

Foreign Investment Law of the People's Republic of China

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Investment Promotion	2
Chapter III — Investment Protection	3
Chapter IV — Investment Management	4
Chapter V — Legal Liability	5
Chapter VI — Supplementary Provisions	6

Adopted at the Second Session of the 13th National People's Congress on March 15, 2019, promulgated by Order No. 26 of the President of the People's Republic of China on March 15, 2019, effective as of January 1, 2020.

Table of Contents

- Chapter I — General Provisions
- Chapter II — Investment Promotion
- Chapter III — Investment Protection
- Chapter IV — Investment Management
- Chapter V — Legal Liability
- Chapter VI — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of further expanding opening-up, actively promoting foreign investment, protecting the lawful rights and interests of foreign investors, regulating the administration of foreign investment, promoting the formation of a new pattern of comprehensive opening-up, and promoting the sound development of the socialist market economy.

Article 2 — This Law applies to foreign investment within the territory of the People's Republic of China (hereinafter referred to as "within the territory of China").

For the purposes of this Law, "foreign investment" means any investment activity conducted directly or indirectly within the territory of China by a foreign natural person, enterprise or other organization (hereinafter referred to as a "foreign investor"), including the following circumstances:

(1) A foreign investor establishing a foreign-invested enterprise within the territory of China, either independently or jointly with any other investor;

- (2) A foreign investor acquiring shares, equities, property shares or other similar rights and interests of an enterprise within the territory of China;
- (3) A foreign investor making investment in a new project within the territory of China, either independently or jointly with any other investor; and
- (4) Investment conducted through other means as prescribed by laws, administrative regulations or provisions of the State Council.

For the purposes of this Law, “foreign-invested enterprise” means an enterprise that is incorporated within the territory of China in accordance with Chinese laws and is wholly or partly invested by a foreign investor.

Article 3 — The State shall adhere to the basic state policy of opening-up and encourage foreign investors to make investment within the territory of China in accordance with the law.

The State shall implement policies of high-level investment liberalization and facilitation, establish and improve a foreign investment promotion mechanism, and create a stable, transparent, predictable and level playing field for foreign investment.

Article 4 — The State shall implement the system of pre-establishment national treatment plus negative list for the administration of foreign investment.

For the purposes of the preceding paragraph, “pre-establishment national treatment” means the treatment accorded to foreign investors and their investments, at the stage of investment access, that is no less favorable than that accorded to domestic investors and their investments. “Negative list” means special administrative measures for the access of foreign investment in specific fields as prescribed by the State.

The State shall accord national treatment to foreign investment beyond the negative list.

The negative list shall be issued by or with the approval of the State Council.

Where any international treaty or agreement concluded or acceded to by the People’s Republic of China provides for more favorable treatment for foreign investors with respect to access, such provisions of the international treaty or agreement may prevail.

Article 5 — The State shall protect the investment, earnings and other lawful rights and interests of foreign investors within the territory of China in accordance with the law.

Article 6 — Foreign investors and foreign-invested enterprises conducting investment activities within the territory of China shall comply with Chinese laws and regulations, and shall not endanger China’s national security or harm the public interest.

Article 7 — The competent departments for commerce and investment under the State Council shall, in accordance with the division of duties, promote, protect and administer foreign investment work. Other relevant departments of the State Council shall be responsible for foreign investment-related work within the scope of their respective duties.

The relevant departments of local people’s governments at or above the county level shall carry out foreign investment promotion, protection and administration work in accordance with laws, regulations and the division of duties determined by the people’s governments at the corresponding level.

Article 8 — Employees of foreign-invested enterprises may establish trade union organizations in accordance with the law, carry out trade union activities, and safeguard the lawful rights and interests of employees. Foreign-invested enterprises shall provide the necessary conditions for the activities of their trade unions.

Chapter II — Investment Promotion

Article 9 — Foreign-invested enterprises shall be equally entitled to apply, in accordance with the law, the State policies concerning enterprise development.

Article 10 — The State shall, in accordance with the law, solicit comments and suggestions from foreign-invested enterprises when formulating laws, regulations and rules related to foreign investment. Documents such as normative documents and adjudicative instruments related to foreign investment shall be published in a timely manner in accordance with the law.

Article 11 — The State shall establish and improve a foreign investment service system to provide foreign investors and foreign-invested enterprises with consultation and services on laws, regulations, policies, measures, investment project information and other aspects.

Article 12 — The State shall guarantee that foreign-invested enterprises participate in the formulation of standards on an equal basis in accordance with the law, and shall strengthen information disclosure and social supervision in the formulation of standards.

The mandatory standards formulated by the State shall apply equally to foreign-invested enterprises and domestic enterprises.

Article 13 — The State shall guarantee that foreign-invested enterprises may participate in government procurement activities through fair competition in accordance with the law. Products produced and services provided by foreign-invested enterprises within the territory of China shall be treated equally in government procurement in accordance with the law.

Article 14 — Foreign investors may lawfully raise funds within the territory of China through the public issuance of stocks, corporate bonds, and other securities, or through other financing means.

Article 15 — The State shall encourage foreign investors to invest in high-end manufacturing, intelligent manufacturing, green manufacturing and other industries, and in modern services such as research and development, design, modern logistics, information services, and legal services.

Article 16 — The State shall safeguard that foreign-invested enterprises may, in accordance with the law, equally participate in the relevant work of standardization bodies, and may, in accordance with the law, equally apply for undertaking projects of scientific and technological plans, and other scientific and technological research.

Article 17 — Foreign-invested enterprises may lawfully conduct profit distribution and other capital account transactions in accordance with the law. Foreign investors may lawfully and freely remit into and out of China their contributions, profits, capital gains, income from asset disposal, intellectual property royalties, lawfully obtained compensation, indemnities or liquidation proceeds, within the territory of China in RMB or a foreign currency.

Article 18 — Local people's governments at or above the county level may, in accordance with laws, administrative regulations and local regulations, formulate policies for the promotion and facilitation of foreign investment within their respective statutory authority.

Article 19 — People's governments at all levels and their relevant departments shall, in accordance with the principles of facilitation, efficiency and transparency, simplify the procedures for conducting business, improve service efficiency, and optimize government services, so as to further improve the foreign investment environment.

The State shall establish a foreign investment enterprise complaint mechanism and shall promptly handle complaints filed by foreign investors or foreign-invested enterprises, and coordinate the improvement of relevant policies and measures.

Chapter III — Investment Protection

Article 20 — The State shall not expropriate the investment of foreign investors.

Under special circumstances, the State may expropriate or requisition the investment of foreign investors for the needs of the public interest in accordance with the provisions of the law. Expropriation or requisition shall be conducted in accordance with statutory procedures and fair and reasonable compensation shall be provided in a timely manner.

Article 21 — Foreign investors' capital contributions, profits, capital gains, income from asset disposal, intellectual property royalties, lawfully obtained compensation or indemnities, liquidation proceeds and other funds may be freely remitted into and out of China in RMB or a foreign currency in accordance with the law. No entity or individual may unlawfully restrict the currency, amount or frequency of such remittances.

Article 22 — The State shall protect the intellectual property rights of foreign investors and foreign-invested enterprises, and protect the lawful rights and interests of holders of intellectual property rights and relevant right holders. With respect to infringement of intellectual property rights, the liability shall be pursued strictly in accordance with the law.

In the course of performing their duties, state organs and their functionaries shall keep confidential the trade secrets of foreign investors and foreign-invested enterprises of which they become aware, and shall not divulge or unlawfully provide such secrets to others.

The State shall encourage technical cooperation on a voluntary basis and in accordance with commercial rules in the process of foreign investment. The conditions for technical cooperation shall be determined by the parties to the investment on an equal basis through consultation in accordance with the principle of fairness. No administrative organ or its functionaries may force the transfer of technology by administrative means.

Article 23 — Administrative organs and their functionaries shall not compel foreign-invested enterprises or foreign investors to transfer technology by administrative means. The conditions for technical cooperation shall be determined on a voluntary basis by all parties to the investment on an equal basis through consultation in accordance with the principle of fairness.

Article 24 — People's governments at all levels and their relevant departments shall keep their policy commitments lawfully made to foreign investors and foreign-invested enterprises, and perform all contracts concluded in accordance with the law.

Where policy commitments or contractual provisions need to be changed for the needs of the State or public interest, such change shall be made in accordance with statutory authority and procedures, and foreign investors and foreign-invested enterprises shall be compensated in accordance with the law for their losses.

Article 25 — Where foreign investors or foreign-invested enterprises consider that the administrative acts of administrative organs or their functionaries infringe upon their lawful rights and interests, they may, in addition to seeking administrative reconsideration or instituting administrative litigation in accordance with the law, apply for coordination and resolution through the foreign-invested enterprise complaint mechanism.

Where foreign investors or foreign-invested enterprises consider that the administrative acts of administrative organs or their functionaries infringe upon their lawful rights and interests, they may also report the matter to the relevant departments of the State Council for handling.

Article 26 — Foreign-invested enterprises may establish and voluntarily participate in chambers of commerce and associations in accordance with the law. Chambers of commerce and associations shall carry out relevant activities in accordance with laws, regulations and their articles of association, and safeguard the lawful rights and interests of their members.

Chapter IV — Investment Management

Article 27 — Foreign investors shall not invest in any field prohibited by the negative list for foreign investment access.

Where the negative list for foreign investment access imposes restrictive access conditions on a field, foreign investors making investment in such field shall comply with such conditions.

Article 28 — Where foreign investment requires the undergoing of a licensing or approval procedure, the relevant competent department shall, in accordance with the conditions and time limits prescribed by the law, review and, if the application is approved, grant the relevant license or approval.

Article 29 — Where foreign investment is not subject to licensing or approval procedures under the negative list for foreign investment access, it shall be subject to the record-filing procedures uniformly prescribed by the State.

Article 30 — Where foreign investors make investment in sectors that require a review under the negative list for foreign investment access, the relevant departments shall conduct the review in accordance with the prescribed conditions and procedures.

Article 31 — Where a foreign investor merges with or acquires a domestic enterprise within the territory of China, and such merger or acquisition falls under the circumstances provided for by the State Council, the foreign investor shall apply to the State Council's anti-monopoly enforcement authority for anti-monopoly review.

Article 32 — Where foreign investors make investment in any industry or sector subject to the investment project approval or record-filing administration, the relevant provisions of the State shall be complied with.

Article 33 — Where foreign investors make investment within the territory of China in accordance with the law and establish foreign-invested enterprises, the relevant provisions of the State on company registration and tax registration shall be complied with, and reporting obligations to the relevant departments shall be performed in accordance with the law.

Article 34 — The State shall establish a foreign investment information reporting system. Foreign investors or foreign-invested enterprises shall submit investment information to the competent commerce departments through the enterprise registration system and the enterprise credit information publicity system.

The content and scope of foreign investment information reporting shall be determined in accordance with the principle of necessity. Information that can be obtained through inter-departmental information sharing shall not be required to be submitted again.

Article 35 — The State shall establish a foreign investment security review system to conduct security reviews of foreign investment that affects or may affect national security.

The security review decision made in accordance with the law shall be final.

Chapter V — Legal Liability

Article 36 — Where a foreign investor invests in a field prohibited by the negative list for foreign investment access, the relevant competent department shall order it to cease the investment activity, dispose of the shares or assets within a specified time limit, or take other necessary measures, and restore the situation to the state prior to the investment. Where there are illegal gains, such gains shall be confiscated.

Where the investment activities of a foreign investor violate any special administrative measure on foreign investment access prescribed by the negative list for foreign investment access, the relevant competent department shall order it to make corrections within a specified time limit and take necessary measures to meet the requirements of the special administrative measure. Where it fails to make corrections within the time limit, measures shall be taken in accordance with the provisions of the preceding paragraph.

Where the investment activities of a foreign investor violate the provisions of the negative list for foreign investment access, the investor shall bear corresponding legal liability in accordance with the law in addition to the measures provided for in the preceding two paragraphs.

Article 37 — Where a foreign investor or foreign-invested enterprise violates the provisions of this Law by failing to submit investment information in accordance with the foreign investment information reporting system, the competent commerce department shall order it to make corrections within a specified time limit. Where it fails to make corrections within the time limit, a fine of not less than RMB 100,000 yuan but not more than RMB 500,000 yuan shall be imposed.

Article 38 — Where foreign investors or foreign-invested enterprises violate any law or regulation, the relevant departments shall investigate and handle such violations and pursue legal liability in accordance with the law, and shall include the relevant information in the credit information system.

Article 39 — Where any functionary of an administrative organ abuses his or her power, neglects his or her duties, or engages in malpractice for personal gain in the work of foreign investment promotion, protection and administration, or divulges or unlawfully provides to others trade secrets of which he or she becomes aware in the course of performing his or her duties, sanctions shall be imposed in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter VI — Supplementary Provisions

Article 40 — Where any foreign investor makes investment in the banking, securities, insurance and other financial industries within the territory of China, or makes investment in the securities markets or foreign exchange markets within the territory of China, the relevant provisions of the State on the administration of foreign investment in the financial industry and financial markets shall apply, unless otherwise provided for by the State.

Article 41 — This Law shall apply *mutatis mutandis* to foreign investors who are natural persons and establish resident offices within the territory of China or carry out cross-border e-commerce or other activities for the purpose of making investment within the territory of China.

Article 42 — The Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures, the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, and the Law of the People's Republic of China on Sino-Foreign Cooperative Joint Ventures shall be repealed simultaneously as of the effective date of this Law.

Foreign-invested enterprises established in accordance with the Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures, the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, and the Law of the People's Republic of China on Sino-Foreign Cooperative Joint Ventures before this Law takes effect may retain their original organizational forms and other structures within five years after this Law takes effect. Specific measures shall be formulated by the State Council.

This translation is provided for informational purposes only by Dan Young Business Consultancy. While every effort has been made to ensure accuracy, this is an unofficial translation and should not be relied upon as legal advice. For official legal purposes, please refer to the original Chinese text promulgated by the National People's Congress.