

## The Legal Needs and Protections for Private Enterprises of Xi'an on Overseas Investments

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**Abstract:** By the stimulation of reform and opening policies of China, and as the development of economic globalization, the private enterprises of China, which take part in the international trade more and more, have become the important participators in international economics and trade, and have developed their overseas investment businesses faster and faster. But, the legislation about the investment is lack and few, even it is none in some fields. The laws keep an important function in overseas investment; it is the wall that standardizes the development of economy; it is the mighty method for protecting the enterprises' benefits; and it is the important way of decreasing the commercial conflicts of some counties and districts in the world. As the development of the overseas investment, the contradiction between the lagging legislation and constant development is prominent. At present, lots of domestic enterprises can not hold an advantage position in overseas investment, so that they can not safeguard their benefits. These greatly restrict their overseas investment activities and harm their benefits of international commercial companies, of the financial institutes, and of the healthy international trading environment as well. In order to build a better trading environment, safeguard the benefits of the private enterprises, and promote the development of economics, it is necessary to perfect the relevant legislation. According to some relevant documents, the writer of the thesis analyzes the overseas investment activities of some local private enterprises in Shaanxi province, and discusses the current legal environment of the enterprises so as to provide some theoretical references.

### Introduction

Overseas investment is an important method of business expansion, after China carries out the reform and opening policies, the economics becomes better by the support of the policies, lots of private enterprises of Xi'an develop fast, and these enterprises put their attentions from domestic market to overseas market and begin the exploration aboard, the overseas investment becomes a way which promotes their development by many private enterprises in Xi'an. As the development of these private enterprises' overseas business, the legal contradiction becomes prominent, the speed of legislation can not follows the speed of the development of the overseas investment, the lagging of the legislation makes many private enterprises can not guarantee their benefits, and their legal needs can not be satisfied well. By the influence of economic globalization, legislative construction becomes very important in overseas investment, it not only guarantees the benefits of the private enterprises, but also standardizes the overseas investment by the legal supervision; it is the important mean for promoting the healthy and constant development of the overseas investment.

### The current legal problems of Xi'an private enterprises on overseas investment.

The laws and policies for adjusting and protecting private economy are not integrity, are not suitable for the need of the reform and opening. By now, there are only little laws and rules which adjust the private economy, such as *temporary rules for private enterprises (1988)*, *individual proprietorship enterprise law (1999)*, *partnership enterprise law(2007)* etc. but these laws only normalize some certain private economy, and there are no the universal laws for private enterprises<sup>[1]</sup>. What's more, the taxes and fees of the private enterprises are high; the enterprises are restricted by the policies in many fields. This legislative situation is not good for the development

of the private enterprises so that it blocks their overseas development<sup>[2]</sup>.

At present, the system of overseas investment legislation is disordered; this is mainly shown as below: the lawmakers are not having an overall understanding about the realistic situations; it lack of separate regulations, laws and rules are hard to be approved; it is complicated to examine and approve the laws; lots of administrative apartments take charge of the legislation; it is not only lack of information open, but also lack of efficiency and timeliness, the speed of lawmaking lags the speed of overseas investment a lot so that there are many defects and disadvantages in the present laws. In the other hand, because of some conflicts between the national laws and the local laws and rules, of the inharmonious of both, and of the different extent between their implementation, many private enterprises have met the different treat. This kind of disorder that cause by the regime also leads to the lag of legislation and unfair phenomena in the realistic execution of the laws<sup>[3]</sup>.

As the development of international economics and trade, the legislation of international laws have been highlighted in China, and we have made greater progress in this filed. Lots of relevant laws have been drafted out in order to help and protect the development of the economics and trade. But, the executor and executive standard of international legislation are very different from the domestic counterpart<sup>[4]</sup>; these block the development of the domestic private enterprises a lot, and make the enterprises face lots of difficulties on overseas investment.

The many private enterprises, especially these enterprises which go to abroad and invest abroad need the strong supports from the government when they do their business activities. They need legal assistants and supports of policy when they invest abroad. But by now, the municipal government of Xi'an has not paid enough attention to the overseas investment, and has given little policy support to these foreign-related enterprises. If these enterprises meet legal problems, the government can not provide legal information and legal support immediately, or the relevant means of solving the problems so that many problems which block the development of these private enterprises have emerged.

### **The legal needs and protections for Xi'an private enterprises on overseas investments.**

Compared with the stated-owed enterprise, the enterprise which was attracted by the local environment of investment, or the foreign enterprise which enjoys lot of preferential policies, the private enterprise is in a disadvantage situation, its developmental foundation is weak. So, it is necessary to consider the developmental environment of the private enterprises conscientiously, to strengthen the legislative works, to improve the fairness and open of legal construction, in order to protect the benefits of these enterprises well. Because of the defects of legislative works in China, it is also necessary to enforce the efficiency of legislative work, to expand the coverage of legislation, to fulfill the legal gap and pay more attention to the supervision of legislation, to enforce the implementation capacity of laws, and to clarify the lawmaker of legislation. Only the legislative works are improved constantly, these private enterprises can be protected well during the process of their development, and they could protect their benefits according the certain laws and rules.

There are many defects on the current administrative system of overseas investment. In one hand, the system of overseas investment in China has been set up just for a short time, in the other hand, the economic situation is changing greatly; as the development of international trade, commercial connection is closer than any time before; what's more, China has joined WTO, these great changes lead to the private enterprises face the different economic and political situation so that the current legislation can not satisfy the current needs of the enterprises<sup>[5]</sup>. Therefore, in order to protect the development of the private enterprises, it is necessary to make changes and reform the developmental system, to introduce the government into the system and take the best of the functions of the government, to set up the long-term planning of the overseas investment under the leading of the government so as to provide the clear guide to these enterprises, and promote the development of overseas investments and legal constructions of them.

When the private enterprises explore abroad, it is necessary to familiar with the international laws and rules, to solve the relevant problems by international economic laws, to learn to protect the own benefits by the regime for solving conflict. The private enterprises must train the legal talents

of their own, enhance the professional quality of their staff, research the regime of solving international conflict and the relevant laws and rules constantly, use these laws to protect their benefits so as to decrease their losses. In the other hand, it is necessary to have a good understanding about the different treatments, the restrictive rules and favorable policies, only when the enterprises have a fully understanding about the relevant policies and rules of international legislation could they have laws to follow, have rules to trust, protect the benefits of their own, and ensure the safety of economy.

Policy supports are the inseparable part of the private enterprises' development of Xi'an, governmental legal assistants are also inseparable in the overseas investment of these enterprise. The local government must pay more attention to the private enterprise of Xi'an, provide the convenient legal assistants to the enterprises in time. The government should provide legal assistants by setting up the hotline, and setting up the legal service center which is financed by the government; the government also should set up the joint reference system which could tie the private enterprises with the relevant economics and trade bureau or the judicial governmental units in order to solve the legal problems of the enterprises, to protect the benefits of the private enterprises, and to protect their overseas investment.

It is necessary to replace the current strict examination and approval system with the system of saving records by the examination and approval system reform; it is also necessary to loose the foreign exchange control, and to provide more financing channels for enterprises which could relief their legal risks when they carries out overseas mergers and acquisitions. In addition, the countermeasures could be adopted as below:

(1) Improve the functions of the policy-based financial institutions. The policy-based financial institutions not only could provide favorable loans, but also could provide some other helps. For example, the institutions can help the enterprises to complete the investigation before their mergers and acquisitions by the reason of safeguarding loan security.

(2) Increase the tax preferences to the enterprise. The government could reduction or exemption certain taxation according to the losses of the enterprises which fail on overseas mergers and acquisitions. The compensation should include the cost of investigation when they carry out the mergers and acquisitions.

(3) Further deepen the reform of state-owned enterprises, reduce the proportion of state ownership, so that more private equities could come into state-owned enterprises. This will not only help the enterprises to increase the flexibility of their own and their enthusiasm on overseas investment, but also could prevent the host government from blocking the merger and acquisition activities of Chinese enterprises in the name of state-owned enterprises<sup>[6]</sup>.

## **Conclusion**

As the development of international trade, the private enterprises of Xi'an meet more developmental opportunities; the scale of overseas investment is increasing day by day, so these private enterprises' legal needs are very urgent; there are some new changes and new trends of China's economic laws come into being. At present, there still are many defects that influence the development of private enterprises' development, such as incomplete legislation, lack of supervision, many defects in insurance and so on. In order to guarantee the benefits, and to optimize the investment environment of them, it is necessary to strengthen domestic legislation works, good legal construction is important as well; it not only need to make some changes of domestic legislation works, but also some policies, laws and rules by the municipal government of Xi'an according to the current trading environment and the overseas situation, in order to reply the changing overseas situation of investment and protect the benefits of these enterprises and China. Because of the limited perspective, the writer's points of view on this issues are not overall, welcome more specialists to do a further research and discussion.

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