Foreign Investment Law of the People’s Republic of China

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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 5

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, vigorously 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 facilitating the sound development of the socialist market economy.

Article 2 — This Law shall apply to foreign investment within the territory of the People’s Republic of China. For purposes of this Law, ‘foreign investment’ means investment activities directly or indirectly carried out by foreign natural persons, enterprises, or other organizations (hereinafter referred to as ‘foreign investors’) within the territory of China, including the following circumstances: (1) a foreign investor establishes a foreign-invested enterprise in China, either independently or jointly with any other investor; (2) a foreign investor acquires shares, equities, property shares, or any other similar rights and interests of an enterprise within the territory of China; (3) a foreign investor invests in a new project in China, either independently or jointly with any other investor; and (4) a foreign investor makes investment in any other way stipulated by laws, administrative regulations, or provisions of the State Council.

Article 3 — The state shall uphold and improve the system of pre-establishment national treatment plus negative list for the administration of foreign investment. Pre-establishment national treatment means the treatment granted to foreign investors and their investments at the access stage that is no less favorable

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than that granted to domestic investors and their investments. The negative list means special administrative measures for foreign investment access in specific fields as prescribed. The state shall grant national treatment to foreign investment beyond the negative list. The negative list shall be issued by or upon approval by 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, the relevant provisions of such treaty or agreement may prevail.

Article 4 — The state shall establish a foreign investment promotion mechanism, perfect the foreign investment service system, and provide foreign investors and foreign-invested enterprises with services and facilitation in areas such as laws and regulations, policies and measures, and investment project information.

Article 5 — The state shall protect the investments, earnings, and other lawful rights and interests of foreign investors in China in accordance with law.

Article 6 — Foreign investors and foreign-invested enterprises shall comply with the laws and regulations of China when carrying out investment activities within the territory of China, and shall not compromise the national security of China 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, carry out the work of foreign investment promotion, protection, and administration. Other relevant departments of the State Council shall, within the scope of their respective duties, be responsible for the work related to foreign investment promotion, protection, and administration. The relevant departments of local people's governments at or above the county level shall, in accordance with laws and regulations and the division of duties as determined by the people's governments at the same level, carry out the work of foreign investment promotion, protection, and administration.

Article 8 — Foreign-invested enterprises shall be established and operated in compliance with laws, administrative regulations, and the relevant provisions of the State Council, and may enjoy preferential treatment in accordance with law.

Article 9 — No state organ or its functionaries may force or covertly force foreign investors or foreign-invested enterprises to transfer technology by administrative means.

Chapter II — Investment Promotion

Article 10 — The state shall treat foreign investment and domestic investment equally in terms of accessing government funds and land supply, applying tax and fee reductions and exemptions, participating in government procurement, and other aspects of investment promotion.

Article 11 — Where foreign investors invest in sectors, fields, or regions encouraged by the state, they may enjoy preferential treatment in accordance with the provisions of laws, administrative regulations, or the State Council.

Article 12 — The state shall, in accordance with the needs of the national economy and social development, encourage and guide foreign investment in specific industries, fields, and regions. Foreign investors and foreign-invested enterprises may, in accordance with law, enjoy fiscal, taxation, financial, land use, and other preferential treatment for investing in sectors, fields, or regions encouraged by the state.

Article 13 — The state shall guarantee that foreign-invested enterprises equally participate in government procurement activities in accordance with law. The products manufactured and services provided by foreign-invested enterprises within the territory of China shall be treated equally with those of domestic enterprises in government procurement.

Article 14 — Foreign-invested enterprises may conduct public financing through methods such as the public issuance of stocks, corporate bonds, and other securities in accordance with laws, administrative regulations, and the relevant provisions of the State Council.

Article 15 — The state shall, in accordance with law, improve the foreign investment service system and provide foreign investors and foreign-invested enterprises with consultation and services in respect of laws and regulations, policies and measures, investment project information, and other aspects.

Article 16 — The state shall establish a multi-faceted foreign investment promotion system, develop international investment promotion platforms, and encourage overseas investment promotion agencies to carry out activities in China.

Article 17 — Foreign investors may freely remit into and out of China their contributions, profits, capital gains, proceeds from asset disposal, royalties of intellectual property rights, lawfully obtained compensation or indemnity, proceeds from liquidation, and other funds in accordance with law. Transfers by foreign investors of the aforesaid funds shall be carried out in accordance with law.

Article 18 — The state shall protect the intellectual property rights of foreign investors and foreign-invested enterprises and the lawful rights and interests of holders of intellectual property rights, encourage technology cooperation based on voluntary principles and commercial rules, and protect the lawful rights and interests of foreign investors and foreign-invested enterprises in the course of technology cooperation. Any infringement upon the intellectual property rights of foreign investors or foreign-invested enterprises shall be subject to strict legal liability in accordance with law.

Article 19 — Administrative organs and their functionaries shall keep confidential any trade secrets of foreign investors and foreign-invested enterprises that come to their knowledge in the performance of their duties, and shall not divulge or illegally provide such secrets to others.

Article 20 — People's governments at all levels and their relevant departments shall formulate policies on foreign investment in compliance with the principle of transparency. The formulation of normative documents involving foreign investment shall be subject to legal review and, as needed, shall solicit opinions and suggestions from foreign-invested enterprises and relevant industry associations in an appropriate manner. Normative documents involving foreign investment shall be published in a timely manner in accordance with law.

Chapter III — Investment Protection

Article 21 — The state shall not expropriate any investment of foreign investors. Under special circumstances where expropriation is necessary for public interest, the state shall expropriate the investment of foreign investors in accordance with the statutory procedures and provide fair and reasonable compensation.

Article 22 — The contributions, profits, capital gains, proceeds from asset disposal, royalties of intellectual property rights, lawfully obtained compensation or indemnity, proceeds from liquidation, and other funds of foreign investors within the territory of China may be freely remitted abroad in RMB or foreign currencies in accordance with law.

Article 23 — Administrative organs and their functionaries shall keep confidential any trade secrets of foreign investors and foreign-invested enterprises that come to their knowledge in the performance of their duties, and shall not divulge or illegally provide such secrets to others.

Article 24 — When formulating normative documents concerning foreign investment, the state shall solicit opinions and suggestions from foreign-invested enterprises in an appropriate manner. Normative documents involving foreign investment shall be published in a timely manner in accordance with law.

Article 25 — Local people's governments at all levels and their relevant departments shall fulfill their policy commitments made to foreign investors and foreign-invested enterprises in accordance with law and perform all types of contracts concluded in accordance with law. Where policy commitments or contractual provisions need to be changed in the public interest, such change shall be made in accordance with statutory authority

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and procedures, and foreign investors and foreign-invested enterprises shall be compensated in accordance with law for the losses incurred as a result thereof.

Article 26 — The state shall establish a complaint mechanism for foreign-invested enterprises, improve the methods for handling complaints, and promptly address problems raised by foreign-invested enterprises or their investors. If a foreign-invested enterprise or its investor believes that an administrative act of an administrative organ or its functionaries infringes upon its lawful rights and interests, it may apply for coordination and resolution through the complaint mechanism for foreign-invested enterprises. In addition to applying for coordination and resolution through the complaint mechanism, a foreign-invested enterprise or its investor may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Article 27 — Foreign-invested enterprises may, in accordance with law, establish and voluntarily participate in trade associations and chambers of commerce. Trade associations and chambers of commerce shall carry out relevant activities in accordance with laws, regulations, and their articles of association to protect the lawful rights and interests of their members.

Article 28 — The state shall not expropriate any investment of foreign investors. Under special circumstances where expropriation is necessary for public interest, the state shall carry out expropriation in accordance with statutory procedures and provide fair and reasonable compensation in a timely manner.

Chapter IV — Investment Management

Article 29 — Where foreign investment is required to obtain a permit, undergo record-filing procedures, or satisfy any other conditions as provided by laws, administrative regulations, or the State Council, such requirements shall be met.

Article 30 — The state shall establish a foreign investment information reporting system. Foreign investors or foreign-invested enterprises shall submit investment information to the competent departments for commerce 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; investment information that can be shared through inter-departmental information sharing shall not be required to be submitted again.

Article 31 — Foreign investors shall not invest in any sector prohibited by the negative list for foreign investment access. Where specific conditions are imposed on sectors restricted by the negative list, foreign investors shall meet such conditions.

Article 32 — With respect to sectors not included in the negative list, foreign investment and domestic investment shall be treated equally in accordance with the principle of equal treatment.

Article 33 — In the process of enterprise registration, the relevant department shall, in accordance with law, examine whether the foreign investment falls within the scope of the negative list. Where it is necessary to obtain a permit, the foreign investor shall obtain such permit in accordance with law.

Article 34 — Where foreign investors merge with or acquire domestic enterprises or participate in the concentration of undertakings in any other manner, they shall be subject to antitrust review in accordance with the provisions of the Anti-Monopoly Law of the People’s Republic of China.

Article 35 — Foreign-invested enterprises shall comply with the relevant state provisions on worker participation in democratic management and trade union organization. Foreign-invested enterprises shall provide necessary conditions for trade union activities in accordance with law.

Article 36 — The state shall establish a security review system for foreign investment. Where foreign investment affects or may affect national security, a security review shall be conducted in accordance with law.

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Chapter V — Legal Liability

Article 37 — Where a foreign investor invests in a sector prohibited by the negative list, the relevant competent department shall order the investor to cease the investment activity, dispose of the shares and assets, or take other necessary measures within a prescribed time limit, and restore the situation to the state before the investment. The foreign investor shall bear the legal liability for any illegal gains.

Article 38 — Where a foreign investor fails to submit investment information as required, or submits false or misleading investment information, the competent department for commerce shall order the investor to make corrections within a prescribed time limit and take other administrative actions in accordance with law.

Article 39 — Where any state organ or its functionaries abuses power, neglects duties, engages in malpractices for personal gain, or divulges or illegally provides others with any trade secrets of foreign investors or foreign-invested enterprises that come to their knowledge in the performance of their duties, such persons shall be subject to legal liability in accordance with law.

Article 40 — Where an administrative organ or its functionaries infringe upon the lawful rights and interests of foreign investors or foreign-invested enterprises in the performance of duties, the foreign investors or foreign-invested enterprises may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Chapter VI — Supplementary Provisions

Article 41 — This Law shall not apply to investments made by investors from the Hong Kong Special Administrative Region or the Macao Special Administrative Region within the mainland, unless otherwise provided by laws, administrative regulations, or the State Council. Matters concerning investment by investors from the Taiwan region shall be governed by the provisions of the Law on the Protection of Investment by Taiwan Compatriots and other relevant laws and administrative regulations.

Article 42 — Where any matter concerning foreign investment is otherwise provided for in any law or administrative regulation governing specific sectors such as banking, securities, insurance, and other financial industries, such provisions shall prevail.

Article 43 — This Law shall come into force on January 1, 2020. 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. Foreign-invested enterprises established in accordance with the aforesaid three laws before the implementation of this Law may retain their original organizational forms within five years after the implementation of this Law.

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