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外商投资法（草案）征求意见

Notice on Soliciting Public Opinions on the Foreign Investment Law (Draft)

颁布机关： 全国人民代表大会常务委员会
Promulgating Institution: Standing Committee of the National People's Congress

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第十三届全国人大常委会第七次会议对《中华人民共和国外商投资法（草案）》进行了审议。现将《中华人民共和国外商投资法（草案）》在中国人大网公布，社会公众可以直接登录中国人大网（www.npc.gov.cn）提出意见，也可以将意见寄送全国人大常委会法制工作委员会（北京市西城区前门西大街1号，邮编：100805。信封上请注明外商投资法草案征求意见）。征求意见截止日期：2019年2月24日。

The Foreign Investment Law of the People's Republic of China (Draft), deliberated at the Seventh Session of the Standing Committee of the 13th National People's Congress ("NPC"), is hereby published on the website of the NPC. The public may directly submit comments through the website of the NPC (www.npc.gov.cn), or send comments by post to the Legislative Affairs Commission of the Standing Committee of the NPC (postal address: No. 1 Qianmen West Street, Xicheng District, Beijing, zip code: 100805; and the envelope shall be marked "comments on the Foreign Investment Law (Draft)"). Deadline for comments and opinions: February 24, 2019.

中华人民共和国外商投资法（草案）

Foreign Investment Law of the People's Republic of China (Draft)

第一章 总则

Chapter 1: General Provisions

第一条 为了进一步扩大对外开放，积极促进外商投资，保护外商投资合法权益，推动形成全面开放新格局，促进社会主义市场经济健康发展，制定本法。

Article 1 This Law is formulated with a view to further opening up to the outside world, actively promoting foreign investment, protecting the legitimate rights and interests of foreign

investment, facilitating the formation of a new pattern of comprehensive opening-up, and promoting the healthy development of the socialist market economy.

第二条 在中华人民共和国境内（以下简称中国境内）的外商投资，适用本法。

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

本法所称外商投资，是指外国的自然人、企业和其他组织（以下称外国投资者）直接或者间接在中国境内进行的投资活动，包括下列情形：

For the purpose of this Law, "foreign investment" means the investment activities carried out directly or indirectly by foreign natural persons, foreign enterprises and other foreign organizations (hereinafter referred to as "foreign investors") in China, including the following circumstances where:

（一）外国投资者单独或者与其他投资者共同在中国境内投资新建项目、设立外商投资企业或者增加投资；

(1) Foreign investors, independently or jointly with other investors, invest in new projects, set up foreign-invested enterprises or increase investment in China;

（二）外国投资者通过并购方式取得中国境内企业的股份、股权、财产份额或者其他类似权益；

(2) Foreign investors obtain shares, equities, property shares or other similar rights and interests of Chinese domestic enterprises through mergers and acquisitions; and

（三）外国投资者通过法律、行政法规或者国务院规定的其他方式在中国境内投资。

(3) Foreign investors invest in China through other means stipulated in laws, administrative regulations or other provisions of the State Council.

本法所称外商投资企业，是指全部或者部分由外国投资者投资，依照中国法律在中国境内经登记注册设立的企业。

For the purpose of this Law, "foreign-invested enterprises" mean enterprises registered and established in China in accordance with the Chinese laws, which are wholly or partly invested by foreign investors.

第三条 国家坚持对外开放基本国策，鼓励外国投资者依法在中国境内投资，提升利用外资的质量和水平。

Article 3 The State adheres to the basic national policy of opening up to the outside world, encourages foreign investors to invest in China in accordance with the law and raises the quality and level of foreign investment utilization.

国家实行高水平投资自由化便利化政策，建立和完善外商投资促进机制，营造稳定、透明、可预期的投资环境。

The State implements policies to ensure high-level investment liberalization and facilitation, establishes and improves foreign investment promotion mechanisms, and creates a stable, transparent

and predictable investment environment.

第四条 国家对外商投资实行准入前国民待遇加负面清单管理制度；中华人民共和国缔结或者参加的国际条约、协定对外国投资者待遇另有规定的，从其规定。

Article 4 The State implements a system of pre-entry national treatment plus negative list for the administration of foreign investment. Where the international treaties or agreements concluded or acceded to by the People's Republic of China provide otherwise for the treatment of foreign investors, those provisions shall prevail.

前款所称负面清单，是指国家规定在特定领域对外商投资实施的准入特别管理措施。负面清单由国务院发布或者批准发布。

For the purpose of the preceding paragraph, a "negative list" means the special administrative measures stipulated by the State for foreign investment's access to specific areas. The State Council shall be responsible for the issuance or approval of issuance of a negative list.

第五条 国家依法保护外国投资者在中国境内的投资、收益和其他合法权益。

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

第六条 外国投资者、外商投资企业应当遵守中国法律法规，不得危害中国国家安全、损害社会公共利益。

Article 6 Foreign investors and foreign-invested enterprises shall abide by Chinese laws and regulations and shall not endanger China's national security or harm the public interest.

第七条 国务院商务主管部门、投资主管部门按照职责分工，开展外商投资促进、保护和管理；国务院有关部门在各自职责范围内，负责外商投资促进、保护和管理的相关工作。

Article 7 The competent commerce department and the competent investment department under the State Council shall, according to the division of responsibilities, carry out the promotion, protection and administration of foreign investment; other relevant departments under the State Council shall be responsible for the foreign investment related promotion, protection and administration work within their respective functions and responsibilities.

县级以上地方人民政府有关部门依照法律法规和本级人民政府确定的职责分工，开展外商投资促进、保护和管理。

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

第八条 外商投资企业职工依法建立工会组织，开展工会活动，维护职工的合法权益。外商投资企业应当为本企业工会提供必要的活动条件。

Article 8 Employees of foreign-invested enterprises shall establish trade union organizations

according to law to carry out trade union activities and protect the legitimate rights and interests of employees. Foreign-invested enterprises shall provide necessary conditions for their trade unions to carry out activities.

第二章 投资促进

Chapter 2: Investment Promotion

第九条 除法律、行政法规另有规定外，国家支持企业发展的各项政策同等适用于外商投资企业。

Article 9 The State's policies supporting enterprise development are equally applicable to foreign-invested enterprises, unless otherwise provided for by laws and administrative regulations.

第十条 制定与外商投资有关的法律、法规、规章，应当听取外商投资企业的意见和建议。

Article 10 The relevant authorities shall hear opinions and suggestions from foreign-invested enterprises when formulating laws, regulations and rules related to foreign investment.

与外商投资有关的规范性文件、司法判决，应当依法及时公布。

Normative documents and judicial decisions related to foreign investment shall be announced in a timely manner according to law.

第十一条 国家建立健全外商投资服务体系，为外国投资者和外商投资企业提供法律法规、政策措施、投资项目信息等方面的咨询和服务。

Article 11 The State establishes a robust foreign investment service system to provide foreign investors and foreign-invested enterprises with advice and services concerning laws and regulations, policies and measures, and investment project information, etc.

第十二条 国家与其他国家和地区、国际组织建立多双边投资促进合作机制，加强投资领域的国际交流与合作。

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

第十三条 国家根据对外开放需要，在特定区域内实行外商投资试验政策措施，促进外商投资。

Article 13 The State, in light of the needs of opening up to the outside world, implements foreign investment pilot policies and measures in specific regions to promote foreign investment.

国务院可以设立特殊经济区域，促进外商投资，扩大对外开放。

The State Council may set up special economic zones in order to promote foreign investment and expand the opening-up.

第十四条 国家根据国民经济和社会发展的需要，采取优惠措施，鼓励和引导外国投资者在特定行业、领域、地区投资。

Article 14 The State, in light of the needs of national economic and social development, adopts preferential measures to encourage and guide foreign investors to invest in specific industries, fields

and regions.

第十五条 外商投资企业平等参与标准化工作，标准制定应当强化信息公开和社会监督。

Article 15 Foreign-invested enterprises participate in standardization work equally. Information disclosure and social supervision shall be strengthened in the standards development work.

国家制定的强制性标准平等适用于外商投资企业。

The mandatory standards formulated by the State shall be equally applicable to foreign-invested enterprises.

第十六条 国家保障外商投资企业公平参与政府采购活动。政府采购依法对外商投资企业在中国境内生产的产品平等对待。

Article 16 The State guarantees that foreign-invested enterprises participate in government procurement activities fairly. Products produced by foreign-invested enterprises in China shall be treated equally according to law in government procurement activities.

第十七条 外商投资企业可以依法通过公开发行股票、公司债券等证券以及其他方式进行融资。

Article 17 Foreign-invested enterprises can raise funds through public issuance of stocks, corporate bonds and other securities in accordance with the law.

第十八条 地方各级人民政府可以在法定权限内制定外商投资促进政策。

Article 18 Local people's governments at all levels may formulate foreign investment promotion policies within their legal powers.

第十九条 各级人民政府及其有关部门应当按照便利、高效、透明的原则，进一步提高外商投资服务水平。

Article 19 The people's governments at all levels and their relevant departments shall further improve the services for foreign investment according to the principles of convenience, efficiency and transparency.

有关主管部门应当编制和公布外商投资指引，为外国投资者和外商投资企业提供服务 and 便利。

The relevant competent authorities shall develop and publish foreign investment guidelines, and provide foreign investors and foreign-invested enterprises with services and conveniences.

第三章 投资保护

Chapter 3: Investment Protection

第二十条 国家对外商投资不实行征收；在特殊情况下，根据社会公共利益需要对外商投资实行征收的，应当依照法定程序进行，并给予公平、合理的补偿。

Article 20 The State does not impose expropriation on foreign investment. Under special circumstances, if it requires imposing expropriation on foreign investment due to the needs of public interest, expropriation shall be imposed according to legal procedures, and the foreign-invested enterprises concerned shall receive fair and reasonable compensation.

第二十一条 外国投资者在中国境内的出资、利润、资本收益、知识产权使用费、依法获得的补偿或者赔偿等，可以依法以人民币或者外汇自由转出。

Article 21 A foreign investor's capital contribution, profits, capital gains, intellectual property rights (IPR) royalties, and indemnity or compensation received in China according to law may be freely transmitted to overseas in accordance with the law, denominated in Renminbi or foreign exchange.

第二十二条 国家依法保护外国投资者和外商投资企业的知识产权，保护知识产权权利人和相关权利人的合法权益，鼓励基于自愿原则和商业规则开展技术合作。

Article 22 The State protects the IPRs of foreign investors and foreign-invested enterprises in accordance with the law, protects the legitimate rights and interests of IPR holders and the related rights holders, and encourages technical cooperation carried out according to voluntary principles and business rules.

外商投资过程中技术合作的条件由投资各方协商确定，行政机关及其工作人员不得利用行政手段强制转让技术。

The conditions for technical cooperation in the process of foreign investment shall be negotiated and determined by all parties to the investment; and the administrative organs and their staff shall not use administrative means to force the transfer of technology.

第二十三条 各级人民政府及其有关部门制定涉及外商投资的规范性文件，应当符合法律法规的规定，不得违法减损外商投资企业的合法权益或者增加其义务，不得违法设置市场准入和退出条件、违法干预或者影响外商投资企业的正常生产经营活动。

Article 23 The people's governments at all levels and their relevant departments shall formulate normative documents concerning foreign investment conforming to the provisions of laws and regulations; shall not illegally impair or reduce the legitimate rights and interests of foreign-invested enterprises or increase their obligations; and shall not illegally set market access and exit conditions, or illegally interfere in or affect the normal production and operation activities of foreign-invested enterprises.

第二十四条 地方各级人民政府及其有关部门应当严格履行向外国投资者、外商投资企业依法作出的政策承诺以及依法订立的各类合同。

Article 24 Local people's governments at all levels and their relevant departments shall strictly abide by the policy commitments made to foreign investors and foreign-invested enterprises according to law and perform all types of contracts concluded therewith in accordance with the law.

因国家利益、社会公共利益需要改变政策承诺或者合同约定的，应当严格依照法定权限和程序进行，并依法对外国投资者、外商投资企业因此受到的损失予以补偿。

If the national interests or public interests require the changes of the abovementioned policy commitments or contractual agreements, the changes shall be made in strict accordance with the statutory powers and procedures, and the foreign investors and foreign-invested enterprises that suffer losses therefrom shall be compensated according to law.

第二十五条 国家建立外商投资企业投诉工作机制，协调完善外商投资企业投诉工作中的重大政策措施，及时解决外商投资企业反映的问题。

Article 25 The State establishes a complaint mechanism for foreign-invested enterprises, coordinates and improves major policy measures for handling foreign-invested enterprises' complaints, and promptly resolves problems reported by foreign-invested enterprises.

外商投资企业认为行政机关及其工作人员的行政行为侵犯其合法权益的，可以通过外商投资企业投诉工作机制解决。

In the case that a foreign-invested enterprise believes that the administrative actions of an administrative organ and its staff members violate its lawful rights and interests, the case may be resolved through the complaint mechanism for foreign-invested enterprises.

第二十六条 外国投资者、外商投资企业可以依法成立和自愿参加商会、协会，依照法律法规和章程的规定开展相关活动，维护自身合法权益。

Article 26 Foreign investors and foreign-invested enterprises may voluntarily establish and join the chambers of commerce and associations according to law, carry out relevant activities in accordance with the provisions of laws, regulations and articles of association, and safeguard their own legitimate rights and interests.

第四章 投资管理

Chapter 4: Investment Administration

第二十七条 外商投资准入负面清单规定禁止投资的领域，外国投资者不得投资。

Article 27 Foreign investors are not allowed to invest in fields or sectors prohibited in the market access negative list for foreign investment.

外商投资准入负面清单规定限制投资的领域，外国投资者进行投资应当符合负面清单规定的条件。

Foreign investors that intend to invest in the fields subject to access restrictions stipulated in market access negative list for foreign investment shall satisfy the conditions stipulated in the negative list.

外商投资准入负面清单以外的领域，按照内外资一致的原则实施管理。

Foreign investment in fields or sectors not stipulated in the market access negative list for foreign investment shall be managed according to the principle of treating Chinese domestic investment and foreign investment equally.

第二十八条 外商投资项目的核准、备案，按照国家有关规定执行。

Article 28 The review and approval and record-filing of foreign investment projects shall be carried out according to the relevant provisions of the State.

第二十九条 外国投资者投资依法需要取得许可的行业、领域的，应当依法办理相关许可手续。

Article 29 If a foreign investor intends to invest in an industry or field that a license is required according to law, the investor shall go through the relevant licensing procedures in accordance with the

law.

除法律、行政法规另有规定外，有关主管部门应当按照与内资一致的条件和程序，审核外国投资者的许可申请。

Unless otherwise stipulated by laws and administrative regulations, the relevant competent authorities shall, according to the same conditions and procedures for Chinese domestic investment, review the applications for license filed by foreign investors.

许可需要同一主管部门内设的多个机构办理的，应当确定一个机构统一受理许可申请，统一送达许可决定；许可依法由两个以上主管部门分别实施的，有关主管部门应当优化、整合办理流程，通过统一受理、联合办理、信息共享等方式为外国投资者申请许可提供便利。

Where the applications for license need to be handled by several institutions within the same competent department, the competent department shall decide to appoint one institution to uniformly accept the applications and uniformly serve the application decisions on the applicants; If the applications for license need to be handled by two or more competent authorities in accordance with the law, the relevant competent departments shall optimize and integrate the handling procedures, and by means of uniform acceptance, joint processing, and information sharing, provide convenience to foreign investors in applying for licenses.

第三十条 外商投资企业的登记以及税收、会计、外汇等事宜，依照有关法律、行政法规和国家有关规定办理。

Article 30 A foreign-invested enterprise's registration, taxation, accounting and foreign exchange matters shall be handled according to the relevant laws, administrative regulations, and the relevant provisions of the State.

第三十一条 国家建立外商投资信息报告制度，信息报告的内容和范围按照确有必要、严格控制的原则确定。外国投资者或者外商投资企业通过企业登记系统以及企业信用信息公示系统向商务主管部门报送投资信息；通过部门信息共享能够获得的投资信息，不得再行要求报送。

Article 31 The State establishes a foreign investment information reporting system, and the content and scope of the information report shall be determined according to the principles of necessity and strict control. Foreign investors or foreign-invested enterprises shall submit investment information to the competent commerce authorities through the enterprise registration system and the enterprise credit information disclosure system. Investment information that can be obtained through the departmental information sharing system shall no longer be required to be submitted separately.

第三十二条 除法律另有规定外，有关主管部门应当按照内外资一致的原则对外商投资企业实施监督检查。

Article 32 Unless otherwise stipulated by law, relevant competent authorities shall conduct supervision and inspection of foreign-invested enterprises according to the principle of treating Chinese domestic investment and foreign investment equally.

第三十三条 国家建立外商投资安全审查制度，对影响或者可能影响国家安全的外商投资进行安全

审查。

Article 33 The State establishes a foreign investment security review system to conduct security reviews of foreign investment that affects or may affect the national security.

依法作出的安全审查决定为最终决定。

The security review decision rendered according to law is the final decision.

第五章 法律责任

Chapter 5: Legal Liability

第三十四条 政府有关部门工作人员在外商投资促进、保护和管理工作中滥用职权、玩忽职守、徇私舞弊的，依法给予处分；构成犯罪的，依法追究刑事责任。

Article 34 Where a staff member of the relevant governmental department abuses his powers, neglects his duties or engages in malpractices for personal gains when carrying out foreign investment promotion, protection and administration work, he shall be punished according to law; if the aforesaid conduct constitutes a crime, the violator shall be held criminally liable according to law.

第三十五条 外国投资者投资外商投资准入负面清单规定禁止投资的领域的，由有关主管部门责令停止投资活动，限期处分股份、资产或者采取其他必要措施，恢复到实施投资前的状态；有违法所得的，没收违法所得。

Article 35 Where a foreign investor invests in a field or sector prohibited in the market access negative list for foreign investment, the relevant competent department shall order the foreign investor to stop the investment activities, dispose of the shares or assets or take other necessary measures within a specified time limit, and restore to the status which is before the occurrence of the aforesaid investment; the illegal gains, if any, shall be confiscated.

外国投资者的投资活动违反外商投资准入负面清单规定的限制性准入特别管理措施的，由有关主管部门责令改正，采取必要措施满足准入特别管理措施的要求；拒不改正的，依照前款规定处理。

Where the investment activities of a foreign investor violate the special administration measures for access restrictions stipulated in the negative list for foreign investment, the relevant competent department shall order the investor to make corrections and take necessary measures to meet the requirements stipulated in the aforesaid special management measures; if the investor refuses to make corrections, provisions of the preceding paragraph shall apply.

第三十六条 对外国投资者、外商投资企业违反法律、法规的行为，由有关部门依法查处，并按照国家有关规定纳入有关信用信息系统，实施联合惩戒。

Article 36 Where a foreign investor or foreign-invested enterprise violates any laws or regulations, the relevant department shall investigate and deal with the violation according to law, and incorporate the same in the relevant credit information system according to the relevant provisions of the State to implement joint disciplinary action.

第六章 附则

Chapter 6: Supplementary Provisions

第三十七条 任何国家或者地区在投资方面对中华人民共和国采取歧视性的禁止、限制或者其他类似措施的，中华人民共和国可以根据实际情况对该国家或者该地区采取相应的措施。

Article 37 Where any country or region adopts prohibitive, restrictive or other similar measures that discriminate against investment from the People's Republic of China, the People's Republic of China may take corresponding measures against such a country or region in light of actual conditions.

第三十八条 对外国投资者在中国境内投资银行、证券、保险等行业或者投资证券市场、外汇市场等金融市场的管理，国家另有规定的，依照其规定。

Article 38 If the State stipulates otherwise concerning the administration of foreign investment in banking, securities, insurance and other industries in China or the administration of foreign investment in securities market, foreign exchange market and other financial markets in China, those stipulations shall prevail.

第三十九条 本法自年月日起施行。《中华人民共和国中外合资经营法》、《中华人民共和国外资企业法》、《中华人民共和国中外合作经营法》同时废止。

Article 39 This Law comes into force on the date (mm/dd/yyyy). The Sino-Foreign Equity Joint Venture Enterprise Law of the People's Republic of China, the Wholly Foreign-Owned Enterprise Law of the People's Republic of China, and the Sino-Foreign Cooperative Joint Venture Enterprise Law of the People's Republic of China shall be repealed simultaneously.

本法施行前依照《中华人民共和国中外合资经营法》、《中华人民共和国外资企业法》、《中华人民共和国中外合作经营法》设立的外商投资企业，在本法施行后五年内可以继续保留原企业组织形式。

Foreign-invested enterprises established according to the Sino-Foreign Equity Joint Venture Enterprise Law of the People's Republic of China, the Wholly Foreign-Owned Enterprise Law of the People's Republic of China, and the Sino-Foreign Cooperative Joint Venture Enterprise Law of the People's Republic of China before the implementation of this Law, may maintain their original organization forms within five years after the implementation of this Law.