Provisions on Foreign-Invested Venture Capital Enterprises of the PRC

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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 purpose of encouraging foreign investors to establish venture capital enterprises in China, introducing advanced foreign venture capital management experience, promoting the development of the domestic

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venture capital industry, and further attracting foreign investment.

Article 2 — For the purposes of these Provisions, a "foreign-invested venture capital enterprise" (hereinafter referred to as "FIVCE") refers to 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, whose principal business is venture capital activities. For the purposes of these Provisions, "venture capital" refers to the activity of making equity investments primarily in unlisted high-tech enterprises and providing them with venture capital management services with a view to obtaining capital appreciation.

Article 3 — The establishment and administration of FIVCEs shall comply with the provisions of the state on foreign investment access and industrial policies. The state shall encourage FIVCEs to invest in high-tech industries and fields encouraged by the state.

Article 4 — The Ministry of Commerce shall be responsible for the examination, approval, and administration of FIVCEs. The Ministry of Science and Technology shall, in conjunction with the Ministry of Commerce, guide and administer the technology fields in which FIVCEs invest. Other relevant departments shall be responsible for the administration of FIVCEs within the scope of their respective functions.

Chapter II — Establishment Conditions

Article 5 — A FIVCE may take the organizational form of a company with limited liability or a company limited by shares. Where the organizational form is a company with limited liability, the number of investors shall not exceed 50. A FIVCE established as a company limited by shares shall comply with the relevant provisions of the Company Law.

Article 6 — Foreign investors establishing a FIVCE shall meet the following conditions: (1) possessing sound financial standing and business reputation; (2) having experience in venture capital or related business; (3) having a sound risk control mechanism; and (4) other conditions prescribed by the relevant state authorities.

Article 7 — A FIVCE shall meet the following conditions: (1) the total capital subscribed by all investors shall not be less than USD 10 million or its equivalent in other freely convertible currencies; (2) the amount of capital contribution subscribed by each investor shall not be less than USD 1 million or its equivalent in other freely convertible currencies; (3) foreign investors shall subscribe at least 25% of the total registered capital; (4) the enterprise shall have at least three professionals with experience in venture capital or related business; and (5) other conditions prescribed by the relevant state authorities.

Article 8 — A FIVCE may establish a venture capital management enterprise to manage its investments. The venture capital management enterprise may take the form of a Sino-foreign equity joint venture, Sino-foreign cooperative joint venture, or wholly foreign-owned enterprise. The venture capital management enterprise shall have professionals with venture capital experience and comply with relevant state regulations.

Article 9 — The investors of a FIVCE shall lawfully contribute their subscribed capital. Capital contributions may be made in cash, and may also be made in kind, intellectual property rights, land use rights, and other non-monetary properties that may be valued in currency and transferred in accordance with the law, provided that the proportion of cash contributions shall comply with the relevant provisions of the Company Law.

Chapter III — Establishment Procedures

Article 10 — Investors establishing a FIVCE shall submit the following documents to the Ministry of Commerce or its authorized local commerce authorities: (1) an application for establishment; (2) a feasibility study report; (3) the contract and articles of association signed by all investors; (4) certification documents of the legal status and creditworthiness of all investors; (5) a list of the members of the board of directors or the joint management committee and resumes of the proposed senior management personnel; (6) proof of the investors' experience in venture capital or related business; and (7) other documents required by the

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examination and approval authority.

Article 11 — The examination and approval authority shall, within 90 days from the date of receipt of all the required documents, decide whether to approve the establishment. Where approval is granted, an Approval Certificate for a Foreign-Invested Enterprise shall be issued. Where approval is not granted, the reasons shall be stated in writing.

Article 12 — Within 30 days from the date of receipt of the Approval Certificate, investors shall apply for registration with the administration for industry and commerce and obtain a business license. The FIVCE shall be formally established on the date its business license is issued.

Article 13 — After obtaining its business license, the FIVCE shall complete registration formalities with the tax authorities, the foreign exchange administration authorities, and the customs authorities, among others.

Chapter IV — Fundraising and Investment

Article 14 — A FIVCE may raise funds through the following channels: (1) capital contributions from investors; (2) retained earnings of the enterprise; and (3) other lawful channels approved by the state. A FIVCE shall not raise funds from the public.

Article 15 — The business scope of a FIVCE shall include: (1) making equity investments in unlisted enterprises; (2) providing venture capital management and consulting services; (3) providing business management consulting services to invested enterprises; and (4) other businesses approved by the examination and approval authority.

Article 16 — A FIVCE shall not engage in the following activities: (1) investing in areas prohibited by the state; (2) making investments beyond its approved business scope; (3) providing loans or guarantees (except for providing guarantees to its invested enterprises); (4) engaging in business activities unrelated to venture capital; and (5) other activities prohibited by laws and regulations.

Article 17 — A FIVCE shall not invest more than 20% of its total capital in a single enterprise. Where the examination and approval authority has special approval, this ratio may be appropriately relaxed.

Article 18 — A FIVCE may exit its investment through the following methods: (1) transferring its equity to other investors; (2) having the invested enterprise repurchase its equity; (3) transferring its equity through an initial public offering of the invested enterprise; (4) transferring its equity through mergers and acquisitions; and (5) other lawful methods.

Article 19 — The income of a FIVCE from equity transfers and dividend distributions shall be disposed of in accordance with the provisions of laws, administrative regulations, and the articles of association. The distribution of profits of a FIVCE shall comply with the relevant provisions of the state on foreign exchange administration.

Chapter V — Operation and Management

Article 20 — A FIVCE shall establish a sound corporate governance structure and establish a board of directors, a board of supervisors, and other internal governance bodies in accordance with the law. A FIVCE shall establish an effective internal control system and risk management mechanism.

Article 21 — A FIVCE may entrust a venture capital management enterprise with the management of its investment business. The entrusting FIVCE and the venture capital management enterprise shall enter into a written entrustment management agreement, specifying matters such as the scope of management, management fees, performance remuneration, and liability for breach of contract.

Article 22 — A FIVCE shall establish an investment decision-making committee responsible for making decisions on investment projects. Members of the investment decision-making committee shall possess

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professional knowledge and experience in venture capital or related fields.

Article 23 — Senior management personnel of a FIVCE shall comply with the provisions of laws and regulations, fulfill their fiduciary duties and duty of care, and shall not use their positions to seek improper benefits or harm the interests of the enterprise or investors.

Article 24 — A FIVCE shall establish a sound financial and accounting system, prepare financial and accounting reports in accordance with the law, and accept supervision by investors and relevant authorities. The annual financial and accounting reports of a FIVCE shall be audited by an accounting firm.

Chapter VI — Supervision and Administration

Article 25 — The examination and approval authority shall supervise and inspect the establishment and operation of FIVCEs in accordance with the law. A FIVCE shall submit its annual report to the examination and approval authority within the first three months of each year, including the enterprise's investment operations, financial status, and other relevant information.

Article 26 — Where a FIVCE engages in any of the following circumstances, the examination and approval authority shall order it to make corrections within a prescribed period; where the circumstances are serious, the approval may be revoked: (1) engaging in business activities beyond the approved business scope; (2) failing to submit the annual report as required; (3) the subscribed capital not having been fully contributed within the prescribed period; (4) failing to establish a governance structure as required; or (5) other violations of the provisions of these Provisions.

Article 27 — Where a FIVCE terminates its operations, it shall form a liquidation committee for liquidation in accordance with the law and shall submit the liquidation report to the examination and approval authority for record filing. The remaining assets after liquidation shall be distributed in accordance with the provisions of laws, administrative regulations, and the articles of association.

Chapter VII — Supplementary Provisions

Article 28 — The establishment of FIVCEs by investors from Hong Kong Special Administrative Region, Macao Special Administrative Region, and Taiwan Region shall be handled with reference to these Provisions.

Article 29 — FIVCEs established before the promulgation of these Provisions shall go through the relevant formalities in accordance with the provisions of these Provisions within one year from the date these Provisions come into force.

Article 30 — The Ministry of Commerce shall be responsible for the interpretation of these Provisions.

Article 31 — These Provisions shall come into force on March 1, 2003.

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