Provisions on the Administration of Foreign-Invested Talent Intermediary Institutions of the PRC

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

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Establishment Conditions and Procedures 2

Chapter III — Administration and Supervision 3

Chapter IV — Penalty Provisions 4

Chapter V — Supplementary Provisions 4

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Establishment Conditions and Procedures
- Chapter III — Administration and Supervision
- Chapter IV — Penalty Provisions
- Chapter V — Supplementary Provisions

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 Regulations on the Administration of Talent Markets and other relevant laws and administrative regulations, for the purpose of standardizing the administration of foreign-invested talent intermediary institutions, promoting the healthy development of talent intermediary services, and meeting the needs of economic and social development.

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Article 2 — These Provisions shall apply to the establishment of Sino-foreign equity joint venture talent intermediary institutions, Sino-foreign cooperative joint venture talent intermediary institutions and wholly foreign-owned talent intermediary institutions (hereinafter referred to as "foreign-invested talent intermediary institutions") within the territory of the People's Republic of China.

Article 3 — The State encourages foreign-invested talent intermediary institutions to engage in activities such as the recruitment, placement and recommendation of talents, and shall protect their lawful rights and interests in accordance with the law.

Article 4 — The administrative departments of human resources and social security under the people's governments at or above the provincial level shall be responsible for the examination and approval of the establishment of foreign-invested talent intermediary institutions, and shall exercise supervision and administration over the business activities of such institutions in accordance with the law.

The commerce departments under the people's governments at or above the provincial level shall be responsible for the examination and approval of the establishment of foreign-invested talent intermediary institutions involving Sino-foreign equity joint ventures or Sino-foreign cooperative joint ventures, and shall exercise supervision and administration in accordance with the law.

The administrative departments for industry and commerce shall be responsible for the registration administration of foreign-invested talent intermediary institutions in accordance with the law.

Chapter II — Establishment Conditions and Procedures

Article 5 — The establishment of a foreign-invested talent intermediary institution shall satisfy the following conditions:

(1) the applicant shall be a foreign company, enterprise or other economic organization, or an entity or individual that has corresponding qualifications for engaging in talent intermediary services;

(2) the enterprise shall have a definite scope of business, a corresponding organizational structure, and its own name and domicile;

(3) the enterprise shall have a registered capital of not less than USD 125,000;

(4) the enterprise shall have at least five full-time staff members with college degrees or above and corresponding qualifications for engaging in talent intermediary services;

(5) the enterprise shall have sound institutional rules and work rules; and

(6) other conditions prescribed by laws and administrative regulations.

Article 6 — The proportion of investment contributed by the foreign party to a Sino-foreign equity joint venture or Sino-foreign cooperative joint venture talent intermediary institution shall not be less than 25%, unless otherwise provided for by the State.

Article 7 — To establish a foreign-invested talent intermediary institution, an application shall be submitted to the administrative department of human resources and social security under the people's government at or above the provincial level, together with the following documents:

(1) a written application and the feasibility study report;

(2) the credentials of the qualification for engaging in talent intermediary services of all the investing parties;

(3) the articles of association of the enterprise to be established;

(4) the name, number, qualifications and resumes of the full-time staff members of the enterprise to be established; and

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

Article 8 — The administrative department of human resources and social security shall complete the examination within 30 working days from the date of receiving all the application documents, and shall make a decision on whether to approve or not. If the application is approved, a Certificate of Approval for a Talent Intermediary Service shall be issued; if the application is not approved, the reasons shall be stated in writing.

Article 9 — Where a Sino-foreign equity joint venture or Sino-foreign cooperative joint venture talent intermediary institution is to be established, the Chinese party shall submit the Certificate of Approval for a Talent Intermediary Service and the relevant documents to the commerce department for the examination and approval of the contract and articles of association and the issuance of the Certificate of Approval for Foreign-Invested Enterprise.

Article 10 — Within 30 days from the date of obtaining the Certificate of Approval, the applicant shall apply for registration with the administrative department for industry and commerce and obtain a business license in accordance with the law.

Article 11 — The applicant shall, within 30 days from the date of obtaining the business license, report to the administrative department of human resources and social security that issued the Certificate of Approval for the record in accordance with the provisions.

Article 12 — A foreign-invested talent intermediary institution that intends to establish a branch shall submit an application to the administrative department of human resources and social security under the people's government at or above the provincial level at the place where the branch is to be located for examination and approval, and shall register with the administrative department for industry and commerce in accordance with the provisions.

Chapter III — Administration and Supervision

Article 13 — The business scope of a foreign-invested talent intermediary institution shall be limited to:

(1) the recruitment, placement and recommendation of talents;

(2) talent training and evaluation;

(3) talent information network services;

(4) the organization of talent recruitment fairs and other talent exchange activities; and

(5) other talent intermediary services as approved by the administrative department of human resources and social security.

Article 14 — A foreign-invested talent intermediary institution shall operate within the approved business scope and shall not conduct business beyond its scope of business without authorization.

Article 15 — A foreign-invested talent intermediary institution shall, in accordance with the provisions of the State, establish and improve the internal management system and the service quality assurance system, and shall publicly display its business license, the Certificate of Approval for a Talent Intermediary Service, the charging standards and the service commitments at its place of business.

Article 16 — A foreign-invested talent intermediary institution shall not engage in fraudulent activities or adopt other improper means when providing intermediary services, and shall not infringe upon the lawful rights and interests of the employers or the talents.

Article 17 — A foreign-invested talent intermediary institution shall protect the personal information of the talents and shall not divulge or illegally provide the personal information of the talents to others.

Article 18 — A foreign-invested talent intermediary institution shall charge fees in compliance with the charging standards prescribed by the State and shall not raise the fees without authorization or charge fees in disguised forms.

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Article 19 — A foreign-invested talent intermediary institution shall accept the supervision and inspection by the administrative department of human resources and social security, and shall truthfully provide the relevant documents and information.

Article 20 — The administrative department of human resources and social security shall establish an annual inspection system for foreign-invested talent intermediary institutions. Foreign-invested talent intermediary institutions shall, in accordance with the provisions, submit annual reports and accept the annual inspection.

Chapter IV — Penalty Provisions

Article 21 — Where a foreign-invested talent intermediary institution commits any of the following acts, the administrative department of human resources and social security shall order it to make corrections and may impose a fine of not more than RMB 30,000 yuan in accordance with the law; if the circumstances are serious, the Certificate of Approval for a Talent Intermediary Service shall be revoked:

(1) engaging in business beyond the approved scope of business without authorization;

(2) engaging in fraudulent activities or adopting other improper means in the intermediary services;

(3) charging fees in violation of the provisions;

(4) divulging or illegally providing the personal information of talents to others;

(5) failing to accept the annual inspection in accordance with the provisions or failing the annual inspection; or

(6) other acts in violation of laws and regulations.

Article 22 — Where a foreign-invested talent intermediary institution is ordered to suspend business for rectification or its Certificate of Approval for a Talent Intermediary Service is revoked, the administrative department of human resources and social security shall notify the commerce department and the administrative department for industry and commerce of the decision.

Article 23 — Where the staff members of the administrative departments of human resources and social security, commerce departments or administrative departments for industry and commerce abuse their powers, neglect their duties or engage in malpractices for personal gain, they shall be given administrative sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter V — Supplementary Provisions

Article 24 — Where there are otherwise special provisions on the establishment of foreign-invested talent intermediary institutions in the laws and administrative regulations of the State, such provisions shall prevail.

Article 25 — The establishment of foreign-invested talent intermediary institutions by investors from Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan shall be governed by these Provisions with reference to the relevant provisions on foreign investment.

Article 26 — These Provisions shall be subject to interpretation by the Ministry of Human Resources and Social Security, the Ministry of Commerce and the State Administration for Industry and Commerce.

Article 27 — These Provisions shall come into force as of November 1, 2003.

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