Interim Provisions on the Administration of Foreign-Invested Venture Capital Enterprises of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures, the Law of the People's Republic of China on Sino-Foreign Cooperative Joint Ventures, the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, the Company Law of the People's Republic of China and other relevant laws and regulations for the purposes of encouraging foreign investors to invest in China and introducing advanced foreign technology and management experience in making venture capital investments.

Article 2 — For the purposes of these Provisions, the term "foreign-invested venture capital enterprise" (hereinafter referred to as "FIVCE") shall mean a Sino-foreign equity joint venture, Sino-foreign cooperative joint venture or wholly foreign-owned enterprise established within the territory of China in accordance with

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the law with the principal business of making venture capital investments.

Article 3 — For the purposes of these Provisions, the term "venture capital" shall mean equity investments made primarily in unlisted high-tech enterprises.

Article 4 — The establishment of a FIVCE shall be subject to the examination and approval of the Ministry of Commerce and its authorized examination and approval authorities.

Chapter II — Establishment Conditions and Procedures

Article 5 — A foreign investor applying for the establishment of a FIVCE shall meet the following conditions: (1) having sound financial status and good credit standing, and having total assets of not less than USD 100 million in the year prior to the application for a major foreign investor, or not less than USD 50 million for other foreign investors; (2) having more than three years of experience in venture capital business or relevant business; (3) having sound corporate governance structures and internal control systems; and (4) other conditions as required by the examining and approving authority.

Article 6 — A domestic investor applying for the establishment of a FIVCE shall have sound financial status and good credit standing and shall be an entity with venture capital experience and capabilities. An individual investor shall have full civil capacity and the source of his or her investment funds shall be lawful.

Article 7 — A foreign investor that meets the conditions set forth in Article 5 of these Provisions may apply to establish a FIVCE. The establishment of a FIVCE shall be subject to the examination and approval of the Ministry of Commerce, except where the examination and approval authority at the provincial level is authorized to conduct the examination and approval.

Article 8 — For the establishment of a FIVCE, an application shall be filed in accordance with the prescribed procedures, and the following documents shall be submitted: (1) a report on the establishment application signed by the investors; (2) the contract and articles of association signed by the investors; (3) the credit standing certification documents of the investors; (4) the registration certificate and the legal representative's identity certificate of the investors; and (5) other documents required by the examining and approving authority.

Chapter III — Organizational Form and Registered Capital

Article 9 — A FIVCE may take the form of a company with limited liability or a company limited by shares. A FIVCE in the form of a company with limited liability shall have a registered capital of not less than USD 5 million or the equivalent in RMB. A FIVCE in the form of a company limited by shares shall have a registered capital of not less than USD 10 million or the equivalent in RMB.

Article 10 — The investors in a FIVCE shall contribute capital within the time limit stipulated in the contract and articles of association. The investors shall pay in the registered capital as stipulated. If the registered capital is paid in installments, the initial installment shall not be less than 15% of the total registered capital and shall be paid in full within three months from the date of issuance of the business license.

Article 11 — FIVCEs may be established in the form of a Sino-foreign cooperative joint venture which does not have the status of a legal person. The rights and obligations among investors shall be stipulated in the cooperative joint venture contract.

Chapter IV — Business Operations

Article 12 — A FIVCE may engage in the following businesses: (1) making equity investments primarily in unlisted high-tech enterprises in accordance with the investment direction stipulated by the State; (2) providing venture capital management and consulting services to the invested enterprises; (3) acquiring the equities of the founders in the invested enterprises or other shareholders through equities transfer and other

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methods as stipulated in the investment agreement; and (4) other businesses as approved by the examining and approving authority.

Article 13 — A FIVCE shall not engage in the following activities: (1) investing in sectors where foreign investment is prohibited by the State; (2) directly or indirectly investing in publicly traded securities, except for the shares of the invested enterprises after listing; (3) directly or indirectly investing in real estate, except for self-use office premises and the purchase of real estate for the invested enterprises; (4) providing loans; (5) providing guarantees other than for the invested enterprises; and (6) other activities prohibited by laws and regulations.

Article 14 — Where a FIVCE conducts venture capital business, it shall use its own funds and shall not absorb public deposits or raise funds from the public by disguised means.

Article 15 — The duration of a FIVCE shall generally not exceed 12 years. The duration may be extended upon the unanimous agreement of the investors and the approval of the original examining and approving authority.

Chapter V — Supervision and Administration

Article 16 — After a FIVCE is established, it shall, within 30 days from the date of obtaining the business license, go through the registration and filing procedures with the Ministry of Commerce and its authorized authorities.

Article 17 — A FIVCE shall submit annual business reports and financial and accounting reports to the examining and approving authority and the registration authority within three months after the end of each fiscal year.

Article 18 — Where a FIVCE has any of the following circumstances, it shall apply to the examining and approving authority for approval: (1) change of investors or adjustment of investment proportion; (2) increase or decrease of registered capital; (3) change of business scope; (4) change of duration; (5) division or merger; or (6) other material changes.

Article 19 — A FIVCE shall be dissolved in any of the following circumstances: (1) expiration of the duration; (2) the occurrence of the causes of dissolution stipulated in the contract or articles of association; (3) resolution for dissolution adopted by the investors; (4) revocation of the business license or closure in accordance with the law; or (5) other circumstances stipulated by laws and regulations. Upon dissolution, a FIVCE shall be liquidated in accordance with the provisions of the relevant laws and regulations and shall apply to the original examining and approving authority and the registration authority for deregistration.

Chapter VI — Supplementary Provisions

Article 20 — These Provisions shall apply, by reference, to venture capital enterprises established within the territory of China by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region.

Article 21 — The Ministry of Commerce shall be responsible for the interpretation of these Provisions.

Article 22 — These Provisions shall enter into force on March 1, 2003.

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