Provisions on Administration of Foreign-Invested Venture Capital Enterprises

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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 Cooperative Joint Ventures, 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 Foreign-Funded Enterprises, the Company Law of the People's Republic of China, and other relevant laws and regulations to regulate the establishment and operation of foreign-invested venture capital enterprises (FIVCEs) and to encourage foreign investors to invest in China's venture capital sector.

Article 2 — For purposes of these Provisions, "foreign-invested venture capital enterprise" means 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 these Provisions and engaged mainly in venture

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capital and venture capital management services. "Venture capital" means equity investment mainly in unlisted high-tech enterprises and provision of venture capital management services to such enterprises, with the aim of obtaining capital appreciation through equity transfer after the invested enterprise matures.

Article 3 — Foreign-invested venture capital enterprises shall comply with Chinese laws and regulations and shall not impair China's social and public interests. The lawful rights and interests of foreign-invested venture capital enterprises and the invested enterprises of their investment within the territory of China shall be protected by Chinese law.

Article 4 — The Ministry of Foreign Trade and Economic Cooperation (now the Ministry of Commerce), the Ministry of Science and Technology, the State Administration for Industry and Commerce, the State Administration of Taxation, and the State Administration of Foreign Exchange shall guide and administer the establishment and operation of foreign-invested venture capital enterprises within the scope of their respective duties in accordance with these Provisions and other relevant laws and regulations.

Chapter II — Establishment Conditions

Article 5 — Foreign investors establishing a foreign-invested venture capital enterprise shall meet the following conditions: (1) the foreign investor shall have a good credit record and professional experience in venture capital; (2) the total investment amount of the foreign investor in the foreign-invested venture capital enterprise shall not be less than 5% of its total assets; (3) the foreign investor shall not have any record of violation of relevant Chinese laws and regulations; and (4) other conditions prescribed by the State.

Article 6 — The registered capital of a foreign-invested venture capital enterprise shall comply with the provisions of the Company Law of the People's Republic of China and other relevant laws and regulations. The total amount of investment committed by investors in the foreign-invested venture capital enterprise shall not be less than USD 10 million, and each investor shall contribute no less than USD 1 million.

Article 7 — Where a foreign-invested venture capital enterprise is established in the form of a company with limited liability, the management personnel of the foreign-invested venture capital enterprise shall have experience in managing venture capital or high-tech enterprises. At least two senior management personnel of the foreign-invested venture capital enterprise shall have more than two years of experience in venture capital.

Article 8 — A foreign-invested venture capital enterprise may adopt the form of a company or an unincorporated enterprise. Where the form of a company is adopted, the enterprise may be a company with limited liability or a company limited by shares.

Article 9 — The contribution by investors to a foreign-invested venture capital enterprise may be made in cash or in non-monetary property such as physical objects, industrial property rights, and know-how, provided that the relevant provisions of the State are complied with. The proportion of non-monetary contributions shall not exceed 70% of the total capital contribution of the investors.

Chapter III — Establishment Procedures

Article 10 — The establishment of a foreign-invested venture capital enterprise shall be subject to the examination and approval of the Ministry of Commerce. The Ministry of Commerce shall, before making a decision on whether to approve the application, solicit opinions from the Ministry of Science and Technology.

Article 11 — An applicant for establishing a foreign-invested venture capital enterprise shall submit the following documents to the Ministry of Commerce: (1) application letter; (2) feasibility study report and articles of association signed by all investors; (3) credit certification documents of the investors issued by financial institutions; (4) legal proof of status and proof of creditworthiness of the investors, which shall be notarized and authenticated in accordance with the law if the investor is a foreign investor; (5) resumes of senior management personnel to be appointed by the foreign-invested venture capital enterprise; and (6)

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other documents that shall be submitted as prescribed by the Ministry of Commerce.

Article 12 — The Ministry of Commerce shall complete the examination within 90 days from the date of receipt of all prescribed documents and decide whether to approve the establishment. If the establishment is approved, a certificate of approval for foreign-invested enterprises shall be issued.

Article 13 — An applicant that has obtained the certificate of approval shall complete the registration formalities with the administrative department for industry and commerce within one month from the date of receipt of the certificate of approval, and obtain a business license.

Chapter IV — Operation and Management

Article 14 — A foreign-invested venture capital enterprise may engage in the following business activities: (1) making equity investments in unlisted high-tech enterprises; (2) providing venture capital management and consulting services; (3) providing management and consulting services to invested enterprises; and (4) other business activities approved by the Ministry of Commerce.

Article 15 — A foreign-invested venture capital enterprise 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 listed companies' stocks, except for the equity of invested enterprises that become listed; (3) directly or indirectly investing in real estate; (4) providing loans for others except for providing entrusted loans to invested enterprises; and (5) other activities prohibited by the State.

Article 16 — A foreign-invested venture capital enterprise's investment in a single enterprise shall not exceed 20% of its total capital. The proportion of foreign-invested venture capital enterprise's investment in the registered capital or equity of an invested enterprise shall be determined by agreement between the foreign-invested venture capital enterprise and the invested enterprise through negotiation.

Article 17 — A foreign-invested venture capital enterprise shall operate and manage funds independently. It may entrust another foreign-invested venture capital enterprise or a venture capital management enterprise with the management of the fund.

Article 18 — A foreign-invested venture capital enterprise may withdraw from its investment through equity transfer, share buyback, listing, and other means.

Article 19 — A foreign-invested venture capital enterprise shall distribute profits in accordance with the law. The income derived by foreign investors from the foreign-invested venture capital enterprise may be remitted abroad in accordance with the law.

Chapter V — Review and Approval of Invested Enterprises

Article 20 — Where an enterprise invested in by a foreign-invested venture capital enterprise falls under the category of foreign-invested enterprises, its establishment and changes shall be subject to the relevant examination and approval procedures for foreign-invested enterprises in accordance with the law.

Article 21 — Where the proportion of investment of a foreign-invested venture capital enterprise in the registered capital of an invested enterprise reaches 25% or more, the invested enterprise shall enjoy the treatment of a foreign-invested enterprise. Where the proportion is less than 25%, the invested enterprise shall be treated as a domestic enterprise, except as otherwise provided by laws and administrative regulations.

Article 22 — The investment of a foreign-invested venture capital enterprise in an invested enterprise shall not be in violation of the provisions of Chinese laws and regulations on foreign investment access and national security.

Chapter VI — Supplementary Provisions

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Article 23 — Where investors from Hong Kong Special Administrative Region, Macao Special Administrative Region, or Taiwan invest in establishing venture capital enterprises in the mainland, the matter shall be handled with reference to these Provisions.

Article 24 — The Ministry of Commerce shall be responsible for interpreting these Provisions.

Article 25 — These Provisions shall enter into force on March 1, 2003.

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