

Shenzhen, China
Rooms 1203-06, 12/F.
Di Wang Commercial Centre
5002 Shennan Road East
Luohu District, Shenzhen
T: +86 755 8268 4480

Shanghai, China
Room 603, 6/F., Tower B
Guangqi Culture Plaza
2899A Xietu Road
Xuhui District, Shanghai
T: +86 21 6439 4114

Beijing, China
Room 303, 3/F.
Interchina Commercial Bldg.
33 Dengshikou Street
Dongcheng District, Beijing
T: +86 10 6210 1890

Taipei, Taiwan
Room 303, 3/F.
142 Section 4
Chung Hsiao East Road
Daan District, Taipei
T: +886 2 2711 1324

Singapore
3/F., 36B
Boat Quay
Singapore 049825
T: +65 6438 0116

New York, USA
202 Canal Street
Suite 303, 3/F.
New York
NY 10013, USA
T: +1 646 850 5888

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Foreign Investment Law of the People's Republic of China

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Chapter I General Provisions

Article 1 For the purposes of further expanding the country's opening up, actively boosting foreign investment, protecting the legitimate rights and interests of foreign investors, regulating the administration of foreign investment, propelling the formation of a new pattern of extensively opening up, and facilitating the sound development of the socialist market economy, this Law is enacted in accordance with the Constitution.

Article 2 Foreign investment within the territory of the People's Republic of China (hereinafter referred to as "within China") shall be governed by this Law.

For the purpose of this Law, foreign investment refers to any investment activity within China directly or indirectly conducted by foreign natural persons, enterprises or other organizations (hereinafter referred to as "foreign investors"), including the following circumstances:

- 1) a foreign investor establishes a foreign invested enterprise within China, either alone or jointly with any other investor;
- 2) a foreign investor acquires shares, equities, property portions or any other similar rights and interests of an enterprise within China;
- 3) a foreign investor invests in any new project within China, either alone or jointly with any other investor; and
- 4) investment in any other manner as stipulated by laws, administrative regulations or provisions of the State Council.

For the purpose of this Law, a foreign invested enterprise refers to an enterprise incorporated under Chinese laws within China in which all or part of its investment is from a foreign investor.

Article 3 The State is adamantly committed to the fundamental national policy of opening up and encourages foreign investors to invest within China according to the law.

The State implements policies of high-level investment liberalization and convenience, establishes and improves a foreign investment promotion mechanism, and create a stable, transparent and predictable market environment featuring fair competition.

Article 4 The State adopts the administration system of pre-establishment national treatment plus negative list for foreign investment.

Pre-establishment national treatment as mentioned in the preceding paragraph refers to the treatment granted to foreign investors and their investments, in the stage of investment access, no less favourable than that granted to domestic investors and their investments; the negative list refers to special administrative measures for access of foreign investment in specific sectors as stipulated by the State. The State grants national treatment to foreign investments outside the negative list.

The negative list shall be released by or upon approval by the State Council.

Where any international treaty or agreement concluded or acceded to by the People's Republic of China provides for any more favourable treatment in respect of access of foreign investors, the relevant provisions of the treaty or agreement may apply.

Article 5 The State protects foreign investors' investment, earnings and other legitimate rights and interests within China in accordance with the Law.

Article 6 Foreign investors and foreign invested enterprises conducting investment activities within China shall observe Chinese laws and regulations, and neither compromise China's national security or cause damage to the public interests.

Article 7 The competent department for commerce and the competent department for investment under the State Council shall, as per the division of duties, conduct the promotion, protection and administration of foreign investment; and other relevant departments of the State Council shall be responsible for the promotion, protection and administration of foreign investment within their respective scopes of duties.

The relevant departments under a local people's government at or above the county level shall promote, protect and administrate foreign investment according to laws and regulations and the division of duties determined by the people's government at the same level.

Article 8 Employees of a foreign invested enterprise shall, according to the law, establish a trade union, conduct trade union activities, and maintain the legitimate rights and interests of employees. Foreign invested enterprises shall provide support required for activities of their trade union.

Chapter II Promotion of Investment

Article 9 Foreign invested enterprises equally enjoy, in accordance with the law, the various State policies supporting the development of enterprises.

Article 10 Comments and recommendations from foreign invested enterprises shall be requested in appropriate manners in the process of enactment of laws, regulations, and rules relating to foreign investment.

Any regulatory or adjudicative instruments, among others, relating to foreign investment shall be timely publicized in accordance with the law.

Article 11 The State establishes and improves a system to provide consultation and service to foreign investors and foreign invested enterprises in respect of laws and regulations, policies and measures, and information relating to investment projects, among others.

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

Article 13 The State may, based on needs, establish special economic zones or implement pilot policies and measures on foreign investment in particular regions to promote foreign investment and expand the opening up.

Article 14 The State, according to the needs of national economic and social development, encourages and guides foreign investors to invest in specific industries, sectors, or regions. Foreign investors and foreign invested enterprises may enjoy preferential treatment in accordance with the laws, administrative regulations, or provisions issued by the State Council.

Article 15 The State guarantees that foreign invested enterprises equally participate in standard-making in accordance with the law, and strengthen information disclosure and social supervision.

The mandatory standards made by the State equally apply to foreign invested enterprises.

Article 16 The State guarantees that foreign invested enterprises participate in government procurement through fair competition. The products produced or services provided by foreign invested enterprises within China shall be equally treated in government procurement in accordance with the law.

Article 17 Foreign invested enterprises may conduct financing according to the law through public offering of securities such as stocks or corporate bonds, as well as through other methods.

Article 18 The local people's governments at or above the county level may, according to the provisions of the law, administrative regulations, and local legislations and within their statutory authorities, formulate policies and measures to promote and facilitate foreign investment.

Article 19 The local people's governments at all levels and their relevant departments shall, in accordance with the principles of convenience, efficiency, and transparency, simplify the procedures, improve efficiency, optimize government services, and further improve the standard for serving foreign investment.

The relevant competent departments shall formulate and publicize foreign investment guidelines to serve and facilitate foreign investors and foreign invested enterprises.

Chapter III Protection of Investment

Article 20 The investment of foreign investors are not to be expropriated by the State.

Under certain special circumstances, the State may, for public interests and in accordance with the law, expropriate or requisition the investment of foreign investors. The expropriation or requisition shall be conducted in accordance with statutory procedure, and fair and reasonable compensations shall be made in a timely manner.

Article 21 The foreign investors may, according to the law, freely remit in or out of China, in Renminbi or a foreign currency, their capital contributions, profits, capital gains, proceeds from asset disposal, royalties for intellectual property rights, indemnity or compensation legally obtained, indemnity or compensation lawfully acquired and income from liquidation, among others.

Article 22 The State protects the intellectual property rights of foreign investors and foreign invested enterprises, protects the lawful rights and interests of intellectual property right owners and relevant right holders thereof, and strictly holds those who infringe upon other's intellectual property rights legally accountable.

The State encourages technological cooperation in the process of foreign investment based on voluntariness and commercial rules. The conditions for technological cooperation are to be determined through equal consultation by the investors in compliance with the principle of fairness. Administrative agencies and their employees shall not force technological transfer through administrative measures.

Article 23 Administrative agencies and their employees shall keep confidential, in accordance with the law, the trade secrets of foreign investors and foreign invested enterprises they obtain in performing their duties, and shall not disclose or illegally provide them to others.

Article 24 When formulating regulatory documents involving foreign investment, the local people's governments at all levels and their relevant departments shall comply to provisions of laws and regulations; and in the absence of any basis in laws and regulations, the lawful rights and interests of foreign invested enterprises shall not be derogated, their obligations shall not be augmented, conditions for market entry and exit shall not be imposed, and the normal production and operation activities of foreign invested enterprises shall not be intervened.

Article 25 The local people's governments at all levels and their relevant departments shall fulfill their commitments on policies made in accordance with the law to foreign investors and foreign invested enterprises, and perform the contracts entered into therewith in accordance with the law.

Where a policy commitment or a contract needs to be changed for national or social public interests purpose, it shall be done within the statutory authority and in accordance with legal procedure, and the damage thus suffered by foreign investors and foreign invested enterprises shall be compensated in accordance with the law.

Article 26 The State establishes a mechanism for foreign invested enterprises to lodge complaints, timely resolving the issues presented by foreign invested enterprises or their investors, and coordinating and improving the relevant policy measures.

Where foreign invested enterprises or their investors deem that an administrative action conducted by an administrative agency or its employee(s) infringes upon their lawful rights and interests, they may apply for coordination and resolution through such complaining mechanism for foreign invested enterprises.

Where foreign invested enterprises or their investors deem that the administrative action conducted by an administrative agency and its employee(s) infringes upon their lawful rights and interests, they may apply for administrative review or initiate an administrative litigation in accordance with the law, in addition to applying for coordination and resolution through the complaining mechanism for foreign invested enterprises.

Article 27 Foreign invested enterprises may establish and voluntarily join in a chamber of commerce or association in accordance with the law. A chamber of commerce or association shall organize relevant activities in accordance with the law, administrative regulations, and their articles of association, and safeguard the lawful rights and interests of their members.

Chapter IV Administration of Investment

Article 28 Foreign investors shall not invest in the sectors in the negative list of foreign investment access that foreign investment is prohibited.

Foreign investors investing in a sector listed in the negative list of foreign investment access as a restricted sector, shall satisfy the requirements provided in the negative list.

Foreign investment in a sector not listed in the negative list of foreign investment access shall be administered according to the principle that domestic and foreign investments are treated equally.

Article 29 Where any foreign investment needs to undergo the approval or recordation of investment projects, the relevant provisions issued by the State shall apply.

Article 30 A foreign investor investing in an industry or sector that requires a license shall obtain the relevant license in accordance with the law.

Unless otherwise provided by the law or administrative regulations, the relevant competent departments shall examine the licensing application of foreign investors under the same conditions and procedures as for domestic investors.

Article 31 The form of organization, organizational structure, and the code of conducts of foreign invested enterprises shall be governed by the Company Law of the People's Republic of China, Law of the People's Republic of China on Partnership Enterprises and other laws.

Article 32 During their production and business operation, foreign invested enterprises shall comply with the provisions of laws and administrative regulations pertaining to labour protection and social insurance, conduct taxation, accounting, foreign exchange, and other affairs according to laws, administrative regulations, and the relevant provisions issued by the State, and accept the supervisory inspection legally conducted by the competent departments.

Article 33 Where a foreign investor participates in the concentration of undertakings by merger or acquisition of enterprises within China or in any other manner, it shall accept a review of concentration of undertakings under 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, through the enterprise registration system and the enterprise credit information disclosure system, report investment information to the competent departments in charge of commerce.

The content and coverage of foreign investment information report shall be determined based on the principle of actual necessity; the investment information accessible by interdepartmental information sharing shall not be required to be submitted again.

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

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

Chapter V Legal Liabilities

Article 36 Where a foreign investor invests in a sector listed in the negative list of foreign investment access as a prohibited sector, the competent department shall order cessation of investment activity, dispose of shares or assets, or adopt other necessary measures within a specified period of time to restore it to the status prior to the investment was made; any illegal gains shall be forfeited.

Where the investment activity of a foreign investor violates any special administrative measures on a sector listed in the negative list of foreign investment access as a restrictive sector, the competent department shall order it to make corrections within a specified period of time and to adopt necessary measures to satisfy the requirements imposed by the special administrative measures; if correction is not made within the specified period of time, the provisions in the preceding paragraph shall be applied.

Where the investment activity of a foreign investor violates any provisions of the negative list of foreign investment access, the foreign investor shall assume, in addition to the consequences as provided in the preceding two paragraphs, corresponding legal liability in accordance with the law.

Article 37 Where a foreign investor or a foreign invested enterprise has not submitted investment information according to the requirement of the foreign investment information reporting system in violation of this Law, the competent department in charge of the commerce shall order it to make corrections within a specified period of time; if correction has not been made within the specified period of time, a fine no less than 100,000 Renminbi but no more than 500,000 Renminbi shall be imposed.

Article 38 The relevant departments shall, in accordance with the law, investigate and deal with the conduct of foreign investors and foreign invested enterprises in violation of laws and regulations, and enter them into the credit information system according to the relevant provisions issued by the State.

Article 39 Employees of administrative agencies who misuse their authority, neglect their duty, or commit corruption, or disclose or illegally provide to others any commercial secrets obtained through performing their duties, shall be sanctioned in accordance with the law; if any of the above conducts constitutes a crime, criminal liability shall be imposed.

Chapter VI Supplementary Provisions

Article 40 Where a country or region adopts any discriminative measures to prohibit, restrict, or use otherwise similar measures against the People's Republic of China in investment, the People's Republic of China may adopt corresponding measures against such country or region based on the actual situation.

Article 41 Where the State has issued any other provisions on foreign investors' investment in the banking, securities, insurance, and other financial industries or the securities, foreign exchange, and other financial markets within China, such provisions shall prevail.

Article 42 This Law shall come into force on January 1, 2020. The Law of the People's Republic of China on China-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 China-Foreign Contractual Joint Ventures shall be repealed at the same time.

The foreign invested enterprises established under 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 Foreign-funded Enterprises, and the Law of the People's Republic of China on Sino-Foreign Contractual Joint Ventures prior to the implementation of this Law may keep their original organization forms, among others, within five years upon the implementation of this Law. Specific implementation rules shall be formulated by the State Council.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

Email: info@kaizencpa.com, enquiries@kaizencpa.com

Tel: +852 2341 1444

WhatsApp/Line/Wechat: +852 6114 9414, +86 1521 932 644

Skype: kaizencpa