

**Notice of the National Development and Reform Commission, the Ministry of Commerce, and the People's Bank of China, et al on Issuing the Code of Conduct for the Operation of Overseas Investments by Private Enterprises[Effective]**

国家发展改革委、商务部、人民银行等关于发布《民营企业境外投资经营行为规范》的通知 [现行有效]

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Notice of the National Development and Reform Commission, the Ministry of Commerce, the People's Bank of China, the Ministry of Foreign Affairs and the All-China Federation of Industry and Commerce on Issuing the Code of Conduct for the Operation of Overseas Investments by Private Enterprises

(No. 2050 [2017] of the National Development and Reform Commission)

The development and reform commissions, commerce departments, branch offices of the People's Bank of China, foreign affairs offices and federations of industry and commerce of all provinces, autonomous regions, municipalities directly under the Central Government, cities under separate state planning and Xinjiang Production and Construction Corps:

In recent years, private enterprises in China have significantly accelerated the pace of overseas investment, which has played an active role in promoting the sustained and sound development of the national economy and strengthening the mutually beneficial and friendly cooperation between China and other countries in the world. Concurrently, private enterprises in China still have inadequate overseas investment experience and overseas operation level to be improved.

For the purposes of regulating the overseas investment and operation acts of private enterprises and improving the quality and level of "going out," the National Development and Reform Commission, the Ministry of

国家发展改革委、商务部、人民银行、外交部、全国工商联关于发布《民营企业境外投资经营行为规范》的通知

(发改外资〔2017〕2050号)

各省、自治区、直辖市及计划单列市、新疆生产建设兵团发展改革委、商务部、人民银行分行、外事办公室、工商联:

近年来,我国民营企业境外投资步伐明显加快,为促进国民经济持续健康发展,加强我国与世界各国互利友好合作发挥了积极作用。同时,我国民营企业境外投资经验仍然不足,境外经营水平有待提高。

为规范民营企业境外投资经营行为,提高“走出去”的质量和水平,国家发展改革委、商务部、人民银行、外交部、全国

Commerce, the People's Bank of China, the Ministry of Foreign Affairs, and the All-China Federation of Industry and Commerce have jointly developed the Code of Conduct for the Operation of Overseas Investments by Private Enterprises, which is hereby issued for directing the compliance and implementation by private enterprises in consideration of their respective actualities.

Annex: Code of Conduct for the Operation of Overseas Investments by Private Enterprises

National Development and Reform Commission

Ministry of Commerce

People's Bank of China

Ministry of Foreign Affairs

All-China Federation of Industry and Commerce

December 6, 2017

Annex

Code of Conduct for the Operation of Overseas Investments by Private Enterprises

## I. General provisions

1. The state shall support qualified private enterprises to “go out” and equally treat private enterprises “going out” and state-owned enterprises “going out.”

2. Private enterprises shall, according to their own conditions and strength, make overseas investment in an orderly manner, participate in the construction of the “Belt and Road,” promote cooperation in international production capacity and equipment manufacturing, and serve the supply-side structural reform, transformation and upgrading.

3. Private enterprises making overseas investment shall insist on the enterprise as the main subject and market operator, independently make decisions and assume sole responsibility for its profits or losses, do what is possible prudently, and focus on improving the innovation capacity, core competitiveness and international operation capability.

工商联联合制定了《民营企业境外投资经营行为规范》，现予以发布，请指导有关民营企业结合自身实际参照执行。

附件：民营企业境外投资经营行为规范

国家发展改革委

商 务 部

人 民 银 行

外 交 部

全 国 工 商 联

2017年12月6日

附件

民营企业境外投资经营行为规范

## 一、总则

（一）国家支持有条件的民营企业“走出去”，对民营企业“走出去”与国有企业“走出去”一视同仁。

（二）民营企业要根据自身条件和实力有序开展境外投资，参与“一带一路”建设，推进国际产能和装备制造合作，服务于供给侧结构性改革和转型升级。

（三）民营企业开展境外投资应坚持企业主体、市场运作，自主决策、自负盈亏，量力而行、审慎而为，着力提高企业创新能力、核心竞争力和国际化经营能力。

4. Private enterprises carrying out investment and operation activities shall comply with the laws and regulations of China and the host countries (regions), comply with the relevant treaty provisions and other international practices, conduct operations according to law and grow in compliance with the rules, and strengthen the prevention and control of overseas risks.

5. Private enterprises shall, under the guidance of peaceful cooperation, openness and inclusiveness, mutual study and mutual learning, and mutual benefits and win-win results, and under the principles of joint consultation, joint construction and sharing, conduct pragmatic cooperation with the relevant institutions and enterprises in the host countries (regions) to realize common development.

## II. Improving the business operation and management system

6. Improving the rules and regulations on the management of overseas investments. Private enterprises shall, in consideration of their actual circumstances, specify the overseas investment management departments and their functions, elaborate the overseas investment decision-making procedures, and develop and improve the rules on the establishment and authorization management of overseas enterprises and the rules on the management and control of overseas investment risks.

7. Conducting performance management. Private enterprises shall attach equal importance to scale, quality and efficiency, improve the measures for overseas operation evaluation, assessment and incentives, and improve the performance level of overseas investment.

8. Strengthening financial supervision. Private enterprises shall strengthen the supervision and management of overseas branches in fund allocation, financing, transfer of equity and other rights and interests, reinvestment, and guarantee, etc., prudently make highly leveraged investments, and regulate the investment activities of overseas financial derivatives.

9. Strengthening the building of talent teams. Private enterprises shall strengthen the cultivation of international business talents, select and appoint excellent domestic and overseas management personnel, establish and improve the personnel management system for dispatched personnel, provide necessary education for the dispatched personnel before they go abroad, assist the dispatched personnel in understanding

(四) 民营企业在境外投资经营活动中应遵守我国和东道国(地区)的法律法规,遵守有关条约规定和其他国际惯例,依法经营、合规发展,加强境外风险防控。

(五) 民营企业要以和平合作、开放包容、互学互鉴、互利共赢为指引,按照共商、共建、共享的原则,与东道国(地区)有关机构、企业开展务实合作,实现共同发展。

## 二、完善经营管理体系

(六) 完善境外投资管理规章制度。民营企业要结合本企业实际,明确境外投资管理部门和职责,细化境外投资决策程序,建立健全境外企业设立和授权管理制度及境外投资风险管控制度。

(七) 开展绩效管理。民营企业要坚持规模、质量和效益并重,完善境外经营评价、考核和激励办法,提高境外投资绩效水平。

(八) 加强财务监督。民营企业要加强对境外分支机构在资金调拨、融资、股权和其他权益转让、再投资及担保等方面的监督和管理,审慎开展高杠杆投资,规范境外金融衍生品投资活动。

(九) 加强人才队伍建设。民营企业要加强国际化经营人才培养,选聘境内外优秀管理人员,建立健全派出人员管理制度,对派出人员出国前开展必要教育,帮助派出人员了解当地法律法规、

the local laws and regulations, security environment and other knowledge, and enhance the dispatched personnel's compliance with law, and awareness and capacity of preventing safety risks.

### III. Operation with good faith according to the laws and regulations

10. Undergoing the domestic declaration procedures. To make overseas investments, a private enterprise shall voluntarily apply for recordation or confirmation in accordance with the relevant provisions. To make overseas investment involving sensitive countries and regions and sensitive industries, approval must be obtained beforehand; and under other circumstances, an application shall be filed for recordation. It is prohibited to illegally obtain foreign exchange, transfer assets, conduct money laundering or carry out other activities by making false overseas investments.

11. Undertaking external financing in accordance with the relevant provisions. An enterprise that follows a project intending to use the credit insurance of a Chinese financial institution overseas shall not make any commitment of external financing or insurance without obtaining any loan or insurance underwriting intention letter issued by a relevant financial institution.

12. Conducting fair competition. Private enterprises engaging in overseas investment and operation shall insist on fair competition, resolutely resist commercial bribery, and shall not offer bribes to local public officials, officials of international organizations or relevant personnel of affiliated enterprises. They shall not collude in bidding, defame competitors, or conduct misleading publicity of performance or take other means of unfair competition.

13. Fulfilling contracts. A private enterprise and its overseas branch office concluding a written contract with an overseas party concerned shall specify the rights and obligations of both parties and strictly fulfill the contract. They shall not conclude any false contract by means of fraud.

14. Guaranteeing the quality of projects and products. The overseas branches of private enterprise shall diligently implement the standards and provisions of the host countries (regions) on the relevant projects and product quality management, strengthen project quality management, and strictly control the product quality.

安全环境等知识，增强派出人员遵法守法以及安全风险防范意识和能力。

### 三、依法合规诚信经营

(十) 履行国内申报程序。民营企业境外投资应按照规定，主动申请备案或核准。境外投资涉及敏感国家和地区、敏感行业的，须获核准；其他情形的，须申请备案。不得以虚假境外投资非法获取外汇、转移资产和进行洗钱等活动。

(十一) 依规承诺对外融资。民营企业在境外跟踪拟使用中国金融机构信贷保险的项目，未取得有关金融机构出具的承贷、承保意向函前不得做出对外融资或保险承诺。

(十二) 开展公平竞争。民营企业境外投资经营应坚持公平竞争，坚决抵制商业贿赂，不得向当地公职人员、国际组织官员和关联企业相关人员行贿。不得串通投标，不得诋毁竞争对手，不得虚假宣传业绩或采取其他不正当竞争手段。

(十三) 履行合同约定。民营企业及其境外分支机构与境外相关方订立书面合同，须明确双方权利与义务，并严格按照合同履行。不得以欺诈手段订立虚假合同。

(十四) 保证项目 and 产品质量。民营企业境外分支机构应认真执行东道国（地区）有关项目及产品质量管理的规定，加强项目质量管理，严控产品质量。

15. Protecting intellectual property rights. The overseas branches of private enterprise shall, in accordance with the provisions of the laws of the host countries (regions) and the relevant treaties, diligently carry out the creation, utilization and management of knowledge and protection of intellectual property rights. They shall, in light of the development needs of overseas business, undergo the formalities of patent applications, trademark registration, and copyright registration, among others, at appropriate times, and specify the protection scope, responsibility subject and confidentiality measures for the trade secrets. The overseas branches of private enterprise carrying out operation activities shall respect the intellectual property rights of other organizations and individuals, and obtain permission to use the technologies and trademarks of other parties according to the laws and regulations.

16. Protection of consumer rights and interests. Private enterprises carrying out overseas investment and operation activities shall protect the rights and interests of consumers according to law, and avoid infringing upon consumers' privacy, and shall not release any false advertisement or commit commercial fraud.

17. Paying taxes in accordance with the law. The overseas branches of private enterprises shall pay taxes in accordance with the laws of the host countries (regions), and shall not evade taxes.

18. Protecting national interests. Private enterprises carrying out overseas investment and operation activities shall be conducive to the protection of national sovereignty, social and public interests, and maintain the relationship between China and relevant countries (regions).

19. Avoiding involvement in other countries' internal affairs. Private enterprises shall avoid getting involved in the disputes of local political and economic interest groups and intervening in the activities of local political parties when carrying out overseas investment and operation activities.

#### IV. Effectively Fulfilling Social Responsibilities

20. Strengthening localized operation. Private enterprises shall, in light of the actual needs, determine the personnel dispatched to the host countries, hire employees in the host countries (regions) in accordance with the laws and regulations, and actively create employment opportunities for the local regions.

(十五) 保护知识产权。民营企业境外分支机构应根据东道国（地区）法律、相关条约的规定，认真开展知识的创造、运用、管理和知识产权保护工作。应根据境外业务发展需要，适时办理专利申请、商标注册、著作权登记等，明确商业秘密的保护范围、责任主体和保密措施。民营企业境外分支机构开展经营活动，应尊重其他组织和个人知识产权，依法依规获取他方技术和商标使用许可。

(十六) 消费者权益保护。民营企业在境外投资经营应依法保护消费者权益，避免侵犯消费者隐私，不得有虚假广告、商业欺诈等行为。

(十七) 依法纳税。民营企业境外分支机构应按照东道国（地区）法律纳税，不得偷税漏税。

(十八) 维护国家利益。民营企业在境外开展投资和经营活动应有助于维护我国国家主权、安全和社会公共利益，维护我国与有关国家（地区）关系。

(十九) 避免卷入别国内政。民营企业境外投资经营应避免卷入当地政治、经济利益集团的纷争，不介入当地政治派别活动。

#### 四、切实履行社会责任

(二十) 加强属地化经营。民营企业要根据实际需要确定国内派出人员，依法依规聘用东道国（地区）员工，积极为当地创造就业机会。

21. Respecting cultural traditions. The personnel dispatched abroad by private enterprises shall strive to adapt to the social environment of the host countries (regions), and respect the local culture, religions, customs and habits. Private enterprises shall actively carry out cultural exchange between China and foreign countries, learn from each other and enhance their understanding.

22. Strengthening social communication. Private enterprises and their overseas branches shall maintain sound relations with the governments of the host countries (regions), and pay attention to strengthening the communication and exchange with the local trade unions, media, religious persons, ethnic group leaders, and non-governmental organizations, etc.

23. Being enthusiastic about public welfare undertakings. The overseas branches of private enterprise shall attach equal importance to justice and profit, actively participate in the local education, health, community development and other public welfare services, benefit the local people, and establish a sound corporate image of serving the society.

24. Promote the technological progress. The overseas branches of private enterprises shall strengthen cooperation with the institutions of higher learning, scientific research institutions, relevant enterprises and other institutions in the host countries (regions), and jointly promote the industrial and technological exchange between China and the host countries (regions).

25. Improving information disclosure. Overseas branches of private enterprises are encouraged to establish and improve the corporate social responsibility information disclosure mechanism, disclose the social responsibility information and performance in a timely manner, and issue reports on social responsibility or sustainable development on a regular basis.

#### V. Attaching importance to resource and environmental protection

26. Protecting the resource environment. Private enterprises are encouraged to insist on the resource-saving and environment-friendly operation method overseas, integrate the protection of resource and environment into the corporate development strategies and production and operation plans, and establish and improve the rules and regulations on the protection of resource and environment.

(二十一) 尊重文化传统。民营企业派驻境外人员要努力适应东道国(地区)社会环境,尊重当地文化、宗教和风俗习惯。民营企业应积极开展中外文化交流,相互借鉴,增进理解。

(二十二) 加强社会沟通。民营企业及其境外分支机构要与东道国(地区)政府保持良好关系,注意加强与当地工会组织、媒体、宗教人士、族群首领、非政府组织等社会各界的沟通与交流。

(二十三) 热心公益事业。民营企业境外分支机构要坚持义利并重,积极参与当地教育、卫生、社区发展等公益事业,造福当地民众,树立服务社会的良好企业形象。

(二十四) 推动技术进步。民营企业境外分支机构要加强与东道国(地区)高等院校、科研机构、有关企业等的合作,共同推动我国和东道国(地区)产业技术交流。

(二十五) 完善信息披露。鼓励民营企业境外分支机构建立健全企业社会责任信息披露机制,及时披露社会责任信息和绩效,定期发布社会责任或可持续发展报告。

#### 五、注重资源环境保护

(二十六) 保护资源环境。鼓励民营企业在境外坚持资源节约、环境友好的经营方式,将资源环境保护纳入企业发展战略和生产经营计划,建立健全资源环境保护规章制度。

27. Conducting environmental impact assessment. Before the construction of an overseas project, a private enterprise shall conduct environmental monitoring and assessment for the construction areas to be selected, and understand the environmental background of the project location and the surrounding areas.

Before acquiring an overseas enterprise, a private enterprise shall conduct environmental due diligence investigation of the subject enterprise, and focus on assessing the hazardous wastes, soil and underground water pollution generated in its historical operation activities and other environmental debts relevant to the subject enterprise.

The overseas branches of private enterprises shall conduct an environmental impact assessment of their development, construction, production and operation activities, and take reasonable measures to reduce possible adverse impacts according to the environmental impact assessment results.

28. Applying for the environmental protection permit. For the overseas construction and operation of a project, a private enterprise shall, according to the relevant provisions of the laws and regulations of the host country (region) on environmental protection, apply for a permit for project construction accordingly. Countries or regions without environmental protection laws for the time being may learn from the environmental protection standards of the international organizations or multilateral institutions, and take environmental protection measures conducive to the ecological development of the host countries (regions) Where necessary, a third party may be retained to conduct the environmental protection assessment.

29. Developing contingency plans for environmental accidents. The overseas branches of private enterprise shall develop contingency plans for the possible environmental accident risks, and establish mechanisms for communication between the local governments and the public.

30. Carrying out clean production. The overseas branches of private enterprises shall carry out clean production, promote cyclic utilization, monitor the major pollutants discharged, and reduce the generation and discharge of pollutants during the process of production, service and use of products.

31. Attaching importance to ecological restoration. For the ecological impacts caused by production and operation activities, the overseas

(二十七) 开展环境影响评价。民营企业在境外项目建设前, 要对拟选址建设区域开展环境监测和评估, 掌握项目所在地及其周围区域的环境本底状况。

民营企业在收购境外企业前, 要对目标企业开展环境尽职调查, 重点评估其在历史经营活动中形成的危险废物、土壤和地下水污染等情况以及目标企业与此相关的环境债务。

民营企业境外分支机构要对其开发建设和生产经营活动开展环境影响评价, 并根据环境影响评价结果, 采取合理措施降低可能产生的不利影响。

(二十八) 申请环保许可。民营企业境外建设和运营的项目, 要依照东道国(地区) 环保法律法规规定, 申请项目建设相关许可。对于暂时没有环保法律的国家或地区, 可借鉴国际组织或多边机构的环保标准, 采取有利于东道国(地区) 生态发展的环保措施。必要时可聘请第三方进行环保评估。

(二十九) 制定环境事故应急预案。民营企业境外分支机构要对可能存在的环境事故风险制定应急预案, 并建立与当地政府及社会公众的沟通机制。

(三十) 开展清洁生产。民营企业境外分支机构要开展清洁生产, 推进循环利用, 对排放的主要污染物开展监测, 减少生产、服务和产品使用过程中污染物的产生和排放。

(三十一) 重视生态修复。对于由生产经营活动造成的生态影响, 民营企业境

branches of private enterprises shall, according to the requirements of the laws and regulations of the host countries (regions) or the practice in industry, effectively conduct ecological restoration.

## VI. Strengthening the prevention and control of overseas risks

32. Strengthening comprehensive risk prevention and control. Private enterprises shall consciously maintain economic, industrial and technical security of the state, and strengthen the prevention of risks relevant to the national interests in overseas investment and operations. Concurrently, they shall strengthen their concern on the political and economic situation, ethnic and religious conflicts, public security, terrorism, negative public sentiment, disasters, epidemic situation and other information on the host countries (regions), effectively conduct a comprehensive risk assessment before the launching of a project, create regular communication channels with the local embassies and consulates of China and the relevant departments under the governments of the host countries (regions) for the investment operation activities, and protect the safety of enterprises' personnel and assets at maximum.

33. Preventing legal risks. Private enterprises are encouraged to select and hire domestic and overseas firms specialized in law, assessment, and credit rating, etc., strictly implement compliance examination for major decisions and transactions, effectively conduct follow-up analyses and compliance trainings on the regulatory rules relevant to overseas investment business, strengthen the communication with the supervision departments in the host countries (regions), and actively cooperate with the supervision work.

34. Improving the safety guarantee. The overseas branches of private enterprises shall strengthen the awareness of safety risk, and establish and improve the safety guarantee system. According to different security risks, they shall develop security measures in a targeted manner, and include the safety protection expenses in the investment costs so as to guarantee investment in manpower, materials and financial resources for the security work. They shall adopt the contract clauses in conformity with internationally accepted practice, and include the security clauses in the project agreement or contract to specify the security responsibilities of both parties.

35. Establishing and improving the emergency response mechanism. Private enterprises and their overseas branches shall establish and improve the emergency response mechanism for overseas security

外分支机构要根据东道国（地区）法律法规要求或者行业通行做法，做好生态修复。

## 六、加强境外风险防控

（三十二）加强全面风险防控。民营企业要自觉维护国家经济、产业、技术安全，境外投资经营需加强与国家利益相关风险防范。同时要加强对东道国（地区）政治经济形势、民族宗教矛盾、社会治安、恐怖主义、负面舆情民情、灾害疫情等信息的关注，项目启动前做好全面风险评估，投资经营活动中与我国驻当地使领馆、东道国（地区）政府有关部门建立经常性沟通渠道，最大限度保护企业人员和资产安全。

（三十三）防范法律风险。鼓励民营企业选聘国内外专业的法律、评估、信用评级等相关机构，严格执行重大决策、交易的合规性审核，做好境外投资业务相关的监管规则跟踪分析和合规培训，加强与东道国（地区）监管部门沟通，积极配合监管工作。

（三十四）完善安全保障。民营企业境外分支机构要强化安全风险意识，建立健全安全保障制度。根据不同的安全风险，有针对性地制定安保措施，并把安全防护费用计入投资成本，保障安保工作的人力、物力、财力投入。采用符合国际惯例的合同条款，把安全保障条款纳入项目协议或合同，明确双方安保责任。

（三十五）建立健全应急处置机制。民营企业及其境外分支机构要建立完善境外突发安全事故应急处置机制，制定安



emergencies, develop emergency response plans for security incidents, and continuously improve the emergency response capacity through regular drills.

36. Handling of safety accidents. After an overseas security accident occurs, the overseas branch of a private enterprise shall report to the relevant department under the local government at the first time and the local embassy or consulate of China, and immediately take necessary and effective emergency rescue measures so as to prevent the accident from spreading, and to reduce the casualties and property losses. It shall actively carry out investigation of accidents, and appropriately and effectively conduct handling of accidents, compensation and rehabilitation.

全事故应急预案，并通过定期演练不断提高应急处置能力。

（三十六）安全事故处理。境外安全事故发生后，民营企业境外分支机构应在第一时间向当地政府有关部门及我国驻当地使领馆报告，并立即采取必要有效的紧急救助措施，防止事故扩大，减少人员伤亡和财产损失。积极开展事故调查，妥善做好事故处理、赔付和善后工作。

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