Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Foreign-Invested Enterprises (I)

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Chapter I — Scope of Application and General Principles

Article 1 — These Provisions apply to the trial by the people's courts of cases involving disputes arising from the establishment, alteration, operation, dissolution or liquidation of foreign-invested enterprises within the territory of the People's Republic of China, and other disputes relating to foreign-invested enterprises.

Article 2 — The term "foreign-invested enterprises" as used in these Provisions includes wholly foreign-owned enterprises, Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures, foreign-invested partnerships, and foreign-invested companies established in accordance with the Foreign Investment Law, among other forms of foreign investment.

Article 3 — The people's courts shall try cases involving foreign-invested enterprises in accordance with the principle of equal protection of the lawful rights and interests of domestic and foreign investors, safeguard the autonomy of the parties' will, and maintain the stability and predictability of transactions.

Article 4 — Where the application of foreign law or international treaties by the parties concerned is in accordance with the provisions of the Law on the Application of Laws to Foreign-Related Civil Relations, the people's court shall apply such law or treaties, unless such application would harm the public interest of the People's Republic of China or is otherwise prohibited by law.

Article 5 — Where a foreign investor makes an investment in a field for which the Special Administrative Measures (Negative List) for Foreign Investment Access provides access conditions, the people's court shall respect such access conditions and shall not determine the investment conduct to be invalid solely on the ground that it does not comply with the conditions.

Chapter II — Validity of Contracts and Legal Relations

Article 6 — Where a foreign investor enters into a contract related to the establishment of a foreign-invested enterprise, and the contract does not violate the mandatory provisions of laws or administrative regulations or the public interest, the people's court shall determine the contract to be valid.

Article 7 — Where a foreign-invested enterprise has been registered and established, a party concerned shall not claim the contract for the establishment of the foreign-invested enterprise to be invalid on the grounds that it has not been approved or filed, unless otherwise provided by law.

Article 8 — Where, during the process of the establishment of a foreign-invested enterprise, the parties concerned agree that the foreign investor or relevant party shall advance expenses, and the foreign-invested enterprise is ultimately not established, the people's court shall, based on the parties' agreement or the principle of fairness, determine the method for apportioning the expenses advanced.

Article 9 — Where a foreign investor, by means of an equity holding arrangement, controls a domestic enterprise to engage in business activities in a field where foreign investment is restricted or prohibited, and the parties concerned dispute the validity of the relevant agreement, the people's court shall determine the validity of the agreement based on whether it violates the mandatory provisions of laws and administrative regulations and whether it harms the public interest.

Article 10 — Where a foreign-invested enterprise borrows funds from a foreign investor or enters into other credit or debt relationships with it, and such act complies with the provisions of laws and administrative regulations on foreign exchange administration and foreign debt administration, the people's court shall determine the relevant contract to be valid.

Chapter III — Equity Transfer and Pledge

Article 11 — Where a foreign investor transfers its equity in a foreign-invested enterprise to another foreign investor or a domestic investor, the people's court shall determine the validity of the equity transfer contract in accordance with the Company Law of the People's Republic of China, the Foreign Investment Law of the People's Republic of China, and other laws and administrative regulations.

Article 12 — Where a foreign investor transfers its equity in a foreign-invested enterprise, the other shareholders shall have the right of first refusal in accordance with the provisions of the Company Law, unless otherwise provided by the articles of association of the foreign-invested enterprise or the agreement of the parties.

Article 13 — Where a foreign investor pledges its equity in a foreign-invested enterprise, the people's court shall determine the validity of the pledge contract in accordance with the provisions of the Civil Code of the People's Republic of China and relevant laws and regulations.

Article 14 — Where a foreign investor, without completing the formalities for the approval or filing of equity change in accordance with the provisions, transfers its equity in a foreign-invested enterprise that requires approval or filing for the equity change, the people's court shall determine that the equity change has not taken effect, but the validity of the equity transfer contract itself shall not be affected thereby.

Article 15 — Where, after a foreign investor transfers its equity in a foreign-invested enterprise, the transferee fails to complete the registration of the equity change, the people's court shall determine the legal consequences based on whether the failure is attributable to the parties concerned and whether the relevant

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contract is performed, without denying the validity of the transfer solely on the ground of failure to register.

Chapter IV — Protection of Investment Rights and Interests

Article 16 — Where the interests of minority shareholders of a foreign-invested enterprise are harmed, the minority shareholders may file a lawsuit with the people's court in accordance with the provisions of the Company Law of the People's Republic of China, including but not limited to actions for the right to information, actions for confirmation of the invalidity of resolutions, actions for derivative litigation, and actions for dissolution of the company.

Article 17 — Where the actual controller of a foreign-invested enterprise, by taking advantage of its controlling position, harms the interests of the enterprise or the lawful rights and interests of other investors, the people's court shall determine its liability in accordance with the provisions of the Company Law on the fiduciary duties of controlling shareholders and actual controllers.

Article 18 — Where the enterprise legal representative, directors, supervisors or senior management personnel of a foreign-invested enterprise violate their fiduciary duties, causing losses to the enterprise, the people's court shall, upon the request of the enterprise or its shareholders, determine their liability for damages in accordance with the Company Law.

Article 19 — Where a foreign investor suffers losses due to the taking of its investment by the State under special circumstances, the foreign investor may claim compensation in accordance with the Foreign Investment Law and relevant laws and regulations. The people's court shall determine the compensation amount in accordance with the law based on the actual losses suffered by the foreign investor.

Chapter V — Supplementary Provisions

Article 20 — These Provisions shall apply, by reference, to disputes involving investments in the mainland by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region, except as otherwise provided by law.

Article 21 — Where any judicial interpretation previously issued by the Supreme People's Court is inconsistent with these Provisions, these Provisions shall prevail.

Article 22 — These Provisions shall take effect on January 1, 2021.

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