

are allied to the US are not so aggressive, but they basically also hold a sceptical view.

So far as the Chinese authorities are concerned, there is no doubt that they will continue to count on inflows of foreign capital into the country, so as to encourage economic growth. They will also encourage local industries to look to the global market. But both market forces and strategic contemplation may make them decide that further shrinkage of the current negative lists by a significant margin would be difficult, at least in the short term. However, their response to foreign investors' expectations should not be seen as indifferent. In the trade negotiations, the US side has gone out of its way to challenge China's current mechanism in regard to trade deficits, market liberalization and intellectual property protection (particularly emphasizing the necessity of banning any forced transfer of intellectual property rights). Coincidentally or not, answers to many of those compelling questions can now be unearthed in relevant provisions contained in chapter 2, 'Promotion of Foreign Investment', and chapter 3, 'Protection of Foreign Investment' under the Foreign Investment Law.

On the other hand, gaining greater access to China's financial markets may always be difficult. Chinese authorities have consistently attached paramount importance to the safeness and stability of China's financial markets. Despite foreign investors' robust demand for more market liberalization in the financial fields, China's legislature has kept the Foreign Investment Law clear of too many detailed technical elaborations with respect to further opening domestic financial markets for foreign investors, leaving that sort of work to an appropriate administrative authority to accomplish and to continue to monitor as time goes by.

For instance, on 1 May 2019, one of China's key government agencies, the China Banking and Insurance Regulatory Commission, made public 12 proposed new policies in relation to further liberalizing China's banking and insurance industries (Zhang 2019). They include:

- 1 'removing the ownership cap in a Chinese commercial bank by either individual Chinese banks or individual foreign-funded banks';
- 2 '[r]emoving the total asset requirement of USD 10 billion for foreign banks to set up locally incorporated subsidiaries and the total asset requirement of USD 20 billion for foreign banks to set up branches';
- 3 '[r]emoving the total asset requirement of USD 1 billion for overseas financial institutions to invest in trust companies';

- 4 '[a]llowing overseas financial institutions to invest in foreign-funded insurance companies';
- 5 '[r]emoving the requirements of 30 years of operation and USD 200 million total assets for foreign insurance brokers to conduct insurance brokerage business';
- 6 '[b]roaden[ing] the scope of Chinese shareholders in Sino-foreign joint-stock banks by canceling the requirement that the sole or major Chinese shareholders must be financial institutions';
- 7 '[e]ncouraging and supporting overseas financial institutions to carry out equity investment, business and technical cooperation with private banking and insurance institutions';
- 8 '[a]llowing foreign insurance group companies to invest in and set up insurance institutions';
- 9 '[a]pplying the unified qualification requirements for foreign insurance groups in China to initiate and establish insurance institutions with those for a Chinese insurance group';
- 10 'relaxing market access requirements for both Chinese and foreign financial institutions to establish consumer finance companies';
- 11 '[r]emoving the approval requirement for foreign banks to conduct RMB business, and allowing foreign banks to engage in RMB business upon their business commencement'; and
- 12 '[a]llowing foreign banks to conduct the agency business for fee collection and payment' (China Banking and Insurance Regulatory Commission 2019).

Better still, while a parallel legal framework for governing foreign investment will likely not be built again, the Foreign Investment Law has maintained a certain sort of continuity from the former system. It points out that 'foreign investors' and 'foreign investment enterprises' may have the possibility of enjoying privileges in a designated line of business or locality in China where foreign investors are particularly encouraged to invest, so as to accommodate the need for generating necessary economic and social development momentum on a nationally upward scale (Foreign Investment Law, Article 14). However, the Foreign Investment Law is responsible for providing only relevant guiding principles. In terms of foreign investor privilege much will depend on the circumstances, infused with a touch of utilitarianism, no matter how minor it may seem. In practice, China's pilot free trade zones and certain improvised benefits of a one-off nature are examples of such privilege. Since 2013, when the Shanghai Free Trade Zone was launched, China has established 18 pilot

free trade zones in total, radiating across 60 per cent of varying local jurisdictions (*International Daily News* 2019). Another example is that any income in connection with the Beijing 2022 Olympic and Paralympic Winter Games will be given a tax holiday for enterprise income tax purpose (ASIALLIANS 2019).

[E] CONCLUDING REMARKS

So in general, we can say that China does not need foreign capital in the way it did in the early days of economic reform, but continuing strong inward investment certainly encourages the belief that China's economic policies and practices are on the right track. Chinese authorities are not willing to see foreign investors leave the China market for good in any large numbers and will surely take timely action to arrest a downturn in this regard if there are warning lights which convincingly flash red.

Moreover, the growing consumption power of the Chinese populace remains very appealing to foreign investors as irresistible now as it was in the past, although there will be unavoidable humps and bumps in the cards. It may not be an exaggeration to claim that foreign investment is still the bellwether of China's economic activeness and perhaps its national well-being

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