



Opinion

Robert Lawrence Kuhn

## China's foreign investment law will be credible. Xi Jinping will see to it

- The Chinese president's commitment to globalisation, and understanding that China's credibility is at stake, will ensure the proposed law will indeed curb predatory practices aimed at foreign businesses and level the playing field for them



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President Xi Jinping stops to talk to National People's Congress deputies during a session of the annual meeting on March 8, in Beijing. Xi is determined that China must continue to champion globalisation. Photo:Xinhua

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With its new foreign investment law, China is backing its words with deeds. Foreign critics, quick to stress the law's lack of specifics, should appreciate China's commitment and process. China has become the champion of globalisation, propounding the overarching benefits of free trade, and by proposing to open up its own markets further, China seeks to align its domestic policy with its international strategy.

Years in the making, the foreign investment law exemplifies the government's commitment to facilitate foreign companies doing business in China, which would enhance the kinds of market competition that benefit Chinese consumers – and here, frankly, foreign pressures can help to do what most Chinese economists want to do anyway. Though the specifics needed for full implementation are yet to come, the law intends to give foreign businesses broader market access, protect their intellectual property, prohibit forced technology transfer, and guarantee equal treatment (a "level playing field") for foreign and domestic companies.

The development of the foreign investment law offers insight into the legislative process in China. The law entered the State Council's legislative plan in 2014, and in 2015, the Ministry of Commerce posted

on its website a draft of the law for the purpose of soliciting opinions, an increasingly common feature of “Chinese democracy”, where the people exercise de facto control over the purveyors of bad practice.

In December 2018, the final draft of the legislation was published for public review and oversight. The long delay is attributed, non publicly, to sharp disagreements among “relevant authorities and ministries” (as they like to say).

The draft law consists of 41 articles in six parts, stressing investment promotion, protection, management, and legal responsibility. It requires national and local governments to upgrade their foreign investment services so that they become more convenient, efficient and transparent. Local governments are directed to abide strictly by policy commitments made to foreign investors and foreign-invested enterprises in accordance with the law.

Beijing believes that the foreign investment law will become the most important legal milestone in China’s continuing process of opening up to the outside world, following China entry into the World Trade Organisation in 2001. The law’s prime objectives are to improve the openness, transparency and predictability of the investment environment for foreign investors.

Yet there is concern among foreign media and business leaders about how the law will be implemented and enforced. The law in its current form is much shorter than the 170 articles in the 2015 draft; moreover, about one-third of the current 41 articles are a single sentence. Thus, there would seem ample room for the law’s “flexible application” in the hands of bureaucrats, especially interest-group bureaucrats. One proviso, especially worrying to foreigners, states that complaints would be heard in Chinese courts.

Under the new law, conditions may well be only marginally better for foreign businesses than the status quo.

But I am cautiously optimistic that a stronger force will ensure the new law ushers in needed improvements. That stronger force is President Xi Jinping’s deep commitment to promoting globalisation, and the fact that China’s credibility as a champion of globalisation will depend on the degree to which its foreign investment law is recognised and respected by the international business community. That's why, in preparation for this year’s meetings of its legislature and political advisory body, commonly known as the “two sessions”, the legislative process was unusually accelerated.

It had been in January 2017, at the World Economic Forum in Davos, that Xi gave perhaps the most impassioned speech in defence of globalisation, when it was under pressure, even attack, by US President Donald Trump and other forces of populism and protectionism. At the time, some foreign media criticised China for hypocrisy – “talking the talk” of globalisation but not “walking the walk” of applying to themselves the same principles of open markets and free trade that it was preaching to others.

I believe Xi is determined that China must continue to champion globalisation, which is why China’s foreign investment law must be effective, and why, after it becomes the law of the land, foreign businesses must appreciate its change-making powers.

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