

---

# FOREIGN INVESTMENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the Second Session of the 13th National People's Congress on March 15, 2019)

The Foreign Investment Law of the People's Republic of China, adopted at the Second Session of the 13th National People's Congress on March 15, 2019, is hereby promulgated for implementation as of January 1, 2020.

Xi Jinping, President of the People's Republic of China

March 15, 2019





## **CONTENTS:**

<b>Chapter I</b>	General Provisions
<b>Chapter II</b>	Investment Promotion
<b>Chapter III</b>	Investment Protection
<b>Chapter IV</b>	Investment Management
<b>Chapter V</b>	Legal Liability
<b>Chapter VI</b>	Supplementary Provisions

## **Chapter I General Provisions**

### **Article 1**

The Foreign Investment Law of the People's Republic of China (hereinafter referred to as "the Law") is hereby formulated in accordance with the Constitution of the People's Republic of China in a bid to further expand opening-up, vigorously promote foreign investment, protect the legitimate rights and interests of foreign investors, standardize the management of foreign investment, impel the formation of a new pattern of all-around opening-up and boost the sound development of the socialist market economy.

### **Article 2**

The Law shall be applicable to the foreign investment within the territory of the People's Republic of China ("the territory of China").

For the purpose of the Law, foreign investment refers to the investment activity directly or indirectly conducted by a foreign natural person, enterprise or other organization (the "foreign investors"), including the following circumstances:

1. A foreign investor establishes a foreign-funded enterprise within the territory of China, 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 makes investment to initiate a new project within the territory of China, 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.

For the purpose of the Law, a foreign-funded enterprise refers to an enterprise that is incorporated under the Chinese laws within the territory of China and is wholly or partly invested by a foreign investor.

### **Article 3**

The State shall adhere to the basic state policy of opening-up and encourage foreign investors to make investments within the territory of China.

The State shall implement policies on high-level investment liberalization and convenience, establish and improve the mechanism to promote foreign investment, and create a stable, transparent, foreseeable and level-playing market environment.

### **Article 4**

The State shall implement the management systems of pre-establishment national treatment and negative list for foreign investment.

For the purpose of the preceding paragraph, pre-establishment national treatment refers to the treatment given to foreign investors and their investments during the investment access stage, which is not lower than that given to their domestic counterparts; negative list refers to special administrative measures for the access of foreign investment in specific fields as stipulated by the State. The State shall give national treatment to foreign investment beyond the negative list.

The negative list will be issued by or upon approval by the State Council.

If more preferential treatment concerning access is offered to a foreign investor under any international treaty or agreement that the People's Republic of China concludes or joins in, relevant provisions in such treaty or agreement may prevail.

### **Article 5**

The State shall protect foreign investors' investment, earnings and other legitimate rights and interests within the territory of China in accordance with the law.

### **Article 6**

Foreign investors and foreign-funded enterprises carrying out investment activities within the territory of China shall observe the Chinese laws and regulations, and shall not impair China's security or damage any public interest.

### **Article 7**

The competent departments for commerce and investment under the State Council shall, pursuant to the division of duties, promote, protect and manage foreign investment; other relevant departments under the State Council shall take charge of the relevant work in the promotion, protection and management of foreign investment within the scope of their respective duties.

The relevant department under the local people's government at or above the county level shall carry out the work relating to promotion, protection and management of foreign investment in accordance with laws and regulations and in line with the division of duties determined by the people's government at the same level.

#### **Article 8**

Employees of a foreign-funded enterprise shall, pursuant to the law, establish trade union, carry out trade union activities, and safeguard their legitimate rights and interests. A foreign-funded enterprise shall provide necessary conditions for its trade union to carry out relevant activities.

### **Chapter II Investment Promotion**

#### **Article 9**

All national policies on supporting the development of enterprises shall equally apply to foreign-funded enterprises in accordance with the law.

#### **Article 10**

Comments and suggestions from foreign-funded enterprises shall be sought in a proper manner when formulating laws, regulations and rules relating to foreign investment.

Normative documents and judgment documents relating to foreign investment shall be published in accordance with the law in due time.

#### **Article 11**

The State shall establish and perfect the service system for foreign investment, and provide foreign investors and foreign-funded enterprises with consultation and services in respect of laws and regulations, policies and measures, investment project information and other aspects.

#### **Article 12**

The State shall establish multilateral and bilateral cooperation mechanisms for the promotion of investment with other countries, regions and international organizations, so as to enhance international exchanges and cooperation in terms of investment.

#### **Article 13**

The State may, as needed, establish special economic area or carry out pilot policies and measures on foreign investment in specific areas, so as to promote foreign investment and expanding opening-up.

#### **Article 14**

The State may, according to the requirements of national economy and social development, encourage and guide foreign investors to invest in specific

industries, fields and areas. Foreign investors and foreign-funded enterprises may enjoy preferential treatments in accordance with laws, administrative regulations or provisions of the State Council.

#### **Article 15**

The State shall guarantee that foreign-funded enterprises can equally participate in setting standards in accordance with the law, and enhance information disclosure and social supervision on standard setting.

The compulsory standards formulated by the State shall equally apply to foreign-funded enterprises.

#### **Article 16**

The State shall guarantee that foreign-funded enterprises can participate in government procurement activities through fair competition. Products produced and services provided by foreign-funded enterprises within the territory of China shall be treated equally in a government procurement.

#### **Article 17**

Foreign-funded enterprises may conduct financing through public offering of shares, corporate bonds and other securities or by other means.

#### **Article 18**

Local people's governments at county level or above may, in accordance with the provisions in laws, administrative regulations or local regulations, formulate policies on promotion and facilitation of foreign investment within their respective statutory authorities.

#### **Article 19**

People's governments at all levels and relevant departments thereunder shall, under the principle of convenience, efficiency and transparency, streamline procedures for handling affairs, raise their efficiency and optimize government services, so as to further improve the services offered for foreign investment.

Relevant competent departments shall prepare and publish guidelines for foreign investment and provide foreign investors and foreign-funded enterprises with services and convenience.

### **Chapter III Investment Protection**

#### **Article 20**

The State is not to expropriate any investment

made by foreign investors.

Under special circumstances, the State may expropriate or requisition an investment made by foreign investors for public interests in accordance with the law. Such expropriation or requisition shall be made pursuant to statutory procedures and fair and reasonable compensation will be given in a timely manner.

#### **Article 21**

A foreign investor may, in accordance with the law, freely transfer inward and outward its contributions, profits, capital gains, income from asset disposal, royalties of intellectual property rights, lawfully obtained compensation or indemnity, income from liquidation and so on within the territory of China in CNY or a foreign currency.

#### **Article 22**

The State shall protect the intellectual property rights of foreign investors and foreign-funded enterprises, and protect the legitimate rights and interests of holders of intellectual property rights and relevant right holders; in case of any infringement of intellectual property right, legal liability shall be investigated strictly the legal liability in accordance with the law.

During the process of foreign investment, the State shall encourage technology cooperation on the basis of free will and business rules. Conditions for technology cooperation shall be determined by all investment parties upon negotiation under the principle of equity. No administrative department or its staff member shall force any transfer of technology by administrative means.

#### **Article 23**

Administrative departments and their staff members shall keep confidential any trade secret of foreign investor or foreign-funded enterprise they are aware of during the performance of their duties, and shall not divulge or illegally provide to others the secret.

#### **Article 24**

In formulating normative documents concerning foreign investment, the people's governments at all levels and their relevant departments shall comply with laws and regulations. Where relevant laws and regulations are not available, the people's governments at all levels and their relevant departments

shall not impair the legitimate rights and interests of or impose any additional obligation to a foreign-funded enterprise, set any condition for market access and withdrawal, or intervene any normal production and operation activity of a foreign-funded enterprise.

#### **Article 25**

Local people's governments at all levels and their relevant departments shall strictly keep their policy commitments made to foreign investors and foreign-funded enterprises and perform all contracts entered into in accordance with the law.

If any policy commitment or contract needs to be changed due to national interests or public interests, the statutory authority and procedures shall be strictly followed, and the foreign investor or foreign-funded enterprise concerned shall be compensated for losses incurred thereby in accordance with the law.

#### **Article 26**

The State shall establish a complaint mechanism for foreign-funded enterprises, timely solve the problems reported by foreign-funded enterprises or their investors, and coordinate and improve relevant policy measures.

Where a foreign-funded enterprise or its investor deems that any administrative act of an administrative department or its staff member infringes its legitimate rights and interests, it may seek coordination and resolution thereof through the complaint mechanism for foreign-funded enterprises.

Where a foreign-funded enterprise or its investor deems that any administrative act of an administrative department or its staff member infringes its legitimate rights and interests, in addition to seeking coordination and resolution through the complaint mechanism for foreign-funded enterprises, it may apply for administrative review, or lodge an administrative litigation.

#### **Article 27**

Foreign-funded enterprises may legally establish and voluntarily join in a chamber of commerce or association, which shall carry out relevant activities in accordance with laws, regulations and the articles of association thereof and safeguard the legitimate rights and interests of its member.

## **Chapter IV Investment Management**

### **Article 28**

Foreign investors shall not invest in any field forbidden by the negative list for access of foreign investment (hereinafter referred to as the “negative list”).

For any field restricted by the negative list, foreign investors shall conform to the investment conditions provided in the negative list.

Fields not included in the negative list shall be managed under the principle that domestic investment and foreign investment shall be treated uniformly.

### **Article 29**

During the process of foreign investment, where verification and record-filing of a foreign investment project are required, relevant provisions of the State shall be followed.

### **Article 30**

If a foreign investor invests in an industry or field where license is required in accordance with the law, relevant licensing formalities shall be handled as stipulated by law.

Unless otherwise provided by laws or administrative regulations, relevant competent department shall review the application for license filed by the foreign investor based on the same conditions and procedures as those for domestic investment.

### **Article 31**

The organization form, institutional framework and standard of conduct of a foreign-funded enterprise shall be subject to the provisions of the Company Law of the People’s Republic of China, the Partnership Law of the People’s Republic of China, and other laws.

### **Article 32**

In carrying out production and operation activities, foreign-funded enterprises shall conform to relevant provisions on labor protection and social insurance stipulated in laws and administrative regulations, handle tax, accounting, foreign exchange and other matters in accordance with laws, administrative regulations and relevant provisions of the State, and shall be subject to the supervision and inspection conducted by relevant competent departments in accordance with the law.

### **Article 33**

Foreign investors who acquire a company within the territory of China through mergers and acquisitions or participate in the concentration of undertakings by other means shall be subject to the examination for concentration of undertakings as stipulated by the Anti-Monopoly Law of the People’s Republic of China.

### **Article 34**

The State shall establish a foreign investment information reporting system. Foreign investors or foreign-funded enterprises shall submit the investment information to competent departments for commerce through the enterprise registration system and the enterprise credit information publicity system.

The contents and scope of foreign investment information to be reported shall be determined under the principle of necessity; investment information that is available through interdepartmental information sharing will not be required to be submitted again.

### **Article 35**

The State shall establish a safety review system for foreign investment, under which the safety review shall be conducted for any foreign investment affecting or having the possibility to affect national security.

The decision made upon the safety review in accordance with the law shall be final.

## **Chapter V Legal Liability**

### **Article 36**

Where a foreign investor invests in a field forbidden by the negative list, relevant competent department shall order the said investor to stop its investment activity, dispose of the shares and assets thereof or take any other necessary measures within a prescribed time limit, and restore the state to what it was prior to the investment; if there is any illegal gain, such gain shall be confiscated.

Where an investment activity of a foreign investor breaches any special administrative measures for restrictive access provided in the negative list, relevant competent department shall order the investor to make corrections within a prescribed time limit, and take necessary measures to meet

the requirements of the aforesaid measures; if the foreign investor fails to make corrections within the time limit, measures specified in the preceding paragraph shall be taken.

Where an investment activity of a foreign investor violates any provision in the negative list, the said investor shall bear corresponding legal liability in accordance the law, in addition to being subject to measures specified in the preceding two paragraphs.

#### **Article 37**

Where any foreign investor or foreign-funded enterprise violates the provisions herein and fails to report their investment information as required by the foreign investment information reporting system, competent department for commerce shall order it to make corrections within a prescribed time limit; if such corrections are not made in time, a penalty of not less than CNY100,000 yet not more than CNY500,000 shall be imposed.

#### **Article 38**

Foreign investors and foreign-funded enterprises violating any law or regulation shall be subject to investigation and measures by relevant departments in accordance with the law and shall be included in the credit information system pursuant to relevant provisions of the State.

#### **Article 39**

Where a staff member of an administrative department abuses his/her functions and powers, neglects his/her duties or engages in malpractice for personal gain during the work relating to promotion, protection and management of foreign investment, or divulge or illegally provide to others any trade secret he/she is aware of during the performance of duties, a penalty will be imposed upon him/her in accordance with the law; if a crime is constituted, he/she will be held criminally liable.

### **Chapter VI Supplementary Provisions**

#### **Article 40**

Where any country or region takes any discriminatory prohibitive or restrictive measures, or other similar measures against the People's Republic of China in terms of investment, the People's Republic of China may take corresponding measures against

the said country or region in light of the actual conditions.

#### **Article 41**

For foreign investors who invest in such financial industries as banking, securities and insurance or manage any investment in such financial markets as securities market and foreign exchange market within the territory of China within the territory of China, where the State has any other provisions, such provisions shall prevail.

#### **Article 42**

The Law shall come into effect as of 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-funded enterprises, which were established in accordance with 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 before the implementation of the Law, may retain their original organization forms and other aspects for five years upon the implementation hereof. Specific implementation measures shall be formulated by the State Council.





CPO & Partners (Shanghai) Co.,Ltd.

Yan 'an middle road n.841, Jing 'an District 200040, Shanghai - OOCL Plaza, Floor 26, Suite 2604, 2605  
Tel: +86 021 63120097 – [www.cpopartners.com](http://www.cpopartners.com) – e-mail: [shanghai@cpopartners.com](mailto:shanghai@cpopartners.com)