China’s reform began with economic reform, which itself began with the protection of foreign investments. At the very beginning of the reform and opening, China issued the Law on Sino-Foreign Equity Joint Ventures (the EJV Law), which specifically governs foreign investments in China. Thereafter, a series of laws and regulations that effectively attracted a large amount of foreign investments and contributed to sustainable growth of China’s economy were promulgated. Transitioning to a market economy in order to create an environment with fair competition has been one of the major goals for China’s reform and opening. One of the driving forces for achieving this goal has been the creation of an increasingly sophisticated foreign investment protection system.

During the past thirty years, China—immersed in the process of transforming from a closed country to an open country—has gone from resisting foreign investment to seeking it out with preferential treatment, and finally to creating a unified market consisting of both domestic and international capital. Accordingly, the foreign investment protection system has also undergone many changes, starting from nothing and developing into a system with increasing transparency. Over the course of the reform and opening period, the improvement of relevant laws and systems has reflected the nation’s resolve and desire to create a foreign investment protection system aimed at creating a fair market competition environment. This resolve is what has laid the foundation for the development of China’s foreign investment legal regime. During the past thirty years, China has made significant advances but also faced many challenges and problems. It is therefore worthwhile to review this process of reform and change and see what can be learned.
I. The Construction and Development of the Legal Regime for Foreign Investment Protection

A. Legislative Background and Implications

As a result of its highly centralized planned economy and closed-door policies, from its founding, the People’s Republic of China was isolated from the rest of the world. Especially in the 1960s, China made a number of mistakes in its economic development and foreign policy, while other economies around the world grew rapidly. While the world witnessed the rapid development of science and technology, China was missing its opportunity to catch up. As a result, the gap between China and the rest of the world widened. In the 1970s, China began to realize that the highly centralized planned economy and closed-door policy needed to be fundamentally changed, that socialist countries could develop their economies by opening to the outside world, and that failure to do so would adversely impact a country’s economic growth. Illustrating this realization, at an event receiving foreign guests Deng Xiaoping remarked that, “We have adopted an opening-up policy to the outside world. We are enhancing communication with other countries, paying particular attention to the experiences and technological developments of developed countries, and attracting foreign capital to help in our development.” At the third plenary session of the Eleventh Chinese Communist Party Central Committee, the opening policy was officially launched. From that moment, China began to gradually approach and open itself up to the outside world. Along with this, foreign capital started to flow into China, and establishing foreign investment laws and other relevant legal frameworks was placed onto the agenda. The EJV Law was an early example of this process, promulgated during the first year of the reform and opening policy; it was immediately followed by the Law on Sino-Foreign Contractual Joint Ventures 《中外合作经营企业法》(the CJV Law) and the Wholly Foreign-Owned Enterprises Law 《外资企业法》(the WFOE Law), which began to regulate and protect foreign investments in China. (Below, these laws are referred to collectively as the “basic foreign investment laws”).

In the history of the establishment and development of China’s foreign investment legal regime, two elements have always played a significant role: China’s domestic industrial policies and increasing globalization of the world economy.