

Provisions on the Establishment of Investment Companies by Foreign Investors of the PRC

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Revised by the Ministry of Commerce Order No. 6 of 2004; superseding the Interim Provisions on Investment by Foreign Investors in Investment Companies (MOFTEC Order No. 4 of 1995)

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Article 1 — These Provisions are formulated for the purposes of further expanding opening-up, promoting and regulating the establishment of investment companies by foreign investors, and in accordance with the laws and administrative regulations on foreign-invested enterprises currently in force, including the Company Law of the People's Republic of China and the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, subject to the actual circumstances of foreign-invested enterprises.

Article 2 — "Investment company" as referred to in these Provisions means a limited liability company or a joint stock limited company that is established by a foreign investor within the territory of China with the principal business of making direct investment. A foreign investor shall apply to the Ministry of Commerce for the establishment of an investment company.

Article 3 — An investment company established under these Provisions may engage in the following businesses: (1) making direct investment in sectors in which foreign investment is permitted by the State; (2) providing the following services to the enterprises in which it invests (hereinafter referred to as "invested enterprises"): (i) assisting or acting as agent for the procurement within and outside China of machinery, equipment, office equipment, and raw materials, parts, and components required for the production of the invested enterprises, as well as the sale within and outside China of the products of the invested enterprises, and providing after-sales services; (ii) balancing foreign exchange among the invested enterprises with the consent and supervision of the foreign exchange control authorities; (iii) providing technical support, training, and human resources services to the invested enterprises; (iv) assisting the invested enterprises in seeking loans and providing guarantees; and (v) providing financial support to the invested enterprises upon approval by the relevant authorities; (3) providing consulting services to investors, such as market research, consulting services on investment policies and regulations, and consulting services on investment project selection and planning; and (4) engaging in technology transfer and technology import and export businesses.

Article 4 — An investment company may, upon approval by the relevant authorities, engage in the business of acting as an agent for the sale within China of products manufactured or produced by the invested enterprises and providing after-sales services; and upon approval by the relevant authorities, it may also engage in the business of providing transportation, warehousing, and other comprehensive services to the invested enterprises.

Article 5 — Where an investment company engages in the import and export businesses specified in Items (1) and (3) of Article 3 of these Provisions with respect to its invested enterprises, it shall apply for the right to act as an import and export agent. The right to import and export may be obtained in accordance with the relevant provisions of the State concerning the administration of foreign trade.

Article 6 — An investment company engaging in the import and distribution of goods not involving the special administrative measures (negative list) for foreign investment access shall comply with the relevant laws and regulations of the State on the administration of foreign investment.

Article 7 — The foreign investor applying for the establishment of an investment company shall satisfy the following conditions: (1) the foreign investor shall have a good credit standing and shall possess the financial strength necessary for the establishment of an investment company; the total assets of the foreign investor in the year preceding the application shall be not less than USD 400 million, and the foreign investor shall have already established foreign-invested enterprises within the territory of China, with the actual paid-in registered capital of the foreign investor exceeding USD 10 million; or the foreign investor shall have already established 10 or more foreign-invested enterprises within the territory of China, with the actual paid-in registered capital of the foreign investor exceeding USD 30 million; (2) in the case of an investment company established in the form of a joint venture, the Chinese party shall have a good credit standing and shall possess the financial strength necessary for the establishment of an investment company, and the total assets of the Chinese party in the year preceding the application shall be not less than RMB 100 million; and (3) the registered capital of the investment company shall be not less than USD 30 million.

Article 8 — A foreign investor applying for the establishment of an investment company shall submit the following documents to the Ministry of Commerce: (1) a project proposal, a feasibility study report, and the contract and articles of association signed by the parties to the joint venture for an investment company established in the form of a joint venture, or a project proposal, a feasibility study report, and the articles of association signed by the foreign investor for an investment company established in the form of a wholly foreign-owned enterprise; (2) the certificate of credit standing, the certificate of registration (photocopy), and the certificate of the legal representative (photocopy) of each investing party; (3) the approval certificate (photocopy), the business license (photocopy), and the capital verification report issued by a certified public accountant (photocopy) of the enterprise already established by the foreign investor within the territory of China; (4) the balance sheet and the profit and loss statement of the foreign investor for the most recent three years, audited by a certified public accountant in accordance with the law; and (5) other documents as required by the Ministry of Commerce. The documents listed in the preceding paragraph shall be in the Chinese language, with the exception of the balance sheet, the profit and loss statement, and the certificate of credit standing of the foreign investor, which shall be accompanied by a Chinese translation.

Article 9 — The foreign investor shall pay in the registered capital within two years from the date of issuance of the business license.

Article 10 — An investment company may not directly engage in manufacturing or production activities.

Article 11 — The registered capital of an investment company established with the business of providing financial support to the invested enterprises upon approval shall be not less than USD 30 million. The investment company shall, in accordance with the provisions of the State Council on the period for making capital contributions by investors of foreign-invested enterprises, pay in the registered capital contribution. Upon the actual payment of the registered capital contribution of not less than USD 30 million, the investment company may provide financial support to the invested enterprises.

Article 12 — The aggregate amount of capital contributions made by an investment company to the invested enterprises shall not exceed the amount of the registered capital of the investment company.

Article 13 — The investment made by an investment company in an enterprise shall be treated as foreign investment in terms of the proportion of the foreign investor's shareholding in the investment company.

Article 14 — Where an investment company invests in an enterprise, the proportion of the registered capital contributed by the investment company to the total registered capital of the invested enterprise shall be not less than 10 percent.

Article 15 — An investment company may establish branches within the territory of China. The establishment of a branch by an investment company shall be subject to the approval of the Ministry of Commerce.

Article 16 — An investment company shall, within 30 days after the end of each fiscal year, submit to the Ministry of Commerce an annual report on its investment operations and business activities for the preceding year, including the investment information of the investment company and the basic information of the invested enterprises. The Ministry of Commerce shall handle the filing of the annual report.

Article 17 — An investment company shall, in accordance with the relevant provisions of the State, fulfill the obligations of reporting, annual inspection, taxation, and foreign exchange.

Article 18 — Where an investment company engages in the businesses specified in these Provisions without satisfying the relevant conditions, the Ministry of Commerce shall order it to make corrections; and where the circumstances are serious, the Ministry of Commerce may revoke the approval certificate.

Article 19 — Where an investment company, in operating a business, violates the laws and regulations on the administration of foreign investment, the relevant authorities shall, within their respective scopes of duties, handle the matter in accordance with the law.

Article 20 — Where an investment company is established in the central and western regions of China, the conditions for the total assets of the foreign investor and the registered capital of the investment company may be appropriately relaxed on the basis of the conditions provided for in Article 7 of these Provisions. The specific conditions shall be separately formulated by the Ministry of Commerce.

Article 21 — A company limited by shares with foreign investment that is approved by the Ministry of Commerce to be established within the territory of China and to engage primarily in direct investment business shall be governed by these Provisions.

Article 22 — An enterprise established by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan Region within the territory of China and engaged primarily in direct investment business shall be governed by these Provisions.

Article 23 — The Ministry of Commerce shall be responsible for the interpretation of these Provisions.

Article 24 — These Provisions shall come into force 30 days after the date of promulgation. The Interim Provisions on Investment by Foreign Investors in Investment Companies (Order No. 4 [1995] of the Ministry of Foreign Trade and Economic Cooperation) and the supplementary provisions thereto shall be repealed simultaneously.

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