

Exploring the Legal System of Foreign Investment in Shenzhen Qianhai Shekou Free Trade Zone

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Abstract: At present, there are still certain problems in the formulation of foreign investment laws in the Free Trade Zone. For example, the investment rule standard has not been perfected, and the dispute settlement mechanism has certain limitations. Therefore, in the process of creating an investment legal system, the autonomous region should formulate perfect investment standards on the basis of the internationalization standard of China. The dispute settlement mechanism should encourage the establishment of a pilot temporary arbitration system, internationalization of arbitration, and establishment and improvement of a foreign dispute settlement system, in order to provide certain guidance for foreign investment in the Free Trade Zone.

1. Introduction

Foreign investment in Shenzhen Qianhai Shekou Free Trade Zone can rely on national policy dividends to innovate law enforcement, legislation, and judicial, and conduct trials in advance to improve the space and disputes of investment rules and standards, and the limitations of appropriate resolution mechanisms. It is the innovation focus of the foreign legal system^[1]. The innovation and construction of the autonomous region system is the basic way to cope with the complicated nationalized economic form and persist in reform and development. In order to better build a demonstration base with social assistance laws with Chinese characteristics, in July 2015, Shenzhen Qianhai Administration issued an implementation plan for free trade in the region^[2].

2. Problems in the foreign investment system in Shenzhen Qianhai Shekou Free Trade Zone

2.1 There is no perfect investment standard

The economy has become a form of globalization. The liberalization of trade and investment has become an important trend in social development. Investors should continue to enhance their protection awareness in the process of investing. In the trade field, the trade list model should be used reasonably to construct a comprehensive and high-standard liberalized trade management model, and the American investment and trade management model can be regarded as the yardstick of Shenzhen Qianhai Shekou Autonomous Region. The following points out some of the problems in the current FTA investment standards.

First, the market access level is low. Compared with the standard of foreign investment in Shenzhen Qianhai Shekou, the foreign investment standard of Shenzhen Qianhai Free Trade Zone is currently being transformed from a positive list to a negative list. In the process of development, in the process of development, according to the gap between the industry and the characteristics of the industry itself, especially in the medical and financial industries, in order to effectively manage the negative list and achieve high standards of national treatment, It takes a long time^[3].

Second, the competition mechanism is not perfect. At present, China's Qianhai Administration is trying to study foreign investment standards from the perspective of fairness and justice. However, due to the complicated work, it is impossible to study a reasonable state-enterprise policy dividend system in a short period of time. It has prompted China's Shenzhen Qianhai Shekou Autonomous Region not to reach the short-term investment and trade management model of American standards.

Third, there is a big difference in the scope and intensity of protection in the process of protecting intellectual property rights. Some enterprises have increased the number of applications for patented products. For example, in the US trade industry, already intensive knowledge products occupy half of the market. It is of great significance to enhance the US economy.

2.2 There are certain limitations in the dispute settlement mechanism.

There are certain problems in the dispute settlement mechanism of the Free Trade Zone. For example, the internationalization of arbitration in Shenzhen Qianhai Tuokou Free Trade Zone is subject to international supervision by the Court of Arbitration. Shenzhen Qianhai Tuokou Free Trade Zone will enhance the credibility of Qianhai International Arbitration as the positioning and standard of commercial international overload, and set the goal to become Qianhai and the international highland and international solution for solving commercial services in Asia. At present, the internationalization of arbitration in Shenzhen Qianhai Tuokou Free Trade Zone is the same as the nationalization of SCIA in the process of development. It can be compared with the world-renowned International Court of Arbitration, such as the American Arbitration Association and the London International Heavy Duty Institute.

There is still a lack of mechanisms for resolving foreign investment disputes. The foreign investment disputes in the autonomous region can be divided into two categories. First, in the case of international projects and BIT protection projects, the nationalization and implementation of the nationalization are generally carried out. The most effective way to resolve disputes arising from the process of listing and treatment is to apply the provisions of the treaty. Second, the current international treaty system has not yet designed the BIT treaty host Air China administrative authority. In addition, due to the use of labor rights, environmental protection, social public health and other approval policies, some economic management for administrative examination and approval, investment supervision, etc. There are no perfect management measures in the work, but the disputes arising from the transactions with other foreign investors and the commercial disputes between investors should be resolved by foreign investors.

3. The foreign investment legal system innovation guidance

3.1 Standardizing the investment rules of the autonomous region

Negative list. From the actual work, we can see that the reform mechanism in the negative list of Shenzhen Qianhai Shekou Free Trade Zone can effectively promote the standard of China's negotiation of RCEP negotiations, but how to narrow the scope of negative list in the process of implementing related work will reduce the future The bargaining chip, therefore, China's Shenzhen Qianhai Shekou Free Trade Zone cannot limit the quality of the investment rules formulated by reducing the number of negative lists when formulating investment standards. In addition, the interests of foreign investors should be fully considered, and domestic shovel The shot was hit by foreign investment to resist the pressure. In addition, local protectionism due to localization should be prevented and the phenomenon of distorting national standards should be avoided.

Second, create policies in competition. In the process of creating a competition policy, certain standards should be established according to the actual situation of the company's competition. The current task is to exclude the competitive advantages of non-compliant enterprises in the state-owned enterprises, and should expand the scope of market-oriented competition. Shenzhen Qianhai Shekou Free Trade Zone should adhere to the theoretical standard of Chineseization in the process of formulating foreign investment legal system, and regulate the irrational situation of the current government departments in the process of economic intervention through reasonable construction of foreign legal system. The elimination of the non-compliant competition mechanism existing in state-owned enterprises will completely eliminate the unreasonable monopoly interests of state-owned enterprises and create an economic system that can be applied to enterprises of all natures. In addition, we should prevent blind expansion of policies in the process of competition. When designing public interests and the lifeline of the nationals, we must fully consider the

dominant position of state-owned enterprises in order to better protect the interests of the citizens. Intellectual property. Currently, there is an intellectual property arbitration center and an arbitration center in Shenzhen Qianhai Shekou Free Trade Zone. This has strengthened the protection of intellectual property rights for overseas investment companies. Protecting intellectual property rights is a new BIT and The indispensable work content of TPP negotiations. In order to better enhance the scope of intellectual property protection and the standards of legislation, the region should adhere to the concept of Chinese standardization. The author believes that the experiment should be carried out in Shenzhen Qianhai Shekou Free Trade Zone. In the process of formulating policies, the supervision and enforcement of intellectual property rights should be strengthened on the basis of the existing legislative framework. According to the actual situation, in addition, the judicial system should be appropriately promoted. Maintain compensation and fully recognize that the primary attribute of intellectual property is regional.

3.2 Constructing a sound competitive dispute resolution mechanism

First, the Shenzhen Qianhai Shekou Free Trade Zone should create an international arbitration mechanism. In the process of perfecting the dispute settlement mechanism, Shenzhen Qianhai Shekou Free Trade Zone should focus on creating commercial disputes in the free trade zone, and in the process of formulating relevant systems, the early stage should fully understand the “wide platform mechanism” of the internationally renowned arbitration institutions. And apply to the famous "wide platform mechanism" of foreign countries. In order to better encourage and give the parties more choices, they can understand the arbitration institutions and arbitrators through their own choices, and the arbitration rules should be drafted to select more familiar arbitration rules. The establishment of SCIA's nationalized Luojiadian should effectively assist commercial dispute parties to provide professional, efficient and convenient arbitration services, rather than non-monopoly disposal of commercial arbitration cases. SCIA will eventually move towards international standards in the “wide platform mechanism” and work together with the free trade zone to achieve a win-win goal.

Second, Shenzhen Qianhai Shekou Free Trade Zone first piloted the temporary arbitration system. At present, China's existing "Secondary Judgment Law" stipulates that a valid arbitration agreement should include the selected judiciary. At present, China has acceded to the New York Convention and recognizes the validity of ad hoc arbitration. Therefore, in order to facilitate temporary arbitration, it can make temporary arbitration decisions abroad and can carry it in and carry out in China. Because of the retention of the New York Convention public procedures and arbitration procedures and other factors. The court will not be able to negate the validity of the arbitral award with other non-procedural issues, as well as the efficiency of the existence of the arbitration agreement.

4. Summary

The temporary pilot implementation of the Free Trade Zone is the basis of arbitration. According to the relevant regulations, there is an agreement with the parties in the previous period. The agreement states that if no navigation is agreed, the arbitration venue may be defaulted to Hong Kong. In addition, Shenzhen Qianhai Shekou Free Trade Zone should fully utilize the advantages of the legal service system in the process of constructing the legal mechanism, and thoroughly explore and study the host country dispute sanitary ware and foreign investors practice specific international arbitration, and thus can guarantee this system. Successful application.

References

- [1] Baihan Liao. Exploration on the Legal System of Foreign Investment in Qianhai Free Trade Zone [J]. Journal of Open Encyclopedia, 2017(4): 84-87.
- [2] Li Yang. Evaluation of Foreign Investment Legal System Reform in Free Trade Zone[J]. France Business Research, 2016(5): 159-171.

[3] Jinwei He. Research on the impact of negative list model on China's foreign investment access system [D]. Shenzhen University, 2017.