

# 广东省外商投资权益保护条例

## Regulations on Protection of Rights and Interests of Foreign Investors in Guangdong Province

(2022年1月16日广东省第十三届人民代表大会常务委员会第三十九次会议通过)

(Adopted by the Standing Committee of the 13th People's Congress of Guangdong Province at its 39th Session on January 16, 2022)

**第一条** 为了保护外商投资合法权益，优化外商投资环境，促进外商投资，根据《中华人民共和国外商投资法》《中华人民共和国外商投资法实施条例》等法律、行政法规，结合本省实际，制定本条例。

**Article 1** To protect the legitimate rights and interests of foreign investors, optimize the environment of foreign investment, and promote foreign investment, the Regulations are formulated in light of actual conditions of Guangdong Province (“the Province”) as per the *Foreign Investment Law of the People's Republic of China*, the *Regulations for the Implementation of the Foreign Investment Law of the People's Republic of China*, and pertinent laws and administrative regulations.

**第二条** 本条例适用于外国投资者、外商投资企业在本省行政区域内的投资、收益和其他合法权益保护。

**Article 2** The Regulations apply to the protection of investments, gains, and other legitimate rights and interests made or owned by foreign investors and foreign-invested enterprises within the administrative areas of the Province.

**第三条** 本省依法促进外商投资，保护外商投资权益，优化外商投资服务，规范外商投资管理，坚持外商投资促进、保护、服务、管理一体推进，形成全面开放新格局。

**Article 3** The Province shall promote foreign investment according to the law, protect the rights and interests of foreign investors, optimize foreign investment services, regulate foreign investment management, as well as adhere to the integrated advancement of foreign investment promotion, protection, service, and management, forming a new pattern of opening up on all fronts.

**第四条** 县级以上人民政府应当加强对外商投资权益保护工作的组织领导，建立健全外商投资权益保护工作机制，及时协调、解决外商投资权益保护工作中的重大问题。

**Article 4** People's governments at or above the county level shall strengthen leadership over the activities related to the protection of the rights and interests of foreign investors, put in place sound mechanisms for such activities, and coordinate efforts to address major problems arising from such activities in a timely manner.

县级以上人民政府商务主管部门负责外商投资权益保护工作，牵头协调外商投资权益保护中跨领域、跨部门问题。其他有关部门在各自职责范围内做好外商投资权益保护相关工作。

The departments of commerce at or above the county level shall take charge of the activities related to the protection of the rights and interests of foreign investors, and lead or coordinate the resolution of the problems that involve different fields and sectors in such work. Other related departments shall conduct the work related to the protection of the rights and interests of foreign investors within their respective scope of duties.

**第五条** 本省按照国家规定对外商投资实行准入前国民待遇加负面清单管理制度。在外商投资准入负面清单之外的领域，各级人民政府及其有关部门不得针对外商投资设置准入限制。

**Article 5** The Province shall implement the management systems of pre-establishment national treatment and negative list for foreign investment as per the national provisions. People's governments at all levels and their related departments may not set conditions that prohibit the entry of foreign investment into the areas that are not on the negative list.

县级以上人民政府及其有关部门应当配合国家做好外商投资安全审查相关工作。

People's governments at or above the county level and their related departments shall properly cooperate with the national security review of foreign investment.

**第六条** 各级人民政府及其有关部门在政府资金安排、政府投资项目建设、土地供应、税费减免、资质许可、标准制定、项目申报、职称评定、人力资源政策等方面，应当依法平等对待外商投资企业和内资企业，不得制定或者实施歧视性政策措施。

**Article 6** People's governments at all levels and their related departments shall equally treat foreign-invested enterprises and domestic-invested enterprises in accordance with the law in terms of activities such as government funding arrangements, government investment projects, land supply, tax relief, qualifications and permits, standards formulation, project application, professional title appraisal, and human resources policies. No discriminatory policies or measures shall be formulated or implemented.

外商投资企业依法和内资企业平等参与政府采购、招标投标、土地出让、

产权交易等活动。

Foreign-invested enterprises and domestic-invested enterprises shall equally participate in government procurement, tendering and bidding, land transfer, property rights transaction, and other activities in accordance with the law.

**第七条** 省负责知识产权保护的主管部门按职责建立跨区域、跨部门知识产权快速协同保护机制，健全知识产权行政执法保护体系，依法处理侵害外国投资者、外商投资企业知识产权的行为。

**Article 7** The government departments of the Province that supervise the intellectual property rights (IPRs) protection shall, within its scope of duties, establish a cross-regional, inter-departmental fast response mechanism to protect IPRs, put in place a complete set of administrative law enforcement systems related to IPR protection, and handle infringements of IPRs owned by foreign investors and foreign-invested enterprises in accordance with the law.

县级以上人民政府市场监督管理部门应当会同商务、工业和信息化等有关部门加强展会知识产权保护，组织和指导展会主办方或者承办方对侵害参展的外国投资者、外商投资企业合法权益的行为，做好展前排查、展中快速处置、展后跟踪处理工作。

Administrations for market regulation at or above the county level shall work with the departments supervising commerce, industry and information technology, and other relevant activities to strengthen the protection of IPRs during exhibitions, organize and provide guidance for the pre-exhibition screening, during-exhibition rapid disposal, and post-exhibition tracking and processing to the exhibition organizers or contractors to handle any infringement on the legitimate rights and interests of foreign investors and foreign-invested enterprises.

鼓励外国投资者、外商投资企业依法进行专利申请、商标注册、著作权

登记以及开展知识产权交易活动。

Foreign investors and foreign-invested enterprises shall be encouraged to carry out such activities as patent application, trademark registration, copyright registration, and IPR transaction in accordance with the law.

**第八条** 县级以上人民政府应当保障外商投资企业依法公平利用知识产权公共服务资源，在知识产权快速审查、快速确权和快速维权方面享受服务。开展各类奖项评审活动，应当保障外商投资企业的发明和其他科技成果平等参与评审。

**Article 8** People's governments at or above the county level shall make sure that foreign-invested enterprises can make fair use of public service resources related to IPRs in accordance with the law, and have access to services concerning fast review, ownership confirmation, and protection of IPRs. While selecting various award winners, the rights of foreign-invested enterprises to participate in such selections along with their inventions and other scientific and technological advances on a level playing field shall be safeguarded.

**第九条** 各级人民法院对于外国投资者、外商投资企业涉及知识产权的证据保全、行为保全、财产保全申请，应当依法按期受理、审查、作出裁定；对于故意侵害知识产权的行为，情节严重的，依法适用惩罚性赔偿制度。

**Article 9** People's courts at all levels shall take up, investigate, and rule on the applications for the IPR-related evidence preservation, behavior preservation, and property preservation filed by foreign investors and foreign-invested enterprises in time and according to the law. Punitive damages shall be applied to the intentional infringements of IPRs, if the circumstances are severe, in accordance with the law.

**第十条** 鼓励外国投资者、外商投资企业基于自愿原则和商业规则，与各类市场主体、科研主体开展技术合作，依法平等协商确定合作各方技术侵权责任的承担、改进技术的归属等技术合作条件。

**Article 10** Pursuant to the principles of voluntariness and fair business, foreign investors and foreign-invested enterprises shall be encouraged to conduct technical cooperation with various market players and scientific research entities. Such conditions of cooperation as identification of the responsibility for technical infringements and the attribution of improved technologies shall be decided through equal consultation of different parties to cooperate in accordance with the law.

**第十一条** 行政机关以及法律法规授权的具有管理公共事务职能的组织及其工作人员应当依法保护履行职责过程中知悉的外国投资者、外商投资企业的商业秘密。

**Article 11** The administrative organs, as well as the organizations authorized by laws and regulations with the function to manage public affairs and their staff members, shall protect trade secrets of foreign investors and foreign-invested enterprises they become aware of in performing their duties according to the law.

司法机关应当依法加强商业秘密司法保护，充分维护权利人合法权益。

Judicial organs shall strengthen the judicial protection of trade secrets in accordance with the law, to fully safeguard the legitimate rights and interests of rights holders.

**第十二条** 鼓励银行业金融机构加大金融科技应用力度，依法为外商投资企业提供涉外收支便利化和结算电子化服务。

**Article 12** Banking financial institutions shall be encouraged to increase the application of financial technology, and provide foreign-invested

enterprises with the services related to foreign payment and receipt facilitation and electronic processing of trade settlement according to the law.

本省金融机构根据国家跨境融资管理政策，为外商投资企业开展本外币跨境融资提供相应便利。

Financial institutions of the Province shall facilitate the cross-border financing denominated in domestic and foreign currencies that foreign-invested enterprises initiate in accordance with the national policies for cross-border financing management.

**第十三条** 县级以上人民政府保障外商投资企业依法平等参与国家标准、行业标准、地方标准和团体标准的制定、修订工作，参加各类专业标准化技术委员会的活动。

**Article 13** People's governments at or above the county level shall ensure foreign-invested enterprises can equally participate in the formulation and revision of national standards, industry standards, local standards, and group standards, as well as in various activities of technical committees for standardization, according to the law.

省、地级以上市人民政府标准化行政主管部门制定、修订与外商投资企业生产经营密切相关的地方标准，应当充分听取外商投资企业的意见，并推进地方标准制定、修订全过程信息公开，为外商投资企业参与地方标准起草、翻译以及国际化合作等提供便利和指导。

Standardization departments at people's governments of the Province and people's governments at or above the prefecture level shall develop and revise the local standards in close relation to production and operation activities of foreign-invested enterprises. In the process, they shall take into full consideration the opinions of foreign-invested enterprises, disclose the information on the whole process of formulating and revising local standards, and provide facilitation and

guidance for foreign-invested enterprises to participate in the drafting of, translation of, and international cooperation on local standards.

禁止利用标准实施妨碍外商投资企业参与公平竞争的行为。

Hindering foreign-invested enterprises from participating in fair competition by taking advantage of standards is prohibited.

**第十四条** 鼓励外商投资企业制定高于推荐性标准相关技术要求和具有国际先进水平的企业标准，引导外商投资企业将科技创新成果转化为企业标准。

**Article 14** Foreign-invested enterprises shall be encouraged to develop corporate standards higher than the recommended technical requirements and aligned with international levels, and convert scientific and technological innovations into corporate standards.

**第十五条** 各级人民政府及有关部门依法保障外商投资企业公平参与政府采购。采购人、采购代理机构在政府采购信息发布、供应商条件确定和资格审查、评标标准等方面，应当依法平等对待外商投资企业。外商投资企业符合条件的中国籍员工可以申请加入政府采购评审专家库。

**Article 15** People's governments at all levels and their related departments shall ensure foreign-invested enterprises can equally participate in government procurement in accordance with the law. Purchasers and purchasing agencies shall equally treat foreign-invested enterprises according to the law in terms of releasing government procurement information, determining supplier conditions and review qualifications, and devising bid evaluation criteria. Eligible Chinese employees in foreign-invested enterprises can apply to join the pool of government procurement review experts.

**第十六条** 县级以上人民政府科技等有关部门支持外商投资企业加强自

主研发，建设高水平研发机构；鼓励外商投资企业与其他企业、科研机构、高等学校建立联合研发机构，开展研发合作。

**Article 16** Science and technology and other relevant departments at or above the county level shall support foreign-invested enterprises in intensifying independent research and development (R&D), and establishing high-level R&D institutions. Foreign-invested enterprises shall be encouraged to establish joint R&D institutions and carry out R&D cooperation along with other enterprises, scientific research institutions, and colleges and universities.

外商投资企业平等参与研发公共服务平台建设、政府科技计划项目申报，并享受配套政策扶持。

Foreign-invested enterprises shall equally participate in the R&D of public service platforms and the application for scientific & technological programs of governments, in addition to enjoying supporting policies.

大型科研仪器设施、重大科技基础设施按照国家规定面向外国投资者、外商投资企业开放共享。

Large research instruments and major scientific and technological infrastructure shall be open to foreign investors and foreign-invested enterprises in accordance with national provisions.

**第十七条** 省人民政府商务等有关部门根据粤港澳大湾区发展战略，发挥中国（广东）自由贸易试验区先行先试作用，探索开展外商投资权益保护的试验性政策措施，积累可复制可推广经验。

**Article 17** Commerce and other relevant departments of the provincial people's government shall leverage the piloting role of the China (Guangdong) Pilot Free Trade Zone by following the Development Strategy for Guangdong-Hong Kong-Macao Greater Bay Area, to explore experimental policy measures for protecting the rights and

interests of foreign investors and accumulating replicable and scalable experience.

经认定的在粤港澳大湾区内的境外高端人才和紧缺人才按照规定享受出入境、停居留等优惠措施。

High-end, much-needed foreign talents identified in the Guangdong-Hong Kong-Macao Greater Bay Area shall be entitled to entry and exit, visit and residency, and other preferential measures as stipulated.

**第十八条** 外商投资企业引进的外国高端人才办理工作许可，按照国家规定可以不受年龄、学历和工作经历限制。

**Article 18** High-end foreign talents introduced by foreign-invested enterprises, while applying for work permits, may be free of restrictions on age, education, and work experience in accordance with national provisions.

外商投资企业引进的外国专业人才办理工作许可，按照国家规定可以适当放宽年龄、学历、工作经历等限制。

Foreign professionals introduced by foreign-invested enterprises, while applying for work permits, shall be subject to moderately relaxed restrictions on age, education, and work experience in accordance with national provisions.

**第十九条** 行政机关以及法律法规授权的具有管理公共事务职能的组织起草涉及外商投资的法规、规章、规范性文件和政策措施，以及开展公平竞争审查，应当听取外商行业协会商会、外商投资企业等利害关系人的意见，或者以向社会公开的方式征求意见。

**Article 19** The administrative organs and the organizations with the functions to manage public affairs which are authorized by laws and regulations, shall take into full account the views of foreign industry

associations and chambers of commerce, foreign-invested enterprises, and other stakeholders, or solicit opinions from the public, while drafting laws, regulations, rules, normative documents and policy measures related to foreign investment, as well as carrying out fair competition review.

**第二十条** 县级以上人民政府商务、市场监督管理等有关部门应当编制和公布外商投资政务服务事项目录以及办事指南，为外国投资者和外商投资企业提供服务 and 便利。

**Article 20** Commerce, market regulation administration and other government departments at or above the county level shall formulate and publish the catalog of government services related to foreign investment, as well as related guidelines, to provide convenient services to foreign investors and foreign-invested enterprises.

办事指南应当明确政务服务事项办理条件和流程、所需材料、办理环节和时限、收费标准、联系方式、投诉渠道等内容。

The guidelines shall clearly define the handling conditions and procedures of government services and formalities, required materials, specific steps and time limit, fees and charges, contact information, complaint channels, and other relevant content of government services.

符合申请条件，主要申请材料齐全但次要材料缺失的政务服务事项，可以容缺受理。

Applications for government services that meet the application conditions can be accepted when the primary application materials are complete but the secondary application materials are missing.

**第二十一条** 各级人民政府及其有关部门应当规范对外商投资企业的行政检查，科学合理设定市场监管、劳动监察、环境保护、安全生产、消防安全等执法检查频次，按照省的规定推行综合查一次制度。

**Article 21** People's governments at all levels and their related departments shall regulate administrative inspections of foreign-invested enterprises, by setting the frequency of law enforcement inspections such as market supervision, labor supervision, environmental protection, production safety, and fire safety in a science-based, reasonable manner, and by carrying out a comprehensive inspection instead of separate ones in accordance with the provisions of the Province.

**第二十二条** 各级人民政府及其有关部门应当鼓励创新,对涉及新技术、新产业、新业态、新模式的外商投资实行包容审慎监管,并区分不同情况制定相应的监管规则 and 标准。

**Article 22** People's governments at all levels and their related departments shall encourage innovation, supervise foreign investments involving new technologies, industries, business forms, operating modes inclusively and prudently, and develop differentiated regulatory rules and standards for varying situations.

**第二十三条** 县级以上人民政府应当畅通外商投资企业纠纷解决渠道,建立和完善调解、仲裁、行政裁决、行政复议、诉讼等有机衔接、相互协调的多元化纠纷解决机制,为外商投资企业提供高效、便捷的纠纷解决途径。

**Article 23** People's governments at or above the county level shall put in place unimpeded channels to settle disputes related to foreign-invested enterprises, and establish a diversity of closely-integrated, mutually-coordinated dispute settlement mechanisms including mediation, arbitration, administrative adjudication, administrative reconsideration, and litigation, all of which provide foreign-invested enterprises with efficient and convenient approaches to dispute resolution.

**第二十四条** 外国投资者、外商投资企业可以对本省行政区域内的行政机关以及法律法规授权的具有管理公共事务职能的组织及其工作人员侵犯其合法权益的行政行为进行投诉，以及反映投资环境方面存在的问题、提出完善有关政策措施的建议。

**Article 24** Foreign investors and foreign-invested enterprises may file complaints about the administrative behavior in breach of their legitimate rights and interests committed by the administrative organs of the Province, as well as the organizations authorized with the function to manage public affairs and their staff members, according to the pertinent laws and regulations. Meanwhile, they may also point out the problems existing in the investment environment and recommend policy measures for improvement.

省人民政府商务主管部门以及地级以上市、县级人民政府指定的部门或者机构（以下统称投诉工作机构）分级负责协调、处理相关投诉事项。其他有关部门按照职责分工，配合做好相关工作。

The department of commerce at the provincial people's government, as well as the designated departments or agencies by the people's governments at or above the prefecture level and the county level (hereinafter collectively referred to as "the complaint handling agencies"), shall coordinate the handling of complaints on different levels. Other relevant departments shall cooperate with the handling process in line with the division of duties.

**第二十五条** 投诉工作机构应当做好下列工作：

**Article 25** The complaint handling agencies shall perform the following activities:

（一）受理投诉事项；

(1) Receive and accept complaints;

(二) 协调处理投诉事项，召集相关部门研究重大投诉事项处理工作；

(2) Coordinate the handling of complaints and convene related departments to handle major complaints;

(三) 向本级人民政府和上一级主管部门报告投诉的重大问题，通报有关单位被投诉和处理投诉的情况，提出意见和建议；

(3) Report major complaints to the people's government at the same level and the direct supervising authority at a higher-level, inform the units about which the complaints have been raised of how complaints are handled, and provide feedback and recommendations;

(四) 开展投诉情况统计和分析；

(4) Conduct statistics and analysis of complaints;

(五) 其他相关投诉工作。

(5) Perform other activities related to complaint handling.

外国投资者、外商投资企业提出投诉时要求对企业信息、个人信息予以保密的，投诉工作机构应当依法保密。

If foreign investors and foreign-invested enterprises, when filing complaints, request that the information of the enterprises and individuals concerned be kept confidential, the complaint handling agencies shall keep it confidential according to the law.

**第二十六条** 投诉工作机构接到外国投资者、外商投资企业投诉后，应当在五个工作日内决定是否受理，并书面告知投诉人；不予受理的，应当说明理由。

**Article 26** After receiving complaints filed by foreign investors and foreign-invested enterprises, the complaint handling agencies shall decide whether to accept the complaint cases for further handling within five working days. If a complaint is accepted for further handling, a written notice shall be sent to the complainant; if not, reasons shall be

explained properly.

投诉工作机构应当在受理投诉之日起二十个工作日内办结受理的投诉事项；事项复杂确需延期的，可以依照国家规定适当延长处理期限，并告知投诉人延期理由。

The complaint handling agencies shall settle complaints within twenty working days from the date when the complaints are accepted. For complex cases, an appropriate extension may be granted in accordance with the pertinent national provisions, and the reasons for extension shall be made known to the complainants.

投诉工作机构协调投诉事项时，被投诉的行政机关以及法律法规授权的具有管理公共事务职能的组织及其工作人员应当予以配合。

The administrative organs under complaint, as well as the organizations authorized by laws and regulations with the function to manage public affairs and their staff members, shall cooperate with the complaint handling agencies to coordinate the handling of complaints.

**第二十七条** 各级人民政府及有关部门在外商投资权益保护工作中不依法履行职责的，依照法律法规追究责任，对直接负责的主管人员和其他直接责任人员依法给予处分。

**Article 27** People's governments at all levels and their related departments, if failing to fulfill their lawful duties in the protection of foreign investors' rights and interests, shall be held accountable in accordance with the applicable laws and regulations. The directly responsible persons-in-charge and other directly responsible personnel shall be punished according to law.

**第二十八条** 本条例自 2022 年 3 月 1 日起施行。

**Article 28** The Regulations shall come into force on March 1, 2022.

(本条例英文译稿由广东省商务厅提供, 仅供参考, 文义请以中文文本为准)

The English version of the Regulations is provided by the Department of Commerce of Guangdong Province for reference only. The Chinese version shall prevail when the meaning of the text is interpreted.