Provisions of the State Council on Encouraging Foreign Investment

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

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Article 1 — These Provisions are formulated to improve the investment environment, better absorb foreign investment, introduce advanced technology, raise product quality, expand export earnings, and develop the national economy.

Article 2 — The State encourages foreign companies, enterprises, other economic organizations, and individuals (hereinafter referred to as "foreign investors") to establish Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures, and wholly foreign-owned enterprises (hereinafter referred to as "foreign-invested enterprises") within the territory of China.

The State grants special preferential treatment to the following foreign-invested enterprises:

(1) production-oriented enterprises whose products are mainly for export and which have a surplus of foreign exchange after deducting from their annual gross foreign exchange income their annual foreign exchange expenditure for production and operation and the foreign exchange needed for foreign investors to remit abroad their share of profits (hereinafter referred to as "export enterprises"); and

(2) production-oriented enterprises in which foreign investors provide advanced technology, engage in the development of new products, and achieve product upgrading and replacement, thereby increasing export earnings or substituting imports (hereinafter referred to as "technologically advanced enterprises").

Article 3 — Export enterprises and technologically advanced enterprises shall, apart from paying or drawing the labor insurance, welfare expenses, and housing subsidy funds for their Chinese staff and workers in accordance with State provisions, be exempted from all subsidies paid by the State to staff and workers.

Article 4 — The site use fees for export enterprises and technologically advanced enterprises shall be charged at the following standards, except in prosperous urban districts of large cities:

(1) in areas where development fees and use fees are charged in a combined manner, from 5 to 20 yuan per square meter per year; and

(2) in areas where development fees are charged as a one-off payment, or where such enterprises develop the site themselves, a maximum use fee of 3 yuan per square meter per year.

The local people's government may, within a certain period, exempt the fees referred to in the preceding paragraph.

Article 5 — Export enterprises and technologically advanced enterprises shall be given priority in obtaining the water, electricity, transport conditions, and communication facilities needed for production and operation, which shall be charged at the fee standards applicable to local State-owned enterprises.

Article 6 — The short-term revolving funds needed for production and circulation, as well as other necessary credit funds, of export enterprises and technologically advanced enterprises shall, after examination and verification by the Bank of China, be granted priority in lending.

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Article 7 — Foreign investors of export enterprises and technologically advanced enterprises shall be exempted from income tax on the amount remitted abroad of the profits they receive from the enterprises.

Article 8 — After the expiration of the period of reduction of or exemption from enterprise income tax in accordance with State provisions, export enterprises whose export product value in the current year reaches 70% or more of the total product value of the enterprise in the current year may pay enterprise income tax at half the current tax rate.

Export enterprises located in special economic zones or economic and technological development zones, and other export enterprises that already pay enterprise income tax at the rate of 15%, shall, where they meet the conditions of the preceding paragraph, pay enterprise income tax at the reduced rate of 10%.

Article 9 — After the expiration of the period of reduction of or exemption from enterprise income tax in accordance with State provisions, technologically advanced enterprises may have the period for paying enterprise income tax at half the current rate extended by three years.

Article 10 — Where a foreign investor reinvests the profits it receives from an enterprise within the territory of China to establish or expand an export enterprise or a technologically advanced enterprise with an operating period of not less than five years, the full amount of the enterprise income tax already paid on the reinvested portion shall, upon application to and verification by the tax authorities, be refunded. Where the investment is withdrawn before the operating period reaches five years, the refunded enterprise income tax shall be paid back.

Article 11 — The export products of foreign-invested enterprises shall, except for crude oil, refined oil, and products otherwise specified by the State, be exempted from the consolidated industrial and commercial tax.

Article 12 — Foreign-invested enterprises may organize the export of their products by themselves, or may entrust export to agents in accordance with State provisions. For products subject to export license requirements, a license shall be applied for once every six months in accordance with the enterprise's annual export plan.

Article 13 — Where, for the purpose of performing its product export contracts, a foreign-invested enterprise needs to import (including imports restricted by the State) machinery and equipment, vehicles for production use, raw materials, fuels, parts, components, elements, and auxiliary materials, no further submission for examination and approval shall be required and import licenses shall be exempted; the goods shall be placed under customs supervision and released on the basis of the enterprise's contracts or import and export contracts.

The imported materials and parts referred to in the preceding paragraph shall be limited to use by the enterprise itself and shall not be sold on the domestic market; where they are used for products sold domestically, import formalities shall be completed in accordance with provisions and taxes shall be paid accordingly.

Article 14 — Foreign-invested enterprises may, under the supervision of the foreign exchange administration departments, mutually adjust their foreign exchange surpluses and shortages.

The Bank of China and other banks designated by the People's Bank of China may provide spot foreign exchange mortgage business to foreign-invested enterprises and lend RMB funds.

Article 15 — People's governments at all levels and the relevant competent departments shall safeguard the autonomy of foreign-invested enterprises and support them in managing their enterprises in accordance with internationally advanced scientific methods.

Foreign-invested enterprises shall have the right, within the scope of their approved contracts, to formulate their own production and operation plans, to raise and use funds, to purchase means of production, and to sell products; and to determine their own wage standards, wage forms, and bonus and allowance systems.

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Foreign-invested enterprises may, in light of their production and operation needs, determine their own organizational structure and staffing, engage or dismiss senior management personnel, and increase or dismiss staff and workers; they may recruit and employ technical personnel, management personnel, and workers locally, and the units where the employed personnel work shall render support and permit their movement. Staff and workers who violate rules and regulations and cause certain consequences may, according to the seriousness of the circumstances, be given different sanctions up to and including dismissal. Foreign-invested enterprises shall report to the local labor and personnel departments for the record when recruiting, employing, dismissing, or expelling staff and workers.

Article 16 — All regions and departments must implement the Notice of the State Council on Resolutely Stopping Arbitrary Apportionment to Enterprises, and the people's governments at the provincial level shall formulate specific measures to strengthen supervision and administration.

Foreign-invested enterprises may refuse to pay unreasonable charges, and may lodge complaints with the local economic commission or up to the State Economic Commission.

Article 17 — People's governments at all levels and the relevant competent departments shall strengthen coordination, improve work efficiency, and promptly examine and approve matters submitted by foreign-invested enterprises that require reply and resolution. With respect to the agreements, contracts, and articles of association of foreign-invested enterprises that are subject to approval by the competent departments of the State Council, the approval authorities must decide whether to approve or disapprove within three months from the date of receipt of all the documents.

Article 18 — The export enterprises and technologically advanced enterprises referred to in these Provisions shall be confirmed, and certificates issued, by the foreign economic relations and trade departments of the place where the enterprise is located, in conjunction with the relevant departments, on the basis of the enterprise's contracts.

Where the annual export performance of an export enterprise fails to achieve the target of a foreign exchange surplus in its balance of foreign exchange stipulated in the enterprise's contract, the enterprise shall, in the next year, make up the taxes and fees reduced or exempted in the previous year.

Article 19 — Except for the articles that clearly apply to export enterprises or technologically advanced enterprises, the other articles of these Provisions shall apply to all foreign-invested enterprises.

Foreign-invested enterprises approved and established before the effective date of these Provisions shall, where they meet the preferential conditions of these Provisions, be governed by these Provisions from the effective date.

Article 20 — Enterprises invested in and established by companies, enterprises, and other economic organizations or individuals from Hong Kong, Macao, and Taiwan shall be governed by these Provisions by reference.

Article 21 — The Ministry of Foreign Economic Relations and Trade shall be responsible for the interpretation of these Provisions.

Article 22 — These Provisions shall enter into force as of the date of promulgation.

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