Provisions on the Administration of Foreign-Invested Telecommunications Enterprises of the PRC

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the relevant laws and administrative regulations on foreign investment and the Telecommunications Regulations of the People’s Republic of China for the purpose of adapting to the needs of the opening up of the telecommunications industry, promoting the development of the telecommunications industry, and regulating the administration of foreign-invested telecommunications enterprises.

Article 2 — For the purposes of these Provisions, a foreign-invested telecommunications enterprise means an enterprise that is established within the territory of the PRC in accordance with the law by a foreign investor and a Chinese investor through joint investment and that engages in telecommunications business. These Provisions shall apply to the foreign-invested telecommunications enterprises established within the territory of the PRC.

Article 3 — The establishment of a foreign-invested telecommunications enterprise within the territory of the PRC shall be subject to the approval of the competent authorities under the State Council. The proportion of capital contribution by a foreign investor in the enterprise engaging in basic telecommunications business (excluding radio paging business) shall not exceed 49% in the end. The proportion of capital contribution by a foreign investor in the enterprise engaging in value-added telecommunications business (including radio

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paging business in basic telecommunications business) shall not exceed 50% in the end. The proportion of capital contribution by the Chinese investor and foreign investor to the enterprise shall be computed and determined in accordance with the relevant laws and regulations on foreign investment.

Article 4 — Foreign-invested telecommunications enterprises shall comply with the provisions of relevant laws and administrative regulations on telecommunications, and shall be subject to supervision and administration by the telecommunications administrative authorities in accordance with the law.

Article 5 — These Provisions shall not apply to the establishment of establishments within the territory for engaging in telecommunications business by foreign-invested enterprises by way of establishing branch offices.

Chapter II — Establishment of Foreign-Invested Telecommunications Enterprises

Article 6 — The establishment of a foreign-invested telecommunications enterprise engaging in basic telecommunications business or value-added telecommunications business covering two or more provinces, autonomous regions, or municipalities directly under the Central Government shall be subject to the examination by the competent authority of industry and information technology under the State Council and the approval of the competent foreign trade and economic cooperation authority under the State Council.

The establishment of a foreign-invested telecommunications enterprise engaging in value-added telecommunications business covering within one province, autonomous region, or municipality directly under the Central Government shall be subject to the examination by the competent authority of telecommunications administration of the relevant province, autonomous region, or municipality directly under the Central Government and the approval of the competent foreign trade and economic cooperation authority of the local people’s government.

Article 7 — To establish a foreign-invested telecommunications enterprise engaging in basic telecommunications business, the major Chinese investor shall satisfy the following conditions:

(1) It shall be a legally established company;

(2) It shall have funds and specialized personnel commensurate with the business it is to engage in;

(3) It shall satisfy the prudent and good faith requirements for engaging in the telecommunications industry; and

(4) Other conditions provided for by the State.

The major Chinese investor in a foreign-invested telecommunications enterprise engaging in basic telecommunications business shall be the investor with the largest proportion of capital contribution among all Chinese investors.

Article 8 — The major foreign investor in a foreign-invested telecommunications enterprise engaging in basic telecommunications business shall satisfy the following conditions:

(1) It shall possess the legal person status;

(2) It shall have obtained the business permit (license) for engaging in basic telecommunications business in its home country or region;

(3) It shall have funds and specialized personnel commensurate with the business it is to engage in; and

(4) It shall have a good performance record and operating experience in basic telecommunications business.

The major foreign investor in a foreign-invested telecommunications enterprise engaging in basic telecommunications business shall be the foreign investor with the largest proportion of capital contribution among all foreign investors.

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Article 9 — To establish a foreign-invested telecommunications enterprise engaging in value-added telecommunications business, the major foreign investor shall have a good performance record and operating experience in value-added telecommunications business.

Article 10 — To establish a foreign-invested telecommunications enterprise, the following documents shall be submitted to the telecommunications administrative authority:

(1) An application form;

(2) A project proposal;

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

(4) The business permits (licenses) of the foreign investors for engaging in telecommunications business in their home countries or regions;

(5) Other documents required by the telecommunications administrative authority.

Article 11 — After the foreign trade and economic cooperation authority grants approval, the foreign investors and Chinese investors shall apply to the administrative department for industry and commerce for enterprise registration with the approval documents, and the administrative department for industry and commerce shall handle the registration procedures in accordance with the law.

Article 12 — After a foreign-invested telecommunications enterprise has completed the enterprise registration, it shall apply for a telecommunications business permit to the telecommunications administrative authority, and the telecommunications administrative authority shall issue the telecommunications business permit if the enterprise satisfies the relevant requirements upon examination.

Chapter III — Operation and Administration

Article 13 — The telecommunications business permit obtained by a foreign-invested telecommunications enterprise shall not be transferred, leased out, or lent out without authorization. The equity interests or shares of a foreign-invested telecommunications enterprise shall not be transferred without authorization.

Article 14 — A foreign-invested telecommunications enterprise shall, when providing telecommunications services, comply with the principles of openness, fairness, and impartiality, shall not engage in any unfair competition activities, and shall accept the supervision and administration of the telecommunications administrative authority and the relevant departments.

Article 15 — A foreign-invested telecommunications enterprise shall provide telecommunications services within the scope specified in its business permit. If the foreign-invested telecommunications enterprise needs to change its business scope, it shall go through the approval and examination procedures in accordance with the law.

Article 16 — A foreign-invested telecommunications enterprise shall establish a complete service quality guarantee system, and shall publish to the public the types, scope, fee standards, and time limits for provision of services.

Article 17 — A foreign-invested telecommunications enterprise shall, in accordance with the relevant provisions of the State, implement network and information security measures, ensure the safe and stable operation of the telecommunications network, and protect the security of State secrets and personal information of users.

Article 18 — A foreign-invested telecommunications enterprise shall, in accordance with the relevant provisions of the State, submit relevant operational data and information to the telecommunications administrative authority and accept supervision and inspection by the telecommunications administrative

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authority in accordance with the law.

Article 19 — Where there is any significant change in the circumstances of a foreign-invested telecommunications enterprise, such as a change in the major investor or a change in the equity structure, the enterprise shall report to the telecommunications administrative authority and the foreign trade and economic cooperation authority for approval or record filing.

Chapter IV — Legal Liability

Article 20 — Where an enterprise, in violation of the provisions of these Provisions, establishes a foreign-invested telecommunications enterprise without approval or engages in telecommunications business without permission, the telecommunications administrative authority shall impose penalties in accordance with the relevant provisions of the Telecommunications Regulations and these Provisions, order the enterprise to cease the illegal activities, and confiscate the illegal gains.

Article 21 — Where a party obtains a telecommunications business permit by fraud, bribery, or other improper means, the telecommunications administrative authority shall revoke the telecommunications business permit, impose a fine in accordance with the law, and may forbid the party from applying for a telecommunications business permit again within three years.

Article 22 — Where a foreign-invested telecommunications enterprise commits any of the following acts, the telecommunications administrative authority shall order it to make corrections and may, in accordance with the law, impose a fine, suspend its business for rectification, or revoke its telecommunications business permit depending on the circumstances:

(1) Changing its business scope without authorization;

(2) Transferring, leasing out, or lending out the telecommunications business permit;

(3) Transferring equity interests or shares without authorization;

(4) Failing to fulfill network and information security obligations;

(5) Committing other acts in violation of the provisions of laws and regulations on telecommunications.

Article 23 — Where the staff members of relevant administrative authorities neglect their duties, abuse their powers, or engage in favoritism and irregularities in the administration of foreign-invested telecommunications 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 24 — 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 telecommunications enterprises within the Mainland shall be handled with reference to these Provisions.

Article 25 — These Provisions shall be effective as of January 1, 2002. Matters not covered by these Provisions shall be governed by the relevant laws and administrative regulations on foreign investment and the Telecommunications Regulations.

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