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Law of the People's Republic of China on Foreign Investment

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Order of the President of the People's Republic of China

No. 26

The Law of the People's Republic of China on Foreign Investment, adopted at the Second Session of the Thirteenth National People's Congress of the People's Republic of China on March 15, 2019, is hereby promulgated and shall come into force as of January 1, 2020.

Xi Jinping

President of the People's Republic of China

March 15, 2019

Law of the People's Republic of China on Foreign Investment

(Adopted at the Second Session of the Thirteenth National People's Congress of the People's Republic of China on March 15, 2019)

Chapter I

General Provisions

Article 1 This Law is formulated in accordance with the Constitution for the purposes of further expanding opening up, actively promoting foreign investment, protecting the legitimate rights and interests of foreign investors, regulating foreign investment administration, striving to form a new structure in the pursuit of opening up on all fronts, and promoting the healthy development of the socialist market economy.

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

"Foreign investment" referred to in this Law means the investment activities conducted directly or indirectly by foreign natural persons, foreign enterprises or other foreign organizations (hereinafter referred to as "foreign investors") in the territory of China, including the following circumstances:

(1) a foreign investor sets up a foreign-invested enterprise in the territory of China individually or jointly with any other investor;

(2) a foreign investor acquires shares, equities, shares of property, or other similar rights and interests of an enterprise in the territory of China;

(3) a foreign investor invests in a new project in the territory of China individually or jointly with any other investor;

(4) investment in other ways as prescribed by laws, administrative regulations or prescribed by the State Council.

"A foreign-invested enterprise" referred to in this Law means an enterprise that is wholly or partly invested by a foreign investor and registered in the territory of China in accordance with Chinese law.

Article 3 The State adheres to the fundamental national policy of opening up, and encourages foreign investors to invest in the territory of China in accordance with law.

The State implements policies of high-level investment liberalization and facilitation, establishes and improves foreign investment promotion mechanisms, and creates a stable, transparent, predictable, and fair market environment.

Article 4 The State implements a system of pre-establishment national treatment plus negative list for foreign investment.

"Pre-establishment national treatment" referred to in the preceding paragraph means that the treatment accorded to foreign investors and their investments at the stage of investment access shall be no less favorable than that accorded to domestic investors and their investments; "negative list" referred to in the preceding paragraph means the special administrative measures for the access of foreign investment in specific sectors as stipulated by the State. The State accords national treatment to foreign investments outside the negative list.

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

Where the international treaties or agreements concluded or acceded to by the People's Republic of China provide for more favorable treatment for the access of foreign investment, the relevant provisions may be implemented.

Article 5 The State protects the investment, income and other legitimate rights and interests of foreign investors in the territory of China in accordance with law.

Article 6 Foreign investors and foreign-invested enterprises that conduct investment activities in the territory of China shall abide by Chinese laws and regulations and shall neither endanger China's national security nor harm public interests.

Article 7 The department for commerce under the State Council and the department for investment under the same shall, in accordance with the division of responsibilities, carry out the work of promotion, protection, and administration of foreign investment; other relevant departments of the State Council shall, within the scope of respective responsibilities, be responsible for the relevant work of promotion, protection, and administration of foreign investment.

Relevant departments of local people's governments at or above the county level shall, in accordance with laws, regulations and the division of responsibilities determined by the people's government at the same level, carry out the work of promotion, protection, and administration of foreign investment.

Article 8 Employees of foreign-invested enterprises may establish trade unions in accordance with law, carry out trade union activities, and safeguard the legitimate rights and interests of the employees.

Foreign-invested enterprises shall provide necessary conditions for the activities of their respective trade unions.

Chapter II

Investment Promotion

Article 9 State policies supporting the development of enterprises shall equally apply to foreign-invested enterprises in accordance with law.

Article 10 Appropriate measures shall be taken to solicit opinions and suggestions from foreign-invested enterprises when formulating laws, regulations and rules related to foreign investment.

Normative documents and adjudicative decisions, etc. related to foreign investment shall be published in a timely manner in accordance with law.

Article 11 The State establishes and improves the service system for foreign investment, to provide counseling and services to foreign investors and foreign-invested enterprises on laws and regulations, policies and measures, and information of investment projects, etc.

Article 12 The State establishes multilateral and bilateral cooperation mechanisms on investment promotion with other countries, regions and international organizations, to strengthen international exchanges and cooperation in the field of investment.

Article 13 The State, as needed, establishes special economic areas, or adopts pilot policies and measures on foreign investment in certain regions, so as to promote foreign investment and expand opening up.

Article 14 The State, based on the needs of national economic and social development, encourages and guides foreign investors to invest in specific industries, sectors, and regions. Foreign investors and foreign-invested enterprises are entitled to preferential treatment in accordance with laws, administrative regulations, or provisions of the State Council.

Article 15 The State ensures the equal participation of foreign-invested enterprises in the standard-setting in accordance with law, and strengthens information publication and public supervision related to the setting of standards.

Compulsory standards set by the State are equally applicable to foreign-invested enterprises.

Article 16 The State ensures that foreign-invested enterprises participate in government procurement activities through fair competition in accordance with law. Products produced and services provided by foreign-invested enterprises in the territory of China shall be treated equally in government procurement in accordance with law.

Article 17 Foreign-invested enterprises may raise funds through public offering of stocks, corporate bonds, and other securities, as well as through other means in accordance with law.

Article 18 Local people's governments at or above the county level may formulate policies and measures promoting and facilitating foreign investment within their statutory authority in accordance with the provisions of laws, administrative regulations, and local regulations.

Article 19 People's governments at all levels and their relevant departments shall, in accordance with the principles of convenience, efficiency, and transparency, streamline procedures, improve efficiency, optimize government services, and further improve the service for foreign investment.

The relevant competent departments shall develop and publish foreign investment guidelines to provide services and facilities for foreign investors and foreign-invested enterprises.

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 in accordance with law and for the needs of public interests. Such expropriation and requisition shall be conducted in accordance with legal procedures, and fair and reasonable compensation shall be paid in a timely manner.

Article 21 Foreign investors' contribution to capital, profits, capital gains, proceeds from assets disposal, intellectual property rights royalties, indemnity or compensation received in accordance with law, and proceeds from liquidation, etc. made or received in the territory of China, may be freely remitted inward or outward in RMB or foreign currencies in accordance with law.

Article 22 The State protects the intellectual property rights of foreign investors and foreign-invested enterprises, protects the legitimate rights and interests of intellectual property rights holders and related rights holders, and strictly pursues legal liability for infringements of intellectual property rights in accordance with law.

The State encourages technical cooperation based on the voluntary principle and commercial rules in the process of foreign investment. The terms and conditions for technical cooperation are determined by the investing parties through negotiation on an equal basis in accordance with the principle of fairness. Administrative departments and their staff members shall not force the transfer of technology through administrative means.

Article 23 Administrative departments and their staff members shall keep confidential in accordance with law the trade secrets of foreign investors and foreign-invested enterprises they have obtained during the performance of their duties, and shall not disclose or illegally provide such trade secrets to others.

Article 24 People's governments at all levels and their relevant departments shall comply with the provisions of laws and regulations in formulating normative documents concerning foreign investment. Without a basis in laws or administrative regulations, such documents shall not impair the legitimate rights and interests of foreign-invested enterprises or add their obligations, or impose conditions for market access and exit, or interfere with normal production and operation activities of foreign-invested enterprises.

Article 25 Local people's governments at all levels and their relevant departments shall fulfill their policy commitments made to foreign investors or foreign-invested enterprises in accordance with law, and fulfill various types of contracts concluded in accordance with law.

If the interests of the State or public interests warrant the need to amend policy commitments or contractual arrangements, such amendments shall be made in accordance with the statutory authority and procedures, and compensations shall be made in accordance with law for the losses incurred thereby on foreign investors or foreign-invested enterprises.

Article 26 The State establishes a complaints mechanism for foreign-invested enterprises to address the problems raised by foreign-invested enterprises or their investors in a timely manner, and coordinates and improves relevant policies and measures.

If foreign-invested enterprises or their investors believe that their legitimate rights and interests are infringed due to the administrative actions of the administrative departments and their staff members, they may apply for coordination to resolve the problems through the complaints mechanism for foreign-invested enterprises.

If foreign-invested enterprises or their investors believe that their legitimate rights and interests are infringed by the administrative actions of the administrative departments and their staff members, they may also apply for administrative reconsideration or bring administrative lawsuits in accordance with law, in addition to applying for coordination to resolve the problems through the complaints mechanism for foreign-invested enterprises in accordance with the preceding paragraph.

Article 27 Foreign-invested enterprises may establish and voluntarily join chambers of commerce and associations in accordance with law. The chambers of commerce and associations shall carry out relevant activities in accordance with laws, regulations and their articles of association, and safeguard the legitimate rights and interests of their members.

Chapter IV

Investment Administration

Article 28 Foreign investors shall not invest in the sectors where foreign investment is prohibited, as prescribed in the negative list for foreign investment access.

If foreign investors invest in the sectors where foreign investment is restricted, as prescribed in the negative list for foreign investment access, the conditions set forth in the negative list shall be satisfied.

Administration of foreign investment in the sectors not covered by the negative list for foreign investment access shall be implemented under the principle of equal treatment for domestic and foreign investment.

Article 29 If an investment project with foreign investment is subject to approval or filing, the relevant provisions issued by the State shall apply.

Article 30 If a foreign investor invests in an industry or sector where a license is required by law, relevant licensing procedures shall be followed in accordance with law.

The relevant competent departments shall examine the applications of foreign investors under the same conditions and procedures as those for domestic investors, unless otherwise provided by laws and administrative regulations.

Article 31 The organizational forms, organizational structures, and rules of activities of foreign-invested enterprises shall be governed by the provisions of the Company Law of the People's Republic of China, the Partnership Enterprise Law of the People's Republic of China, and other laws.

Article 32 In the course of production and operation, foreign-invested enterprises shall comply with the provisions of laws and administrative regulations pertaining to labor protection and social insurance, handle taxation, accounting, foreign exchange, and other matters in accordance with laws, administrative regulations, and the relevant provisions issued by the State, and subject themselves to the supervision and inspection conducted by the relevant competent departments in accordance with law.

Article 33 If a foreign investor participates in the concentrations of undertakings by merger or acquisition of enterprises in the territory of China or in any other manner, the matter shall be subject to the review of concentrations of undertakings in accordance with the provisions of the Anti-Monopoly Law of the People's Republic of China.

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

The content and scope of foreign investment information to be reported shall be determined according to the principle of necessity. Investment information that can be obtained through inter-departmental information sharing shall not be required to be submitted again.

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

Security review decisions made in accordance with law shall be final.

Chapter V

Legal Liability

Article 36 If a foreign investor invests in a prohibited sector specified in the negative list for foreign investment access, the relevant competent departments shall order the foreign investor to cease investment activities and, within a specified period, dispose shares or assets or take other necessary measures to restore to the state as if the investment had not been made; and the illegal income, if any, shall be confiscated.

If an investment activity of a foreign investor violates any special restrictive administrative measure as set out in the negative list for foreign investment access, the relevant competent departments shall order the foreign investor to make corrections and take necessary measures within a specified period and take necessary measures to meet the requirements of the special restrictive administrative measure for the access; and if it fails to make corrections within the specified period, the preceding paragraph shall apply.

If an investment activity of a foreign investor violates the provisions of the negative list for foreign investment access, in addition to being held liable subject to the preceding two paragraphs, the foreign investor shall assume the corresponding legal liability in accordance with law.

Article 37 A foreign investor or foreign-invested enterprise that, in violation of this Law, fails to submit investment information as required by the foreign investment information reporting system, shall be ordered by the department for commerce to make corrections within a specified period; and if the foreign investor or foreign-invested enterprise fails to make corrections within the specified period, a fine ranging from RMB100,000 yuan to RMB500,000 yuan shall be imposed thereupon.

Article 38 Violations of laws and regulations by foreign investors or foreign-invested enterprises shall be investigated and punished by the relevant departments in accordance with law and shall be recorded in the credit information system in accordance with the relevant provisions of the State.

Article 39 If a staff member of an administrative department, in the promotion, protection, and administration of foreign investment, abuses powers, neglects duties, engages in malpractices for personal gain, or discloses or illegally provides others with any trade secret the staff member has learned during the performance of his duties, a disciplinary action shall be taken against the staff member in accordance with law; and if the aforesaid conduct constitutes a crime, the staff member shall be held criminally liable in accordance with law.

Chapter VI

Supplementary Provisions

Article 40 In the event that any country or region applies discriminatory prohibitions, restrictions or other similar measures against the People's Republic of China in respect of investment, the People's Republic of China may take appropriate measures against the aforesaid country or region, depending on the actual circumstances.

Article 41 If the State stipulates otherwise on the administration of investment by foreign investors in the territory of China in financial industries such as banking, securities, insurance, etc., or in financial markets such as securities markets, foreign exchange markets, etc., such stipulations shall prevail.

Article 42 This Law shall come into force as of January 1, 2020. 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 Cooperative Joint Ventures are repealed simultaneously.

Foreign-invested enterprises established 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 Cooperative Joint Ventures before this Law comes into force may retain their original organizational forms, etc., within five years after the entry into force of this Law. Specific implementation measures shall be stipulated by the State Council.