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**Keynote Speech: Why Is Foreign Investment Law a  
Friendly Legislation for Foreign Investment in  
China?**

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## **Why Foreign Investment Law Is a Friendly Legislation for Foreign Investment in China?**

---Keynote Speech in APEC Workshop On Optimizing Investment Measures in the Asia-Pacific Region

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### **Distinguished guests, dear colleagues, ladies and gentlemen,**

It's my great honor to be here to share several observations of Chinese newly passed Foreign Investment Law with all of you. Also thanks to DG Zhang for his kind words during his opening remarks for me. Last month, on March 15<sup>th</sup>, the new Foreign Investment Law was passed by the second plenary session of the 13th NPC. And everyone, may have his own view on how to evaluate this newly passed law. I do agree with DDG Yang with his opening remarks saying the newly passed Foreign Investment Law shows completely the firm determination and confidence for Chinese government to continue the policy of opening up, and indeed this new law sends out a very strong and very clear signal for that.

In my personal point of view on that, I would like to share with all of you with one question: why Foreign Investment Law is a friendly legislation for foreign investment in China?

First of all, this law for the first time has incorporated a system of Pre-establishment National Treatment plus negative list. In 2013 China initiated a program to establish the first pilot free trade zone in Shanghai. And up to now, we have 12 free trade zones. Based on the experience of pilot programs, this law for the first time has made it very clear that we will implement the new rule of Pre-establishment National Treatment to all foreign investment. What's that new? That means the National Treatment will be given to the whole process for the investment. We will extend those National Treatment from post-investment stage to the market access phase which includes the establishment, acquisition and expanding. So the whole life circle of investment will enjoy the National Treatment. And also negative list, what's that mean? That's to say that only a limited number of measures will be listed out. We call it negative list. Within this list, it will be very clear in those areas, where foreign investors are prohibited or restricted to invest in China. But it is worth to note that list is very limited. Now it only has 48 measures. And we believe that this list will be further reduced. So this is a new idea with this system incorporated. Beyond the list or outside the list, foreign investors will enjoy equally National Treatment with domestic enterprises. So this is the first point.

And secondly what I would like to share with you is, what I call, the main characteristics of this law is promotion and protection. what is promotion? what is protection.? Totally there are 42 articles in this new law. If you count the number of specific articles including those from the first chapter of the General Provisions, you can find article 3 and article 5 are the provisions of promotion and protection. And also there are two independent chapters within this law, the second chapter and the third chapter which separately touch on promotion and protection. Adding all these articles together, (the number) is 21. so that's to say, half of the new law is targeting on how to promote and how to protect the foreign investment.

Not only the number to show, but there are also following aspects to demonstrate how friendly the law is for foreign investment in China.

Number one, from the perspective of stability. Article 3 makes it very clear that China will adhere to the national basic policy of opening up, and create a stable, predictable, transparent and fair competition business environment for foreign investment. So the first point I would like to say is that the new law will create a stable environment, mainly regulated by Article 3.

Number two, from the perspective of predictability. If you want to come to China to have your investment, what will happen before you get access to the market? According to this law, you can image and design your future business picture very clearly, which is firstly included in Article 5, saying China will definitely protect your investment, your benefits gained from your investment and also your other legal rights and interests. So you are protected. Article 20 also makes it very clear that China will not expropriate or requisition your investment except for very extreme circumstances. If that could happen, it must strictly follow the legal procedure, and also give you timely, reasonable and fair compensation. The fact is, we all know, there is no any expropriation had happened during the past 40 years since China had the policy of opening up. So your investment is safe. And also in Article 21, it stipulates very clear that you enjoy the free transfer of your capital, your investment and your profit, or income you got from your investment, no matter for abouchement or remittance.

Number three, from the perspective of IPR, that's another very important item I'd like to mention. There are two separate specific articles, which are Article 22 and 23, making it very clear that we will strengthen the IPR protection and we will fight seriously against those infringement of IPR. And also we are prohibited for any means of forcing the transfer of technologies. That's to say, technology cooperation will only happen based on free will and equal consultation, equal negotiation between partners, and only be considered based on your commercial needs and your commercial rules. And for those government officials, no matter central level or local level, it's all of their obligations and duties to keep the commercial secret into secret, which they know or they got to know when they perform their duties as a government official. These two articles get to be incorporated to confront directly with the concerns brought by foreign investors for many years. Even though, during the past time, we want to find what's happening, and ask those companies and investors to show us the evidence. My personal experience for the issue, I have never got any proof or specific evidence from those investors. No matter whether it exists or not, in order to solve the concerns of foreign investors, the law this time stipulates very clear for the IPR protection and for the commercial secret protection.

Number four, from the perspective of fair competitions. With this perspective, there are also several articles to show. The first one is Article 9. Article 9 makes it very clear that all the national policies supporting the development of industries will be equally applied to all the investors no matter foreign or domestic. So that's to say those supporting policies will be equally applicable to all the investors no matter foreign or domestic. Within Article 15, Article 16, and Article 17, you can find the specific provisions related to standard-setting, government procurement and also the finance.

Under those articles, all the investors, no matter foreign or domestic, they have equal access to participate those activities happening in standard setting process. It is the same for foreign investment enterprises to get involved for the government procurement, and also for the finance, you can get the equal access to finance thorough public offering of stocks, corporate bonds and other securities. So this will definitely

create a fair competition market environment.

Number five, from the perspective of transparency. This is also one of the concerns we heard for many years. Within article 10 of this new law, it's well stipulated, during and in the process of legislation, no matter law, administrative regulations or any rules, the drafter needs to solicit the opinions from foreign investors, from foreign investment enterprises. And also once any laws, regulations or documents passed, they need to be made available to public. Those documents, including normative or adjudicative paper, need to be published in a timely way.

Number six, from the perspective of working mechanism. This law, article 11 and 12, targets the working mechanism for promoting foreign investment at two sub-aspects. The first one is within China, we will establish and improve the working mechanism to promote the foreign investment from central to local level, to provide consultation or services on legislation, policy and business information, etc. The second one is outside China, Chinese government will work together with other foreign economies or international organizations actively in the area of promoting investment, by signing bilateral or multilateral, or plurilateral treaties, to create working mechanism, conduct international exchange and cooperation.

Number seven, from the perspective of dispute-settlement mechanism. Article 26, within this new law, this specific article regulates how to deal with those disputes. We will establish a national complaint and service center, which will accept, you know, any complaint or any dispute faced by foreign investors. The center will provide possible advice, or try to do some coordination for solving those problems faced by the foreign investors. However, that does not mean to replace those legal remedy channels like the administrative reconsideration, or the administrative lawsuit. You can continue to use those legal remedy channels to seek for you remedy according to the different laws. Besides those legal remedy channels, this law added a new one to deal with those disputes or problems faced by foreign investors.

Number eight, from the perspective of fighting against local protectionism. For this aspect, there are four articles. They are Article 18., 19., 24., 25. If you read it carefully, you can find there is a 1-3-3 disciplines there. "1" is "may", the local government may formulate their own policies to promote or facilitate foreign investment. However, those policies need to be based on law, administrative regulations, and need to be within your own authorities. You cannot allow to go beyond your authorities, the policies you give can only target those issues for promotion and facilitation. This is one.

The first "3" is "3 should", that means: local government should perform their duties according to the law; This is one "should". And the second "should" is, local government should simplify administrative procedure and optimize their public service. This is the second "should". The third should is, local government should honor their commitment, honor their contract obligations with the foreign investors. Once you got any commitment from the government, or you signed any contract with the local government, they need to honor it, to implement their commitment, their contract. And this is very important, that's to say, the local government need to honor what they said. That's also to say, before they make their any commitment with foreign investors, they should be very careful. Once they made the commitment, they need to follow that. So what kind of commitments they can make? That is also very clear. They need to follow the law. They cannot go beyond the law. And they cannot, go beyond their authorities, their own

powers, either.

The second “3” is “3 kinds of prohibitions”. The first one is, the local government is prohibited to derogate from legal rights and interests of foreign investment enterprises or increase obligation therein. The second one is, the local government is prohibited to set forth any conditions for investment to enter or exit the market. And the third one is, local government is prohibited interfere with normal production or operation of foreign-invested enterprises in China.

In order to help you to have a easy memory, I summarize those disciplines for local governments in this law as “1-3-3.”

In addition, According to Article 13 of this law, China will continue to establish Special Economic Development Zone where needed and conduct pioneer programs by giving even more favorable treatment for foreign investment. And within Article 14., it is allowed for the foreign investment in the different or in the specific industries, sectors, or specific regions, you know, to enjoy more favorable treatment according to the law.

The new law will enter into effect next year, and as far as I know, the relevant government agencies, they are working very hard, you know, to draft the implementing rules under this law. And it is also very clear that those implementing rules will come into effect in the same time with this new law.

We have full of reasons to believe China will welcome more and more foreign investment, with this new friendly law coming into effect.

That ends my presentation. Thank you for your attention. Thank you.