

外商投资 法律实务手册

敬云川 主编

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前 言

自 1978 年我国实施改革开放的政策以来,吸引外资参与国家的经济建设不仅成为政府有关部门的重要工作,外商投资也成为法律等专业服务机构的重要服务内容。到 2010 年年底,我国累计吸收的外商直接投资已经超过 1 万亿美元,近 20 年连续位列发展中国家第一位。我国吸收外资的重点也逐步从改革开放初期的轻纺、家电逐步发展到现在的集成电路、计算机、通信等高新技术产业,进而发展到金融、保险、资讯等现代服务业,外商在华设立地区总部、研发中心、营销中心等已经成为外商投资的新亮点。

本书主编敬云川律师毕业于北京外国语大学英语专业,后在北京大学法律系、美国华盛顿大学法学院完成硕士课程,获得国内和国外的法学硕士学位,具有深厚的法学功底。敬云川曾在最高立法机关——全国人大常委会法制工作委员会从事立法工作多年,其间参与了《合同法》等重要民商法的起草、调研、修改工作,并负责我国最新立法的英文翻译、编辑和审校,具有较高的法律英语水平。2001 年从事专职律师工作以来,他牵头办理了大量跨国公司在华投资和争议解决方面的法律业务,包括但不限于外商投资企业的设立、重组、并购、投资、融资、清算、知识产权保护以及其他日常经营管理中的法律事务;同时,他还与欧美国家知名律师所合作,成功代理了大量涉外的诉讼和仲裁案件以及反垄断审查项目,并自 2005 年开始担任中国国际经济贸易仲裁委员会仲裁员,2011 年担任首席仲裁员;荣获北京市“十佳留学归国律师”、“北京市优秀律师”称号,并经全国律师协会推荐出任环太平洋律师协会理事。

本书编撰起始于 2006 年,一方面是自 2001 年我国加入世界贸易组织以来制定的外商投资政策和法律规定有较大修改,尤其是针对外商投资企业的税收、外汇管理和劳动用工等方面出台了不少新的规定;另外关于外商投

资操作实务方面的书籍近年出版得比较少,而采用中英文对照编写的就更是凤毛麟角。此外,一些西方国家的投资者认为当前中国外资政策不再友好、不再欢迎外商投资,鉴于此,本书主编组织多名法律实务工作者一道、结合新的外资法律法规及政策和自己亲自办理案件的经验编写本书,希望本书的出版能为从事外商投资的法律实务工作者提供一些帮助,亦能改变境外投资者对中国外商投资政策的认识。

本书共分七章,包括外商投资企业设立、外汇管理、涉外税收、知识产权保护、劳动用工、争议解决及外资企业清算等内容,不但详细介绍外商投资的设立、税收、外汇、知识产权保护和劳动用工等相关法律规定,而且列举了不少经典案例,为法律实务工作者解决现实中常见的法律问题提供了实践操作流程及解决方案。本书的另一大亮点就是提供了中英文对照版,可供中外读者参阅。

本手册不仅适用于企业法务、律师以及外国投资者的工作需要,相信对法学院的老和生也是很好的研究和学习材料。由于编者能力有限,如有不当和缺漏,敬请各位法律界与企业界人士指正。

《外商投资法律实务手册》编委会
2012 年 12 月

Foreword

Since the adoption of the reform and open-up policy in 1978, attracting foreign investment to the economic construction of China has become a major task of relevant authorities. Furthermore, foreign investment proves to be an important service of law offices and other specialized service organizations. The foreign investment attracted by China has been over USD 1 trillion by the end of 2010, which has topped among developing countries during the last 20 years. The focus of attraction for foreign investment is developing into high and new technology industries such as integrated circuit, computer, communication etc. and then into modern service sectors such as finance, insurance, information etc, while the emphasis of the initial stage of reform and opening up was textile, home appliances etc. Regional headquarters, research and development centers, marketing centers etc have been new highlights in foreign investment.

Mr. Yunchuan Jing, chief editor of this book obtained his bachelor degree of arts in Beijing Foreign Studies University, master degree of laws in Law Department, Peking University and Law School, University of Washington, US. He has solid law background and excellent legal English. When working in the Law Committee of the National People's Congress—the top legislative body, Mr. Jing participated in the drafting, investigation and revision of important laws such as the Contract Law and the translation, edition and proofreading of new legislations. In 2001 he began to work as a lawyer. Up till now he has led his team to deal with a large number of cases in respect of foreign investment of multinationals and dispute resolution, which include but are not limited to establishment, reorganization, mergers and acquisition,

investment, financing, liquidation, intellectual property protection of foreign investment enterprises and many other legal affairs concerning daily operation. In the meanwhile, Mr. Jing has also cooperated with famous law firms in western countries and represented a great deal of foreign-related litigations, arbitration cases and anti-trust review projects. He has been acting as an arbitrator in the China International Economic and Trade Arbitration Commission since 2005 and began to work as the chief arbitrator since 2011. In addition, he was awarded one of the ten best lawyers studied and returned from overseas by Beijing lawyers Association and nominated as the At—Large Council member of the IPBA by the All—China Lawyers Association in 2012.

The edition of this book can date back to 2006. During that time China had made plenty of modifications in its foreign investment policies, laws and regulations, especially laws concerning taxation, foreign exchange administration and employment of foreign investment enterprises since the entry into WTO in 2001. On the other hand, few books on foreign investment practice came out. English-Chinese books in this regard are even rare. In addition, some investors from western countries conclude that the Chinese foreign investment policies are no longer friendly and that foreign investors are not welcomed any more. Given the above, Mr. Jing called on some law practitioners to write this book based on the latest foreign investment laws, regulations and policies and their personal experience obtained from cases, hoping to offer some help to those practicing in the foreign investment field and to alter the outlook of foreign investors toward Chinese foreign investment policies.

This book is divided into seven chapters including establishment of foreign investment enterprises, foreign exchange administration, foreign-related taxation, intellectual property protection, labor & employment, dispute resolution, liquidation of foreign investment enterprises etc. The editors not only give elaborate recommendations of relevant laws and regulations concerning the above aspects but also list a great deal of typical cases to provide law practitioners with practice procedures and solutions that they can refer to

when dealing with common legal issues. Another highlight of this book is the English-Chinese texts as a reference for readers.

This handbook can not only meet the job demand of corporate counsels, lawyers and foreign investors but also be a research and study material for professors and students of law schools. However, due to the limits of editors, this committee respectfully request that readers point out the mistakes and inadequacy in this Book.

Editors' Committee of Foreign Investment; Law & Practice in China
December, 2013

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