

Taiwan Province of China

Statute For Investment By Foreign Nationals (1960)

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Contents

Statute For Investment By Foreign Nationals

(Amended on November 19, 1997)

Article 1 Matters relating to domestic investment by foreign nationals, and the protection, restrictions, and administration of such investments shall be governed by this Statute.

Article 2 The term "Competent Authority" as used in this Statute shall mean the Ministry of Economic Affairs.

The Competent Authority may delegate its subordinate or may commission other institutions or organizations to administer the investments set forth in this Statute.

Article 3 Foreign national as referred to in this Statute shall include foreign juridical persons.

The nationality of a foreign juridical person shall be determined by the law under which the foreign juridical person is incorporated.

Foreign nationals making investments within the territory of the Republic of China ("ROC") under this Statute are hereinafter referred to as "investors" or the "investor."

Article 4 Investments as referred to in this Statute shall be as follows:

1. Holding shares issued by an ROC company, or contributing to the capital of an ROC company;
2. Establishing a branch office, a proprietary business or a partnership in the territory of the Republic of China; and
3. Providing loan(s) to the invested business referred to in the preceding two Paragraphs for a period exceeding one (1) year.

Article 5 If the investor holds, in an aggregate, more than one third (1/3) of the total shares issued by an enterprise in which he/she invests, or if an investor contributes, in an aggregate, more than one third (1/3) of the total capital amount of an enterprise in which he/she invests, the reinvestment to be made by the invested enterprise shall be subject to the Competent Authority's approval.

Article 6 Investments made under in this Statute consist of the following kinds:

1. Cash;
2. Machinery and equipment or raw materials for own use;
3. Patent right, trademark right, copyright, technical know-how or other intellectual property right; and
4. Other property in which the investor may invest under the Competent Authority's approval.

Article 7 The investor is prohibited from investing in the following industries:

1. Those which may negatively affect national security, public order, good customs and practices, or national health; and
2. Those which are prohibited by the law.

The investor, who applies to invest in an industry in which investment is restricted by law or by an order given under the applicable law, shall obtain an approval thereof or a consent thereto from the competent authority in charge of the industry in question.

The industries prohibited under Paragraph 1 above or restricted under Paragraph 2 above shall be prescribed and reviewed on a regular basis by the Executive Yuan.

Article 8 The investor who makes an investment in accordance with this Statute is required to submit an investment application, together with his/her investment plans and relevant documents, to the Competent Authority for approval. The same shall apply if and when his/her investment plan changes.

The investment application form shall be prescribed by the Competent Authority.

The Competent Authority shall make its decision on an investment application within one (1) month after the completion of the application procedures by the applicant, or if the application is also subject to the approval of the competent authority in charge of the relevant end enterprise, within two (2) months thereafter.

Regulations governing investors' investments in securities shall be stipulated by the Executive Yuan.

Article 9 The investor shall have his/her approved capital contribution remitted in full into the Republic of China within the prescribed time limit, and shall submit a report on the receipt of the contribution amount to the Competent Authority for examination.

If, after being granted an approval to make an investment under this Statute, the investor fails to implement his/her investment, in whole or in part, within the prescribed time limit, the approval of his/her unimplemented investment shall be revoked upon expiration of the prescribed time limit. However, for good cause shown, the investor may, prior to the expiration, apply to the Competent Authority for an extension of the prescribed time limit.

After implementing his/her investment, the investor shall request the Competent Authority to verify the total amount of his/her investment. The rules of the verification shall be prescribed by the Competent Authority.

Article 10 In case the investor intends to transfer his/her investment already implemented by him/her to an industry other than those prohibited from investment under Paragraph 1 of Article 7 hereof, he/she shall apply to the Competent Authority for cancellation of his/her original investment and for approval of his/her new investment.

In case the investor intends to assign his/her investment, the assignor and the assignee shall jointly apply to the Competent Authority for approval of the assignment.

Article 11 An investor shall be entitled to exchange settlement under this Statute. This entitlement is not transferable, except to the legitimate heir of the assignee of his/her investment, or to other authorized foreign nationals or overseas Chinese to whom he/she has assigned his/her investment.

Article 12 The investor may apply for exchange settlement against the interests accrued on his/her annual income, or against the profit surplus distributed to him/her from his/her investment.

When the investor is approved to transfer his/her shares, to withdraw or decrease his/her investment, he/she may apply for exchange settlement, in a lump sum, against the total amount of his/her investment as approved. The foregoing clause is also applicable to the capital gain realized from the investor's investment.

The investor's application for exchange settlement against the payment of the principal and interest of his/her loan investment shall be governed by the agreed terms and conditions approved by the Competent Authority.

Article 13 In case the government expropriates or acquires an invested enterprise for national defense reasons, the investor thereof whose investment is less than 45% of the total capital amount of the invested enterprise shall be entitled to a reasonable compensation.

The compensation under the preceding Paragraph shall be permitted for exchange settlement.

Article 14 In case the investor's investment accounts for 45% or more of the total capital amount of the enterprise in which he invests, the invested enterprise shall not be subject to requisition or expropriation as long as the said capital contribution rate of the investor remains unchanged for a period of twenty (20) years after the commencement of business of the invested enterprise.

If the investor's investment is made in conjunction with an overseas Chinese who makes the investment under the Statute for Investment by Overseas Chinese, and if their aggregate amount of investment accounts for 45% or more of the total capital amount of the invested enterprise, the provisions referred to in the preceding Paragraph shall, *mutatis mutandis*, apply thereto.

Article 15 Where an invested enterprise is organized as a company under the Company Law, the investor thereof may be exempt from the restrictions on his/her domicile in the Republic of China, Chinese nationality, and the amount of investment under Articles 98-1, 108-2, 128-1, 208-5, and 216-1 of the same Law.

The provisions of Article 156-4 of the Company Law requiring issuance of stock certificates to the public, and the provisions of Article 267 of the same Law requiring setting aside a certain percentage of new shares (issued as a result of capital increase by cash) to be purchased by the employees of the invested enterprise shall not apply to an investor's investment if such investment accounts for 45% or more of the total capital of the enterprise in which he/she invests.

If the investor's investment is made in conjunction with an overseas Chinese who makes the investment under the Statute for Investment by Overseas Chinese, and if their aggregate amount of investment accounts for 45% or more of the total capital amount of the invested enterprise, the provisions referred to in the preceding Paragraph shall, mutatis mutandis, apply thereto.

Article 16 After special approval by the Executive Yuan, the investor or the enterprise in which he/she invests shall not be subject to the following restrictions:

1. Article 5-1, proviso of Article 5-3, Article 8-1 regarding Chinese nationals, and Sub-paragraph 2 of Article 43 of the Mining Law;
2. Sub-paragraph 7 of Article 17 of the Land Law;
3. Item 1, 2, 3 and 4 of Sub-paragraph 3, and Sub-paragraph 4 of Article 2 of the Maritime Law; provided, however, that inland and coastal navigation enterprises or those which are not in the form of jointly invested enterprises shall remain subject to the foregoing restrictions; and
4. Items 1, 2, 3, 4 and 5 of Sub-paragraph 3 of Paragraph I of Article 10, and Paragraph I of Article 45 of the Civil Aviation Law.

Article 17 Except as otherwise provided for in other laws, the enterprise in which the investor has invested hereunder shall be accorded the same rights and obligations to which an enterprise operated by local Chinese nationals is entitled.

Article 18 Unless otherwise provided for in this Statute, if the investor violates the provisions of this Statute, or fails to perform any matters approved by the Competent Authority, the Competent Authority may deal with the situation in the following manner:

1. Revoke the investor's right of exchange settlement against his/her income of the profit from his/her investment, and the interest accrued thereon in a prescribed period of time; and
2. Revoke the approval for the investor's investment and his/her rights under this Statute.

Article 19 A foreign national, who fails to make an investment in accordance with this Statute prior to the amendment to this Statute may, within one (1) year from the enforcement of this amended Statute, apply to the Competent Authority for registration for the application of this amended statute to his/her prior investment.

The procedure of registration referred to in the preceding Paragraph shall be prescribed by the Competent Authority.

Article 20 This Statute shall become effective as of its date of promulgation.