Measures for Administration of Foreign-Invested Commercial Enterprises

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Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Application Requirements 2

Chapter III — Approval Procedures 2

Chapter IV — Special Operations 3

Chapter V — Supervision and Administration 3

Chapter VI — Supplementary Provisions 3

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Application Requirements
- Chapter III — Approval Procedures
- Chapter IV — Special Operations
- Chapter V — Supervision and Administration
- Chapter VI — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Measures are formulated in accordance with the Law of the People's Republic of China on Foreign-Funded Enterprises, 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, and other relevant laws and administrative regulations to further expand opening-up, regulate the examination and approval of foreign-invested commercial enterprises, and promote the development of the commercial sector.

Article 2 — These Measures apply to the establishment and operation of foreign-invested commercial enterprises within the territory of China. "Foreign-invested commercial enterprises" means Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, and wholly foreign-owned enterprises established within the territory of China by foreign investors to engage in commercial activities such as commission agency, wholesale, retail, and franchising.

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Article 3 — Foreign-invested commercial enterprises shall comply with the laws and regulations of the People's Republic of China, and their legitimate business activities shall be protected by Chinese law. The State shall encourage foreign investors to invest in establishing commercial enterprises in the central and western regions of China.

Article 4 — The Ministry of Commerce and its authorized local commerce authorities shall be responsible for examining and approving the establishment and changes of foreign-invested commercial enterprises.

Chapter II — Application Requirements

Article 5 — Foreign-invested commercial enterprises shall comply with the provisions of the law on the registered capital and total investment amount of foreign-invested enterprises. The minimum registered capital of foreign-invested commercial enterprises shall comply with the relevant provisions of the Company Law of the People's Republic of China.

Article 6 — Foreign investors establishing foreign-invested commercial enterprises shall have a good business reputation and no record of violation of Chinese laws, regulations, or rules. Foreign investors shall provide certification documents issued by notary public offices and competent institutions of their home countries or regions, and authenticated by Chinese embassies or consulates in the relevant countries to certify the subject qualification and credit standing of the investors.

Article 7 — The business scope of foreign-invested commercial enterprises shall be specific and clear, and shall include the specific mode of business operation and the specific categories of commodities. The business scope of foreign-invested commercial enterprises shall not include business activities prohibited under Chinese laws and administrative regulations.

Article 8 — Where a foreign-invested commercial enterprise engages in retail business, it shall have a fixed business premise meeting the requirements of retail business. Where a foreign-invested commercial enterprise engages in wholesale business, it shall have an office and storage facilities suitable for the wholesale business.

Article 9 — The term of operation of a foreign-invested commercial enterprise shall generally not exceed 30 years, and shall not exceed 40 years for projects established in the central and western regions.

Article 10 — Where a foreign-invested commercial enterprise engages in the distribution of commodities subject to mandatory standards or certification under Chinese laws and administrative regulations, such commodities shall comply with the relevant standards or obtain the relevant certifications before they can be sold.

Chapter III — Approval Procedures

Article 11 — Applicants for establishing foreign-invested commercial enterprises shall submit the following documents: (1) application letter; (2) feasibility study report jointly prepared by all parties to the joint venture or foreign investor of a wholly foreign-owned enterprise; (3) contracts and articles of association signed by all parties to the joint venture, or articles of association of a wholly foreign-owned enterprise; (4) credit certification documents of the investors, photocopies of registration certificates, and photocopies of identity documents of the legal representatives; (5) list of names of the board of directors appointed by all investors and appointment letters of the directors; (6) documents certifying the business premises; (7) pre-approval notice of enterprise name issued by the administrative department for industry and commerce; (8) other documents required by laws and administrative regulations.

Article 12 — Applications for establishing foreign-invested commercial enterprises shall be submitted in accordance with the following procedures: (1) the applicant shall submit the application documents to the commerce authority of the province, autonomous region, or municipality directly under the Central Government where the proposed enterprise is to be located; (2) the provincial commerce authority shall,

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within one month from the date of receipt of all application documents, complete the preliminary examination and submit the preliminary examination opinions and all application documents to the Ministry of Commerce; (3) the Ministry of Commerce shall, within three months from the date of receipt of all application documents, make a decision on whether to approve the application.

Article 13 — Foreign-invested commercial enterprises that have been approved for establishment shall, within one month from the date of receipt of the certificate of approval, complete the registration formalities with the administrative department for industry and commerce.

Article 14 — Where a foreign-invested commercial enterprise has finished its establishment registration, it shall apply to the relevant departments for the relevant business permits for special commodities within the scope of its approved business in accordance with the provisions.

Chapter IV — Special Operations

Article 15 — Where a foreign-invested commercial enterprise engages in import and export business of goods or technology, it shall handle the registration formalities for foreign trade operators in accordance with the law.

Article 16 — Where a foreign-invested commercial enterprise opens a store engaging in retail business, it shall apply to the commerce authority for approval of the store establishment in accordance with the procedures prescribed in these Measures.

Article 17 — Where a foreign-invested commercial enterprise engages in business by means of franchising, it shall comply with the provisions of the Measures for the Administration of Commercial Franchising and other relevant regulations.

Article 18 — Where a foreign-invested commercial enterprise engages in retail of pharmaceuticals, medical devices, books, newspapers, audio-visual products, or other commodities subject to special state regulations, it shall comply with the relevant provisions of the State.

Article 19 — A foreign-invested commercial enterprise shall not engage in the sale of commodities that are prohibited by the State from circulation and use.

Chapter V — Supervision and Administration

Article 20 — Commerce authorities at all levels shall strengthen supervision and administration of foreign-invested commercial enterprises and conduct regular inspections of their business activities.

Article 21 — Foreign-invested commercial enterprises shall submit statistical reports on their business operations to the commerce authorities in accordance with the relevant provisions.

Article 22 — Where a foreign-invested commercial enterprise violates the provisions of these Measures, the commerce authority shall order it to make rectification within a prescribed time limit; where the circumstances are serious, the commerce authority may revoke its certificate of approval.

Article 23 — Where a foreign-invested commercial enterprise engages in illegal business activities, the relevant administrative departments shall impose penalties on it in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter VI — Supplementary Provisions

Article 24 — Where any matters not covered in these Measures are involved, the provisions of the Law of the People's Republic of China on Foreign-Funded Enterprises, 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 Company Law of the People's Republic of China, and other relevant laws and

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administrative regulations shall apply.

Article 25 — The establishment of foreign-invested commercial enterprises in bonded areas, export processing zones, and other special areas under customs supervision shall be handled in accordance with the relevant provisions of the State.

Article 26 — Where investors from Hong Kong Special Administrative Region, Macao Special Administrative Region, or Taiwan invest in establishing commercial enterprises in the mainland, the matter shall be handled with reference to these Measures.

Article 27 — The Ministry of Commerce shall be responsible for interpreting these Measures.

Article 28 — These Measures shall enter into force on June 1, 2004.

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