Provisions on the Establishment of Foreign-Funded Investment Companies

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Promulgated by Order No. 2 [2004] of the Ministry of Commerce of the People's Republic of China on November 17, 2004

Revised in accordance with Order No. 3 [2006] of the Ministry of Commerce on August 8, 2006

Effective: December 17, 2004

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the relevant laws and administrative regulations of the State concerning foreign investment for the purpose of further expanding opening-up, promoting the development of foreign investment, and encouraging foreign investors to establish investment companies (also known as holding companies or umbrella companies) in China to make investments.

Article 2 — For the purposes of these Provisions, a "foreign-funded investment company" (hereinafter referred to as "Investment Company") means an enterprise with limited liability established within China by a foreign investor alone or jointly with a Chinese investor, whose business is direct investment. The Investment

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Company shall take the form of a limited liability company.

Article 3 — The establishment of an Investment Company shall obtain the approval of the Ministry of Commerce. The Investment Company shall not engage in direct production and business operation activities within China.

Chapter II — Conditions for Establishment

Article 4 — To establish an Investment Company, the foreign investor shall meet the following conditions: (1) the foreign investor shall have good credit and possess the necessary financial strength; (2) the foreign investor shall have total assets of not less than USD 400 million in the year prior to the application, and shall have established foreign-invested enterprises within China with a total paid-in registered capital of not less than USD 10 million; or, the foreign investor shall have established ten or more foreign-invested enterprises within China with a total paid-in registered capital of not less than USD 30 million; (3) if a foreign investor establishes an Investment Company jointly with a Chinese investor, the Chinese investor shall have total assets of not less than RMB 100 million; and (4) the registered capital of the Investment Company shall be not less than USD 30 million.

Article 5 — Where a foreign investor that meets the conditions set forth in Article 4 of these Provisions establishes an Investment Company in the western region of China, the required total assets of the foreign investor in the year prior to the application may be reduced to USD 200 million, the registered capital of the Investment Company shall be not less than USD 20 million, and the total paid-in registered capital of the foreign-invested enterprises it has established within China shall be not less than USD 5 million, or it shall have established five or more foreign-invested enterprises.

Article 6 — The Investment Company may make capital contributions in cash or may make capital contributions in the form of the equity rights of enterprises in which it has invested.

Chapter III — Application and Approval Procedures

Article 7 — To establish an Investment Company, the investors shall submit the following documents to the Ministry of Commerce: (1) an application signed by the legal representative of each investor; (2) the contract and articles of association signed by each investor; (3) the approval document or business license of each investor; (4) the creditworthiness certificate and proof of assets of each investor issued by a financial institution; (5) the certificates of approval and business licenses of the foreign-invested enterprises already established by the foreign investor within China; (6) the feasibility study report; (7) other documents required by the Ministry of Commerce.

Article 8 — The Ministry of Commerce shall complete the examination and decide on the application within 90 days from the date of receipt of all documents prescribed in Article 7. If the application is approved, an approval certificate for foreign-invested enterprise shall be issued.

Article 9 — Within 30 days after obtaining the approval certificate, the Investment Company shall complete the registration formalities with the administrative department for industry and commerce. The business license shall be the date of establishment of the Investment Company.

Article 10 — The registered capital of the Investment Company shall be fully paid within two years from the date of issuance of the business license.

Chapter IV — Business Scope and Operation

Article 11 — An Investment Company may engage in the following businesses upon approval: (1) investing in industry, agriculture, infrastructure, energy, and other sectors encouraged by the State; (2) providing the following services to the enterprises in which it invests: assistance or acting as agent for the procurement of machinery, equipment, spare parts, raw materials, and components needed for production by the invested

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enterprises; acting as sales agent for products of the invested enterprises and providing after-sales services; balancing foreign exchange among invested enterprises with the approval of foreign exchange authorities; providing technical support, employee training, and internal human resources management services to invested enterprises; assisting invested enterprises in seeking loans and providing guarantees; and providing market development and consulting services to invested enterprises; (3) providing consulting services to investors; (4) establishing scientific and technological research and development centers within China to engage in research, development, and transfer of research results in new products and high technology; and (5) establishing service outsourcing companies to provide services to investors and their affiliates.

Article 12 — An Investment Company may, based on its actual needs, establish branches within China after obtaining approval.

Article 13 — An Investment Company shall not invest in fields where foreign investment is prohibited by the Special Administrative Measures for Foreign Investment Access. Investments in restricted fields shall be subject to approval in accordance with relevant provisions.

Article 14 — The enterprises invested in by an Investment Company shall be treated as foreign-invested enterprises in accordance with the law.

Chapter V — Supervision and Administration

Article 15 — An Investment Company shall prepare accounting statements in accordance with Chinese law and accept the supervision and inspection of the relevant authorities.

Article 16 — An Investment Company shall submit an annual report on its operations and investment activities to the Ministry of Commerce before March 31 of each year.

Article 17 — An Investment Company shall open a foreign exchange account in accordance with the law and comply with the relevant provisions on foreign exchange control.

Article 18 — Where an Investment Company changes its name, business scope, registered capital, or other registered items, it shall apply to the original approval authority for approval and go through the change registration formalities.

Chapter VI — Supplementary Provisions

Article 19 — Investors from Hong Kong, Macao, and Taiwan establishing investment companies in the Mainland shall be governed by these Provisions with reference thereto.

Article 20 — The Ministry of Commerce shall be responsible for the interpretation of these Provisions.

Article 21 — These Provisions shall come into force on December 17, 2004.

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