Implementing Regulations of the Foreign Investment Law of the PRC

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Foreign Investment Law of the People's Republic of China (hereinafter referred to as the “Foreign Investment Law”).

Article 2 — The State encourages and promotes foreign investment, protects the lawful rights and interests of foreign investors, regulates the administration of foreign investment, continuously improves the environment for foreign investment, and advances opening-up at a higher level.

Article 3 — The “other investors” referred to in item (1) and item (3) of paragraph 2 of Article 2 of the Foreign Investment Law include natural persons of China.

Article 4 — The negative list for foreign investment access (hereinafter referred to as the “negative list”) shall be proposed by the competent investment department of the State Council in conjunction with the competent

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commerce department of the State Council and other relevant departments, and shall be published by the State Council, or published by the competent investment department and the competent commerce department of the State Council after approval by the State Council.

The State shall adjust the negative list in a timely manner in light of the need for further expanding opening-up and for economic and social development. The procedure for adjusting the negative list shall be governed by the provisions of the preceding paragraph.

Article 5 — The competent commerce department, the competent investment department and other relevant departments of the State Council shall, in accordance with the division of duties, closely cooperate and coordinate with one another in jointly performing the work of promoting, protecting and administering foreign investment.

Local people's governments at or above the county level shall strengthen organizational leadership over the work of promoting, protecting and administering foreign investment, support and urge the relevant departments to carry out such work in accordance with laws, regulations and the division of duties, and promptly coordinate and resolve major issues arising in the promotion, protection and administration of foreign investment.

Chapter II — Investment Promotion

Article 6 — Governments and their relevant departments shall, in such matters as the allocation of government funds, land supply, tax and fee reductions and exemptions, qualification licensing, standard-setting, project application and human resources policies, treat foreign-invested enterprises and domestic-invested enterprises equally in accordance with the law.

Policies formulated by governments and their relevant departments in support of enterprise development shall be made public in accordance with the law; with respect to matters that require enterprise application in the course of policy implementation, governments and their relevant departments shall make public the conditions, procedures and time limits for application and handling, and shall treat foreign-invested enterprises and domestic-invested enterprises equally in the course of review.

Article 7 — When formulating administrative regulations, rules and regulatory documents relating to foreign investment, or when governments and their relevant departments draft laws and local regulations relating to foreign investment, they shall, in light of the actual circumstances, adopt various forms such as soliciting opinions in writing and convening symposiums, expert demonstration meetings and hearings to hear the opinions and suggestions of foreign-invested enterprises and relevant chambers of commerce and associations; with respect to opinions and suggestions that are reflected in a concentrated manner or that involve major rights and obligations of foreign-invested enterprises, the adoption of such opinions and suggestions shall be fed back through appropriate means.

Regulatory documents relating to foreign investment shall be published in a timely manner in accordance with the law, and those not published shall not serve as the basis for administrative administration. With respect to regulatory documents closely related to the production and operational activities of foreign-invested enterprises, the interval between publication and entry into force shall be reasonably determined in light of the actual circumstances.

Article 8 — People's governments at all levels shall, in accordance with the principle of government leadership and multi-party participation, establish and improve the service system for foreign investment, and continuously enhance their capacity and level in serving foreign investment.

Article 9 — Governments and their relevant departments shall, through government websites and the national integrated online government service platform, list in a centralized manner the laws, regulations, rules, regulatory documents, policy measures and investment project information relating to foreign

investment, and shall strengthen publicity and interpretation through multiple channels and means, providing consultation, guidance and other services for foreign investors and foreign-invested enterprises.

Article 10 — The “special economic zones” referred to in Article 13 of the Foreign Investment Law mean specific areas established with State approval that implement greater-intensity policies and measures for opening-up.

Pilot policies and measures for foreign investment implemented by the State in certain regions may, upon being proven practicable, be extended to other regions or nationwide in light of the actual circumstances.

Article 11 — The State shall, in light of the needs of national economic and social development, formulate the catalogue of encouraged industries for foreign investment, listing the specific industries, fields and regions in which foreign investors are encouraged and guided to invest. The catalogue of encouraged industries for foreign investment shall be drafted by the competent investment department of the State Council in conjunction with the competent commerce department of the State Council and other relevant departments, and shall be published by the competent investment department and the competent commerce department of the State Council after approval by the State Council.

Article 12 — Foreign investors and foreign-invested enterprises may, in accordance with laws, administrative regulations or provisions of the State Council, enjoy preferential treatment in respect of finance, taxation, banking, land use and other aspects.

Foreign investors that expand their investment within China with the proceeds of their investment in China shall enjoy corresponding preferential treatment in accordance with the law.

Article 13 — Foreign-invested enterprises shall, in accordance with the law, participate equally with domestic-invested enterprises in the formulation and revision of national standards, industry standards, local standards and association standards. Foreign-invested enterprises may, according to their needs, formulate enterprise standards on their own or jointly with other enterprises.

Foreign-invested enterprises may submit proposals for the establishment of standards to the competent standardization administrative departments and the relevant administrative departments, offer opinions and suggestions in such processes as project establishment, drafting and technical review of standards and in the feedback and evaluation of the implementation of standards, and, in accordance with regulations, undertake the relevant work of drafting and technical review of standards as well as the translation of standards into foreign languages.

The competent standardization administrative departments and the relevant administrative departments shall establish and improve relevant working mechanisms, raise the transparency of the formulation and revision of standards, and advance the disclosure of information throughout the process of the formulation and revision of standards.

Article 14 — Mandatory standards formulated by the State shall apply equally to foreign-invested enterprises and domestic-invested enterprises, and technical requirements higher than mandatory standards shall not be applied specifically to foreign-invested enterprises.

Article 15 — Governments and their relevant departments shall not obstruct or restrict the free access of foreign-invested enterprises to the government procurement market of their respective regions and industries.

Purchasers and procurement agencies in government procurement shall not, in respect of the publication of government procurement information, the determination of supplier qualifications and the qualification review, and bid evaluation standards, impose differential or discriminatory treatment on foreign-invested enterprises; they shall not restrict suppliers on the basis of such unreasonable conditions as the form of ownership, the organizational form, the equity structure, the nationality of investors, or the product or service brand, and shall not discriminate between products produced and services provided by foreign-invested

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enterprises within China and those of domestic-invested enterprises.

Article 16 — Foreign-invested enterprises may, in accordance with the Government Procurement Law of the People's Republic of China (hereinafter referred to as the “Government Procurement Law”) and its implementing regulations, raise inquiries and challenges with purchasers and procurement agencies in respect of matters in government procurement activities, and file complaints with the government procurement supervisory and administrative departments. Purchasers, procurement agencies and government procurement supervisory and administrative departments shall make replies or handling decisions within the prescribed time limits.

Article 17 — Government procurement supervisory and administrative departments and other relevant departments shall strengthen supervision and inspection of government procurement activities, and shall, in accordance with the law, correct and investigate and deal with illegal and non-compliant conduct such as the imposition of differential or discriminatory treatment on foreign-invested enterprises.

Article 18 — Foreign-invested enterprises may, in accordance with the law, conduct financing within or outside China through the public issuance of stocks, corporate bonds and other securities, as well as through the public or non-public issuance of other financing instruments and the borrowing of foreign debts.

Article 19 — Local people's governments at or above the county level may, in accordance with laws, administrative regulations and local regulations, and within their statutory authority, formulate policies and measures for the promotion and facilitation of foreign investment in respect of fee reductions and exemptions, the guarantee of land-use indicators and the provision of public services.

When formulating policies and measures for the promotion and facilitation of foreign investment, local people's governments at or above the county level shall be oriented toward promoting high-quality development, be conducive to improving economic, social and ecological benefits, and be conducive to continuously improving the environment for foreign investment.

Article 20 — The relevant competent departments shall compile and publish foreign investment guides to provide services and facilitation for foreign investors and foreign-invested enterprises. Foreign investment guides shall include an introduction to the investment environment, guides for handling foreign investment matters, information on investment projects and relevant data and information, and shall be updated in a timely manner.

Chapter III — Investment Protection

Article 21 — The State does not expropriate the investments of foreign investors.

Under special circumstances, where the State expropriates the investments of foreign investors in accordance with the law for the needs of the public interest, the expropriation shall be conducted in accordance with statutory procedures and in a non-discriminatory manner, and compensation shall be given in a timely manner based on the market value of the expropriated investments.

Where a foreign investor is dissatisfied with an expropriation decision, it may apply for administrative reconsideration or bring an administrative lawsuit in accordance with the law.

Article 22 — The capital contributions, profits, capital gains, proceeds from the disposal of assets, royalties from acquired intellectual property rights, compensation or damages obtained in accordance with the law, and liquidation proceeds of foreign investors within China may be freely remitted into or out of China in RMB or in foreign currency in accordance with the law, and no entity or individual may unlawfully restrict the currency, the amount or the frequency of such remittances into or out of China.

The wages and other lawful income of foreign employees and employees from Hong Kong, Macao and Taiwan of foreign-invested enterprises may be freely remitted out of China in accordance with the law.

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Article 23 — The State strengthens the punishment of intellectual property infringement, continuously intensifies intellectual property enforcement, promotes the establishment of a rapid and collaborative mechanism for intellectual property protection, improves diversified mechanisms for resolving intellectual property disputes, and equally protects the intellectual property rights of foreign investors and foreign-invested enterprises.

Where the formulation of standards involves patents of foreign investors or foreign-invested enterprises, the matter shall be handled in accordance with the relevant administrative provisions on patents involved in standards.

Article 24 — Administrative organs (including organizations authorized by laws or regulations to administer public affairs, the same hereinafter) and their staff shall not, by taking advantage of administrative licensing, administrative inspection, administrative penalty, administrative compulsion or other administrative means, compel or covertly compel foreign investors or foreign-invested enterprises to transfer technology.

Article 25 — Where administrative organs, in performing their duties in accordance with the law, genuinely need foreign investors or foreign-invested enterprises to provide materials or information involving trade secrets, such provision shall be limited to the scope necessary for the performance of their duties, and the scope of access shall be strictly controlled; personnel unrelated to the performance of duties shall not have access to the relevant materials or information.

Administrative organs shall establish and improve internal management systems and take effective measures to protect the trade secrets of foreign investors and foreign-invested enterprises that they learn of in the course of performing their duties; where information needs to be shared with other administrative organs in accordance with the law, the trade secrets contained in the information shall be processed for confidentiality so as to prevent disclosure.

Article 26 — Where governments and their relevant departments formulate regulatory documents involving foreign investment, they shall conduct legality review in accordance with the provisions of the State Council.

Where foreign investors or foreign-invested enterprises believe that the regulatory documents formulated by departments of the State Council or by local people's governments and their departments, on which an administrative act is based, are unlawful, they may, when applying for administrative reconsideration against or bringing an administrative lawsuit in respect of the administrative act in accordance with the law, request review of such regulatory documents at the same time.

Article 27 — The “policy commitments” referred to in Article 25 of the Foreign Investment Law mean written commitments made by local people's governments at all levels and their relevant departments, within their statutory authority, in respect of the supportive policies, preferential treatment and facilitation conditions enjoyed by foreign investors and foreign-invested enterprises in investing in the local region. The contents of policy commitments shall conform to the provisions of laws and regulations.

Article 28 — Local people's governments at all levels and their relevant departments shall honor the policy commitments made to foreign investors and foreign-invested enterprises in accordance with the law and all kinds of contracts concluded in accordance with the law, and shall not breach or repudiate them on the grounds of adjustment of administrative divisions, change of government leadership, adjustment of institutions or functions, or replacement of the relevant responsible persons. Where policy commitments or contractual provisions need to be changed for the needs of the national interest or the social public interest, this shall be conducted in accordance with statutory authority and procedures, and the losses suffered by foreign investors or foreign-invested enterprises as a result shall be compensated in a fair and reasonable manner in a timely manner in accordance with the law.

Article 29 — People's governments at or above the county level and their relevant departments shall, in accordance with the principles of openness, transparency, efficiency and facilitation, establish and improve

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the complaint-handling mechanism for foreign-invested enterprises, promptly handle problems reported by foreign-invested enterprises or their investors, and coordinate the improvement of relevant policies and measures.

The competent commerce department of the State Council shall, in conjunction with the relevant departments of the State Council, establish an inter-ministerial joint conference system for the complaint-handling work of foreign-invested enterprises, coordinate and promote the complaint-handling work of foreign-invested enterprises at the central level, and guide and supervise such work at the local level. Local people's governments at or above the county level shall designate departments or institutions responsible for accepting complaints of foreign-invested enterprises or their investors in their respective regions.

The competent commerce department of the State Council and the departments or institutions designated by local people's governments at or above the county level shall improve complaint-handling rules, refine complaint channels and specify the time limits for handling complaints. The complaint-handling rules, complaint channels and time limits for handling complaints shall be made public.

Article 30 — Where a foreign-invested enterprise or its investor believes that an administrative act of an administrative organ or its staff infringes upon its lawful rights and interests, and applies for coordinated resolution through the complaint-handling mechanism for foreign-invested enterprises, the relevant parties may, in the course of coordination, learn the relevant information from the administrative organ or its staff against which the application is made, and such administrative organ or its staff shall cooperate. The result of coordination shall be notified to the applicant in writing in a timely manner.

The application by a foreign-invested enterprise or its investor for coordinated resolution of the relevant problems in accordance with the preceding paragraph shall not affect its application for administrative reconsideration or filing of an administrative lawsuit in accordance with the law.

Article 31 — No entity or individual may suppress or retaliate against foreign-invested enterprises or their investors for reporting problems or applying for coordinated resolution through the complaint-handling mechanism for foreign-invested enterprises.

In addition to the complaint-handling mechanism for foreign-invested enterprises, foreign-invested enterprises or their investors may report problems to governments and their relevant departments through other lawful channels.

Article 32 — Foreign-invested enterprises may establish chambers of commerce and associations in accordance with the law. Unless otherwise provided by laws or regulations, foreign-invested enterprises have the right to independently decide to join or withdraw from chambers of commerce and associations, and no entity or individual may interfere.

Chambers of commerce and associations shall, in accordance with the provisions of laws, regulations and their charters, strengthen industry self-discipline, promptly reflect industry demands, and provide their members with services in respect of information consultation, publicity and training, market development, economic and trade exchanges, rights protection and dispute resolution.

The State supports chambers of commerce and associations in carrying out relevant activities in accordance with laws, regulations and their charters.

Chapter IV — Investment Management

Article 33 — Foreign investors shall not invest in fields in which investment is prohibited by the negative list. Where foreign investors invest in fields in which investment is restricted by the negative list, they shall comply with the special management measures for restrictive access, such as the equity requirements and the senior management personnel requirements, specified in the negative list.

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Article 34 — Where, in the course of performing their duties in accordance with the law, the relevant competent departments find that a foreign investor intends to invest in a field within the negative list but fails to comply with the provisions of the negative list, they shall not handle the relevant matters such as licensing and enterprise registration; where the approval of a fixed-asset investment project is involved, they shall not handle the relevant approval matters.

The relevant competent departments shall strengthen supervision and inspection of the implementation of the negative list; where they discover that a foreign investor has invested in a field in which investment is prohibited by the negative list, or that the investment activities of a foreign investor violate the special management measures for restrictive access specified in the negative list, they shall handle the matter in accordance with the provisions of Article 36 of the Foreign Investment Law.

Article 35 — Where a foreign investor invests in an industry or field that requires a license in accordance with the law, unless otherwise provided by laws or administrative regulations, the competent departments responsible for implementing the license shall examine the license application of the foreign investor in accordance with conditions and procedures consistent with those for domestic investment, and shall not impose discriminatory requirements on foreign investors in respect of the licensing conditions, application materials, review procedures or review time limits.

The competent departments responsible for implementing licenses shall optimize approval services through multiple means and improve approval efficiency. Licensing matters that meet the relevant conditions and requirements may be handled by means of notification and commitment in accordance with the relevant provisions.

Article 36 — Where foreign investment requires the approval or filing of investment projects, it shall be handled in accordance with the relevant provisions of the State.

Article 37 — The registration of foreign-invested enterprises shall be handled in accordance with the law by the market regulation department of the State Council or by the market regulation departments of local people's governments authorized by it. The market regulation department of the State Council shall publish the list of the market regulation departments authorized by it.

The registered capital of a foreign-invested enterprise may be expressed in RMB or in a freely convertible currency.

Article 38 — Foreign investors or foreign-invested enterprises shall report investment information to the competent commerce departments through the enterprise registration system and the enterprise credit information publicity system. The competent commerce department and the market regulation department of the State Council shall properly connect and coordinate their relevant business systems, and provide guidance for foreign investors or foreign-invested enterprises in reporting investment information.

Article 39 — The content, scope, frequency and specific procedures of foreign investment information reporting shall be determined and published by the competent commerce department of the State Council in conjunction with the market regulation department of the State Council and other relevant departments in accordance with the principles of being genuinely necessary and of efficiency and facilitation. The competent commerce departments and other relevant departments shall strengthen information sharing; investment information that can be obtained through inter-departmental information sharing shall not be required to be reported again by foreign investors or foreign-invested enterprises.

The investment information reported by foreign investors or foreign-invested enterprises shall be true, accurate and complete.

Article 40 — The State establishes a security review system for foreign investment, and conducts security reviews of foreign investment that affects or may affect national security.

Chapter V — Legal Liability

Article 41 — Where governments, their relevant departments or their staff have any of the following circumstances, they shall be held accountable in accordance with the law and regulations:

(1) formulating or implementing the relevant policies without treating foreign-invested enterprises and domestic-invested enterprises equally in accordance with the law;

(2) unlawfully restricting foreign-invested enterprises from equally participating in the formulation and revision of standards, or applying technical requirements higher than mandatory standards specifically to foreign-invested enterprises;

(3) unlawfully restricting the remittance of funds into or out of China by foreign investors;

(4) failing to honor the policy commitments made to foreign investors or foreign-invested enterprises in accordance with the law or all kinds of contracts concluded in accordance with the law, making policy commitments beyond their statutory authority, or making policy commitments whose contents do not conform to the provisions of laws and regulations.

Article 42 — Where purchasers or procurement agencies in government procurement impose differential or discriminatory treatment on foreign-invested enterprises on the basis of unreasonable conditions, they shall be held legally liable in accordance with the Government Procurement Law and its implementing regulations; where the winning-bid or transaction result is affected or may be affected, the matter shall be handled in accordance with the Government Procurement Law and its implementing regulations.

Where a government procurement supervisory and administrative department fails to handle a complaint of a foreign-invested enterprise within the prescribed time limit, the directly responsible person in charge and other directly responsible persons shall be given sanctions in accordance with the law.

Article 43 — Where administrative organs and their staff compel or covertly compel foreign investors or foreign-invested enterprises to transfer technology by administrative means, the directly responsible person in charge and other directly responsible persons shall be given sanctions in accordance with the law.

Chapter VI — Supplementary Provisions

Article 44 — Foreign-invested enterprises established before the implementation of the Foreign Investment Law in accordance with the Law of the People's Republic of China on Chinese-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 Chinese-Foreign Contractual Joint Ventures (hereinafter referred to as the “existing foreign-invested enterprises”) may, within five years after the implementation of the Foreign Investment Law, adjust their organizational forms and organizational structures in accordance with the Company Law of the People's Republic of China, the Partnership Enterprise Law of the People's Republic of China and other laws, and complete the registration of changes in accordance with the law, or may continue to retain their original organizational forms and organizational structures.

From January 1, 2025, with respect to existing foreign-invested enterprises that have not adjusted their organizational forms and organizational structures and completed the registration of changes in accordance with the law, the market regulation departments shall not handle other registration matters applied for by them, and shall publicize the relevant circumstances.

Article 45 — The specific matters concerning the registration of changes in the organizational forms and organizational structures of existing foreign-invested enterprises shall be prescribed and published by the market regulation department of the State Council. The market regulation department of the State Council shall strengthen guidance on the registration of changes, and the market regulation departments responsible for handling the registration of changes shall optimize services through multiple means to provide facilitation for enterprises in completing the registration of changes.

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Article 46 — After the organizational forms and organizational structures of existing foreign-invested enterprises are adjusted in accordance with the law, the methods agreed by the original parties to the joint venture or cooperation in their contracts for the transfer of equity or rights and interests, the distribution of income and the distribution of remaining property may continue to be handled in accordance with the agreements.

Article 47 — Where foreign-invested enterprises invest within China, the Foreign Investment Law and the relevant provisions of these Regulations shall apply.

Article 48 — Where investors from the Hong Kong Special Administrative Region or the Macao Special Administrative Region invest in the mainland, the matter shall be handled with reference to the Foreign Investment Law and these Regulations; where laws, administrative regulations or the State Council provide otherwise, such provisions shall prevail.

Where investors from the Taiwan region invest in the mainland, the Law of the People's Republic of China on the Protection of Investment by Taiwan Compatriots (hereinafter referred to as the “Taiwan Compatriots Investment Protection Law”) and its implementing rules shall apply; with respect to matters not provided for in the Taiwan Compatriots Investment Protection Law and its implementing rules, the Foreign Investment Law and these Regulations shall apply by reference.

Where Chinese citizens residing abroad invest within China, the matter shall be handled with reference to the Foreign Investment Law and these Regulations; where laws, administrative regulations or the State Council provide otherwise, such provisions shall prevail.

Article 49 — These Regulations shall come into force on January 1, 2020. The Implementation Regulations of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, the Interim Provisions on the Duration of Chinese-Foreign Equity Joint Ventures, the Implementation Rules of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises and the Implementation Rules of the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures shall be repealed simultaneously.

Where provisions on foreign investment formulated before January 1, 2020 are inconsistent with the Foreign Investment Law and these Regulations, the Foreign Investment Law and these Regulations shall prevail.

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