Provisions on the Administration of Foreign-Invested Commercial 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 Measures are formulated in accordance with the relevant laws and administrative regulations on foreign investment and the laws and administrative regulations on commerce for the purpose of further expanding opening up, improving the legal environment for foreign investment, and promoting the healthy development of foreign-invested commercial enterprises.

Article 2 — For the purposes of these Measures, foreign-invested commercial enterprises means foreign-invested enterprises established within the territory of the PRC in accordance with the law and engaging in the following business activities:

(1) Commission agency: the sale of goods on behalf of others, the provision of brokerage services on behalf of others, the auction of goods on behalf of others, the import and export of goods as an agent on behalf of others, and other agency businesses;

(2) Wholesale: the sale of goods to retailers, industrial, commercial, institutional, and other commercial users, and other wholesale businesses, and the provision of related supporting services; or

(3) Retail: the sale of goods to individual consumers or social groups from fixed locations, or through television, telephone, mail order, the Internet, vending machines, and other means, and the provision of

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related supporting services.

Article 3 — These Measures shall apply to the establishment and business activities of foreign-invested commercial enterprises within the territory of the PRC. Matters not covered by these Measures shall be governed by the relevant laws and administrative regulations on foreign investment.

Article 4 — The competent foreign trade and economic cooperation authorities shall be responsible for the approval and administration of foreign-invested commercial enterprises in accordance with the law. The competent commerce authorities shall be responsible for the administration of the commercial business activities of foreign-invested commercial enterprises in accordance with the law.

Article 5 — Foreign investors who invest in the establishment of commercial enterprises within the territory of the PRC shall comply with the laws, administrative regulations, and industrial policies of the PRC, and shall satisfy the requirements of the commercial development plans.

Chapter II — Application and Approval

Article 6 — Foreign investors who invest in the establishment of commercial enterprises shall submit the following documents to the competent foreign trade and economic cooperation authority:

(1) An application form for the establishment of the enterprise;

(2) The feasibility study report and the project proposal;

(3) The legal person certificates, creditworthiness certificates, and legal representative identification certificates of the Chinese and foreign investors;

(4) The certificates of the location and facilities of the business premises; and

(5) Other documents required by the examination and approval authority.

Article 7 — The foreign trade and economic cooperation authority shall complete the examination within three months from the date of receipt of all the prescribed documents. If the establishment of the enterprise is approved, a certificate of approval for a foreign-invested enterprise shall be issued; if the establishment is not approved, the reasons shall be stated.

Article 8 — After obtaining the certificate of approval for a foreign-invested enterprise, the investors shall, within 30 days, apply to the administrative department for industry and commerce for registration with the certificate of approval, and the administrative department for industry and commerce shall handle the registration in accordance with the law.

Article 9 — Where a foreign-invested commercial enterprise has already been established and lawfully operating intends to open branches, it shall satisfy the corresponding conditions and apply to the original examination and approval authority for approval. For the opening of branches within the province, autonomous region, or municipality directly under the Central Government where the enterprise is located, the approval of the competent foreign trade and economic cooperation authority of the relevant province, autonomous region, or municipality directly under the Central Government shall be required.

Article 10 — Foreign-invested commercial enterprises may engage in retail business through franchising. The establishment of chain stores shall be handled in accordance with the relevant State regulations on commercial chain operations.

Chapter III — Operation and Administration

Article 11 — Foreign-invested commercial enterprises shall conduct business activities within the approved scope of business and shall not engage in business activities beyond the approved scope of business without authorization.

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Article 12 — Foreign-invested commercial enterprises shall comply with the laws, administrative regulations, and rules on product quality, consumer rights and interests protection, fair competition, pricing, food safety, advertising, and other aspects, and shall be subject to the supervision and administration of the relevant competent authorities in accordance with the law.

Article 13 — Foreign-invested commercial enterprises shall establish a sound financial and accounting system, and shall submit accounting statements and relevant information to the competent authorities in accordance with the relevant State provisions.

Article 14 — The operation term of a foreign-invested commercial enterprise shall generally not exceed 30 years. For enterprises established in the central and western regions, the operation term may be extended to 40 years upon approval.

Article 15 — Foreign-invested commercial enterprises shall, in accordance with the law, protect the lawful rights and interests of their employees, and shall purchase social insurance for their employees in accordance with the relevant State provisions.

Article 16 — Where foreign-invested commercial enterprises import goods for sale in the domestic market, they shall comply with the laws and regulations on foreign trade, customs, foreign exchange, and taxation, and shall go through the relevant formalities in accordance with the law.

Chapter IV — Legal Liability

Article 17 — Where foreign investors establish commercial enterprises without approval in violation of these Measures, the competent foreign trade and economic cooperation authority shall, in conjunction with the administrative department for industry and commerce, order them to cease the illegal activities and confiscate the illegal gains, and may impose a fine in accordance with the law.

Article 18 — Where a foreign-invested commercial enterprise engages in business activities beyond the approved scope of business, the administrative department for industry and commerce shall impose penalties in accordance with the law.

Article 19 — Where a foreign-invested commercial enterprise violates the laws, administrative regulations, and rules on product quality, consumer rights and interests protection, fair competition, pricing, food safety, or advertising, the relevant competent authorities shall impose penalties in accordance with the law.

Article 20 — Where the examination and approval authority and other relevant administrative authorities and their staff members neglect their duties, abuse their powers, or engage in favoritism and irregularities in the administration of foreign-invested commercial enterprises, they shall be subject to administrative sanctions in accordance with the law; where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Chapter V — Supplementary Provisions

Article 21 — Investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region of China who invest in the establishment of commercial enterprises within the Mainland shall be handled with reference to these Measures.

Article 22 — These Measures shall be effective as of June 1, 2004. Matters concerning foreign investment in the commercial sector that were approved before the effectiveness of these Measures shall remain valid; however, if the existing foreign-invested commercial enterprises intend to modify the scope of business or other matters, they shall go through the formalities in accordance with these Measures.

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