
АЗАМАТТЫҚ ҚҰҚЫҚ ЖӘНЕ АЗАМАТТЫҚ ПРОЦЕСС ГРАЖДАНСКОЕ ПРАВО И ГРАЖДАНСКИЙ ПРОЦЕСС CIVIL LAW AND CIVIL PROCEDURE

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History of investment legislation system development of the Republic of China

The article analyzes the history of legislation development regulating legal relations in the field of foreign investment in the Republic of China. The development of laws on foreign investment on the basis of the form of the enterprise does not meet the requirements of economic development in the area of foreign investment in the republic of China. Therefore, development of a unified Law on foreign investment will continue to increase the transparency of policies and legislation, are widely distributed, except for situations with more stringent national regime. By the only way China will be able to create more open, transparent investment environment with equal competition, stimulating the development of China's economy. The article treats that these laws determine the legal grounds (bases) for the implementation of activities of foreign investors, the procedure of providing guarantees to foreign investors in China. It is affirmed that China strives for carrying out a flexible and transparent policy in the sphere of attracting foreign investments, granting privileges and preferences to foreign investors, but maintaining state control over the activities of foreign investors. A particular attention is drawn to the necessary of legal enforce and legitimate interests of investors in China need to raise to new heights, should create for foreign investments more stable, transparent and predictable legal environment.

Keywords: investment, foreign investment, investment activity, foreign investor, foreign capital, the area of investment, investment field, investment.

The existing legislation in the PRC in the field of foreign investments effectively regulates legal relations of foreign investment. But among the adopted laws in this area there are still duplications and even contradictions. After the entry of the PRC into the WTO in 2001, there appeared contradictions between the law on foreign investment and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. In this regard, the laws on foreign investment in the PRC were revised within the shortest term possible so that they could more effectively stimulate the development of China's economy. As a legislative model of the law on foreign investment of the PRC, the «Double Composite System» model is still being applied, aimed at the legislative regulation of enterprises with foreign capital and Chinese companies with two legal norms. This has many inconsistencies with the «Rules of investment measures in the field of trade» mentioned in the TRIPS agreement.

Following the development of the world globalization, global capital flows in the world will acquire more and more new forms of foreign investment, such as WTO investments (EPA — economic partnership association), cross-border mergence and acquisitions, non-equity and other new investment models. If China continues to support the legislatively arranged form of enterprises, this will not only increase the legal burden, but may also lead to the inhibition of the economic development of legislation on foreign investment in the PRC. In modern China, three legislative acts have been adopted that directly regulate foreign investment: 1) the PRC Law «On joint ventures with foreign capital» of July 1, 1979 [1]; 2) The PRC Law «On Enter-

prises with Foreign Capital» of April 12, 1986 [2]; 3) The PRC Law «On unitary joint ventures of Chinese and foreign capital» dated July 1, 1979 [3].

These laws determine the legal basis for carrying out the activities of foreign investors; provide guarantees for foreign investors on the territory of the PRC. At the same time, there certain issues arise in the consideration of the main provisions of these legislative acts.

Firstly, legal support in the field of investment activity cannot be acknowledged sufficient, enough therefore, it is necessary to adopt a single legislative act in this area that would not regulate certain issues related to the implementation of investment activities in the PRC, but would determine the grounds and order of this activity, and, in first of all, with the participation of foreign investors.

Thus, on January 19, 2015, Ministry of Trade of the People's Republic of China presented the draft law of the PRC «On Foreign Investments» [4; 25].

Secondly, it is necessary to make the existing regime of the governmental management of foreign investments more liberal, it should be simplified in order to take away unnecessary bureaucratic delays, especially in those activities where the receipt of a license is required. With the adoption of the new Law on Foreign Investments of the People's Republic of China, privileges and preferences should be provided for foreign investors operating in those sectors of the economy that are least attractive in terms of investment, but which are important for the PRC. As follows from the draft law of the PRC on foreign investment, it is proposed to abolish the procedure for preliminary approval and coordination available for foreign investors on an individual basis, as well as to reduce the list of branches of the economy where the presence of foreign capital is undesirable or completely prohibited.

As a result, these measures will help to create a new regime for foreign investment in China — to introduce the system of «limited license plus comprehensive (all round) legal protection». Such a new management system access means that if the prospective scope for attracting foreign investment is included in to the list of banned or restricted one, it may be possible to obtain permission for their implementation through a special external license access to these investments.

At the same time, foreign investors who invest in to the Chinese economy will be legally required to fulfill their obligations on submission of their carried out activities, regardless of whether this area of investment is included into the negative or restrictive list or not.

Specialized legislative acts which are currently in force in the field of investment have become obsolete, as they were developed and adopted during the transition to a market economy. They established the legal basis for the use of foreign investment in China, promoted China's reform and China's great substantial economic growth. These laws play a key role in the process of active and effective use of foreign investment, and contribute to the further development of the national economy.

Over the past few years, China has been the world's second largest investor for inserting capital in to the economy of developing countries. The process of investing foreign capital, applying new technologies, contemporary management experience and exporting channels leads to the creation of a new format of service, a new business philosophy, and promote the economic and social development of China.

At the same time, legal support for the rights and legal interests of investors in the PRC should to be raised to new heights, it is necessary to create a more stable, transparent and predictable legal environment for foreign investments. We believe that in this situation there aroused an extreme necessity for the development and adoption of a special law of PRC on foreign investment. Duplicates of legislation on foreign investment in the current system of the PRC lead to misunderstandings, drive to the waste of legislative resources.

At the same time, the development of laws on foreign investment on the basis of the form of the enterprise has long been inadequate to the requirements for the development of the economy in the field of foreign investment in the PRC. Therefore, the development of a single Law on Foreign Investments will continuously enhance the transparency of policies and legislation, widely disseminated, except in situations with an increasingly rigid national regime. Only this way China will be able to create an even more open, transparent, investment environment with equal competitive capacity, stimulating the development of China's economy.

Today, the system of granting privileges and preferences to foreign investors in the PRC manifests itself mainly in the following areas:

1) in the sphere of production (Regulation «On Guidance of Foreign Investments Course» generally reflects the production policy of the PRC government related to foreign investment). The PRC divided the projects of foreign investment into 4 categories — encouraged, permitted, limited, prohibited. Encouraged draft

of foreign investments category (for example agriculture, new high production technologies), except for beneficial preferences stipulated by relevant legal and administrative provisions, depending on the amount of investment, the payment period for the construction of projects in the field of energy, transport, urban infrastructure (coal, oil, natural gas, electricity, railways, roads, ports, airports, urban highways, water treatment, garbage disposal and etc.) after agreement and approval, can be expanded in the framework of its corresponding activities [5; 15].

2) in the sphere of land usage (In accordance with the Law of the PRC «On Land Management», urban lands are related to the state property.) Rural and suburban lands, with the exception of lands that are classified as the state property by special legislative acts, belong to collective property. In accordance with The Law on Land Management, state lands pursue a regime of onerous (paid) usage; enterprises with foreign capital may receive the right to use the land on onerous grounds or for a limited period of time. In accordance with this legislative act, enterprises with foreign investments submit a relevant request, in addition they refund the corresponding value of the land, and then receive the right to use this land allotment. Enterprises with foreign capital can also receive the right to use the land through the transfer of rights, leases.

3) in the field of taxation (The main activities of the preferential policy of the PRC government in the field of taxation of enterprises with foreign capital include the following: privileges are supplied in respect of corporate income tax, enterprise tax cuts, as well as customs duties on import and export of equipment, VAT on import, etc.) [6; 4].

Along with this in 2011–2012 in the PRC there were adopted new regulatory acts in the field of investment. So, on January 31, 2011, the State Committee for Development and Reform had adopted the Circular «On Further Standardization of Promotion Management and Accounts of Joint-Stock Investment Enterprises in Pilot Zones», according to which for the first time legislative requirements were determined for operations, disclosure of information and registration of private joint-stock companies that invest into pilot zones of economic development. This document came into force on the day of its publication and is applied to joint-stock companies that perform corresponding functions in the pilot development zones in Tianjin, Beijing, Shanghai, Jiangsu, Zhejiang and Wuhan, where investment activity is the most active. Since January 30, 2012, «Catalogue — Manual of Branches for Foreign Investments» had come into force [7].

This catalogue opens up new branches of economy for foreign investors and expands the list of types of activities that are encouraged by the state, since they allow attracting new high-tech manufactures and know-how to China. In particular, to priority kinds of activities the following were referred in addition:

- 1) production of elements for solar batteries;
- 2) production of components for wind power stations and high-speed trains;
- 3) chemical industry and the production of man-made fibers;
- 4) processing of hazardous waste products;
- 5) improvement of the natural environment;
- 6) manufacture of equipment for recycling household electrical appliances, textiles, worn-out tires;
- 7) production of equipment for the use of waste from ore mining;
- 8) production of construction, clearance plants;
- 9) reclamation, re-cultivation and restoration of land;
- 10) growing of oil palms;
- 11) cultivation of ecologically pure organic vegetables (except genetically modified vegetables);
- 12) extraction of subsoil assets (including exploration and production of oil shale, oil sands, heavy oil and extra-heavy oil).

Like other countries-recipients of foreign capital, the PRC seeks to pursue a flexible and transparent policy in the field of attracting foreign investments by providing benefits and preferences to foreign investors, but retaining state control over the activities of foreign investors. It is obvious that the process of attracting foreign investments into the Chinese economy is quite active.

However, unlike other countries, including neighboring countries, despite realized recent reforms, China still has a planned distribution system of the economy system with a strong economic role of the state and the desire to form the major economic national proportions on a unified basis [8].

Thus, it can be concluded that market mechanisms in the PRC quite effectively exist in conditions of planned economy, that present great interest to the RK, which since the beginning of the 1990s actively joined the process of building a new market economy, rejecting practically completely the administrative command system of management, which had existed more than seventy years. In this connection, the experience of the PRC convincingly proves that not everything that was in conditions of socialism is unambiguous-

ly unacceptable for us in the new market conditions, therefore, after studying the experience of other countries in this area, it is possible to obtain from it positive and acceptable methods of regulating the economy.

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Ли Шань

Қытай Халық Республикасының инвестициялық заңнамаларының даму тарихы

Мақалада Қытай Халық Республикасында шетелдік инвестициялар саласындағы құқықтық қатынастарды реттейтін заңнамалардың даму тарихы талданды. Кәсіпорын нысаны негізіндегі шетелдік инвестициялар туралы заңдарды әзірлеу Қытай Халық Республикасында шетелдік инвестициялау саласындағы экономиканың даму талаптарына әлдеқашан сәйкес келмейді. Сондықтан шетелдік инвестициялар туралы бірінші заңды әзірлеу, күшті ұлттық тәртіпті қоспағанда, заңнама мен саясаттың кіршіксіздігін үздіксіз нығайтатын болады, кеңінен таралуына жол ашады. Тек осылай ғана Қытай өзінің экономикасын ынталандыра отырып ашығырақ, кіршіксіз, тепе-теңдік бәсекелестік инвестициялық ахуалды құра алады. Мақала авторы бұл заңдар шетелдік инвесторлардың қызметін жүзеге асырудың құқықтық негіздерін, шетелдік инвесторларға ҚХР-ның аумағында кепілдіктер беру тәртібін айқындады. ҚХР шетелдік инвесторлардың қызметіне мемлекеттік бақылауды сақтай отырып, шетелдік инвесторларға жеңілдіктер мен преференциялар ұсынып, шетелдік инвестицияларды икемді және ашық саясат саласында жүргізуге ұмтылатынына баса назар аударылды. Қорытындыда автор ҚХР-да инвесторлардың заңды мүдделері мен құқықтарын құқықтық қамтамасыз етуді жаңа деңгейге көтеру қажеттігі, шетелдік инвестициялар үшін тұрақтырақ құқықтық ортаны құру жайлы айтады.

Кілт сөздер: инвестиция, шетелдік инвестиция, инвестициялық қызмет, шетелдік инвестор, шетелдік капитал, инвестиция саласы, инвестиция аясы, инвестициялау.

Ли Шань

История развития инвестиционного законодательства Китайской Народной Республики

В статье анализируется история развития законодательства, которое регулирует правовые отношения в области иностранных инвестиций в Китайской Народной Республике. Закон об иностранных инвестициях на основании формы предприятия давно не соответствует требованиям развития экономики в области иностранного инвестирования в КНР. Поэтому разработка единого Закона об иностранных инвестициях будет усиливать прозрачность политики и законодательства, широко распространяться, за исключением отдельных ситуаций, все более жестким национальным режимом. Только таким образом Китай сможет создать еще более открытую, прозрачную инвестиционную обстановку с равноправной конкуренцией, стимулируя развитие экономики Китая. В статье автор утверждает, что эти законы определяют правовые основы осуществления деятельности иностранных инвесторов, порядок предоставления гарантий иностранным инвесторам на территории КНР. Делается акцент на то, что КНР стремится проводить гибкую и прозрачную политику в сфере привлечения иностранных инвестиций, предоставляя льготы и преференции иностранным инвесторам, но сохраняя при этом государственный контроль над их деятельностью. В заключение автор отмечает, что правовое обеспечение прав и законных интересов инвесторов в КНР нужно поднять на новый уровень, для иностранных инвестиций следует создать более стабильную правовую среду.

Ключевые слова: инвестиция, иностранная инвестиция, инвестиционная деятельность, иностранный инвестор, иностранный капитал, область инвестиции, сфера инвестиции, инвестирование.

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