Provisions on the Establishment of Foreign-Funded Foreign Trade Companies of the PRC

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the relevant laws and regulations on foreign-invested enterprises and the Foreign Trade Law of the People's Republic of China, for the purpose of further opening the foreign trade sector, promoting the development of foreign trade, and regulating the examination, approval, and administration of foreign-funded foreign trade companies.

Article 2 — For the purposes of these Provisions, a "foreign-funded foreign trade company" refers to a Sino-foreign equity joint venture, Sino-foreign cooperative joint venture, or wholly foreign-owned enterprise established within the territory of the People's Republic of China by foreign investors in accordance with the law to engage in the import and export of goods and technologies.

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Article 3 — Foreign investors establishing foreign-funded foreign trade companies in China shall comply with the provisions of the state on foreign investment access and the relevant laws and regulations on foreign trade. Foreign-funded foreign trade companies shall carry out import and export activities in accordance with the law and shall not engage in any activities in violation of Chinese laws and regulations.

Article 4 — The Ministry of Commerce shall be in charge of the examination, approval, and administration of foreign-funded foreign trade companies nationwide. The commerce authorities of provinces, autonomous regions, municipalities directly under the Central Government, and cities specifically designated in the state plan shall be responsible for the examination, approval, and administration of foreign-funded foreign trade companies within their respective administrative regions in accordance with their authority.

Chapter II — Establishment Conditions

Article 5 — Foreign investors establishing a foreign-funded foreign trade company shall meet the following conditions: (1) the foreign investor shall have a good business reputation and sound financial standing; (2) the foreign investor shall have experience in international trade business; (3) the registered capital shall meet the minimum amount prescribed by the state; and (4) other conditions prescribed by the relevant state authorities.

Article 6 — The minimum registered capital for a foreign-funded foreign trade company shall be RMB 500,000 yuan. Where the enterprise applies to engage in the import and export of restricted commodities, the registered capital shall meet the minimum amount separately prescribed by the state.

Article 7 — A foreign-funded foreign trade company shall have suitable business premises, facilities, and employees commensurate with its business scale, and shall establish a sound financial management system and business management system.

Article 8 — Where a wholly foreign-owned foreign trade company is established, the foreign investor shall have been engaged in foreign trade business for at least three years before the application and shall have an average annual trade volume of not less than USD 20 million for the three years preceding the application.

Article 9 — Where a Sino-foreign joint venture foreign trade company is established, the Chinese party shall have foreign trade operation qualifications, and the foreign party shall meet the conditions prescribed in Article 8 of these Provisions. The registered capital contributed by the foreign party shall account for not less than 25% of the total registered capital.

Chapter III — Examination and Approval

Article 10 — Investors applying to establish a foreign-funded foreign trade company shall submit the application materials to the local commerce authority, which shall forward the materials to the Ministry of Commerce or its authorized commerce authority for examination and approval after issuing a preliminary examination opinion.

Article 11 — The application materials shall include: (1) an application for establishment of a foreign-invested enterprise; (2) the contract and articles of association; (3) a feasibility study report; (4) certification documents of the legal status and creditworthiness of the investors; (5) certification documents of the foreign trade business performance of the investors; (6) a credit certificate issued by a bank for the investors; (7) a list of the proposed members of the board of directors and resumes of the proposed senior management personnel; and (8) other materials required by the examination and approval authority.

Article 12 — The commerce authority shall decide whether to approve the establishment within the prescribed time limit from the date of receipt of all the required application materials. 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.

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Article 13 — Within 30 days from the date of receipt of the Approval Certificate, the investors shall apply for registration with the administration for industry and commerce and obtain a business license. After obtaining the business license, the enterprise shall complete the filing formalities for foreign trade operator status with the commerce authority.

Chapter IV — Rights and Obligations

Article 14 — A foreign-funded foreign trade company shall have the right to engage in the import and export of goods and technologies within the approved scope of business, and shall enjoy the rights and bear the obligations of foreign trade operators under the Foreign Trade Law.

Article 15 — A foreign-funded foreign trade company shall, in its import and export business activities, comply with the provisions of Chinese laws and regulations on foreign trade, customs, foreign exchange, taxation, commodity inspection, and other areas, and shall not engage in any illegal business activities.

Article 16 — A foreign-funded foreign trade company shall comply with the provisions of the state on the administration of the import and export of goods. Where the import or export of commodities subject to state quota or license administration is involved, the enterprise shall obtain the quota or license in accordance with the relevant regulations.

Article 17 — A foreign-funded foreign trade company shall establish a sound financial and accounting system, keep account books in accordance with the law, and submit financial and accounting reports and foreign trade statistical reports to the relevant authorities on time.

Article 18 — A foreign-funded foreign trade company shall comply with the provisions of the state on foreign exchange administration. Foreign exchange receipts and payments from import and export business shall be handled through the enterprise's foreign exchange accounts in accordance with the relevant regulations.

Chapter V — Supervision and Administration

Article 19 — The commerce authorities shall supervise and inspect the establishment and operation of foreign-funded foreign trade companies in accordance with the law. The customs, foreign exchange, taxation, commodity inspection, and other relevant authorities shall supervise foreign-funded foreign trade companies in accordance with their respective functions.

Article 20 — A foreign-funded foreign trade company shall submit annual reports to the commerce authority and the relevant authorities, including the enterprise's import and export business performance, financial status, and other relevant information.

Article 21 — Where a foreign-funded foreign trade company violates the provisions of these Provisions, the relevant authorities shall order it to make corrections and impose penalties in accordance with the law. Where the circumstances are serious, the Approval Certificate may be revoked in accordance with the law, and the administration for industry and commerce shall revoke the business license.

Chapter VI — Supplementary Provisions

Article 22 — The establishment of foreign trade companies within the mainland by investors from Hong Kong Special Administrative Region, Macao Special Administrative Region, and Taiwan Region shall be handled with reference to these Provisions.

Article 23 — Foreign-funded foreign trade companies established before the promulgation of these Provisions shall go through the relevant formalities in accordance with the provisions of these Provisions.

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

Article 25 — These Provisions shall come into force on January 31, 2003.

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