

Several Provisions on Foreign-Invested Enterprises Investing as Domestic Investors in China of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

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

Issued by the Ministry of Commerce and the State Administration for Industry and Commerce on May 31, 2006

Effective: May 31, 2006

Table of Contents

- Scope and Conditions
- Approval Procedures
- Supervision and Administration

Article 1 — These Provisions are formulated in accordance with the relevant laws and regulations on foreign investment and company law to regulate and facilitate foreign-invested enterprises making investments in China as domestic investors and to promote the development of a unified, open, and orderly market.

Article 2 — For the purposes of these Provisions, the term "foreign-invested enterprise" means a Sino-foreign equity joint venture, a Sino-foreign contractual joint venture, a wholly foreign-owned enterprise, or a foreign-invested joint stock company established within the territory of China in accordance with the law.

Article 3 — A foreign-invested enterprise that intends to invest as a domestic investor in China shall satisfy the following conditions: (1) its registered capital has been fully paid up; (2) it has commenced normal production and operation and has recorded profits; (3) it has no record of material violations of laws or regulations in its business operations; and (4) other conditions as prescribed by laws and administrative regulations.

Article 4 — Where a foreign-invested enterprise invests in sectors subject to the Special Administrative Measures (Negative List) for Foreign Investment Access, the provisions on foreign investment access shall apply. Where a foreign-invested enterprise invests in sectors not subject to the Negative List, it shall be treated as a domestic enterprise.

Article 5 — Where a foreign-invested enterprise invests as a domestic investor to establish a new enterprise, the enterprise to be established shall submit the following documents to the commerce department for approval or filing: (1) a written application for the establishment of the new enterprise; (2) the articles of association of the new enterprise; (3) the business license and capital verification report of the foreign-invested enterprise; (4) the resolution or decision of the board of directors or executive director of the foreign-invested enterprise on the investment; (5) a creditworthiness certificate of the foreign-invested enterprise; and (6) other documents required by laws and administrative regulations.

Article 6 — Where a foreign-invested enterprise acquires a domestic enterprise through equity acquisition or asset acquisition, the foreign-invested enterprise shall submit the corresponding acquisition documents to the commerce department for approval or filing in accordance with the relevant provisions on mergers and acquisitions of domestic enterprises by foreign investors.

Article 7 — The commerce department that receives the application shall complete the examination within 45 days from the date of receipt of all required application documents. Where approval is granted, a written reply shall be issued; where the matter falls within the scope of filing, a filing receipt shall be issued.

Article 8 — After obtaining the approval or filing receipt from the commerce department, the foreign-invested enterprise shall complete the registration formalities with the administrative department for industry and commerce and other relevant departments.

Article 9 — The enterprise established by a foreign-invested enterprise through investment as a domestic investor in China shall operate in accordance with the law and shall not engage in any business activities beyond its approved business scope. Any change in the registered items of such enterprise shall be subject to the relevant approval or filing formalities in accordance with the law.

Article 10 — Commerce departments shall, in conjunction with industrial and commercial administrative departments, strengthen supervision and administration of foreign-invested enterprises' investment activities as domestic investors and shall promptly investigate and handle any illegal activities discovered.

Article 11 — Where a foreign-invested enterprise invests in a sector that is prohibited for foreign investment, the commerce department shall not grant approval, and the industrial and commercial administrative department shall not handle the registration.

Article 12 — These Provisions shall apply, *mutatis mutandis*, to enterprises established by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region that invest in Mainland China as domestic investors.

Article 13 — These Provisions shall come into force on the date of issuance.

Disclaimer: This translation is provided for informational and reference purposes only. While every effort has been made to ensure accuracy, it is not an official translation and may contain errors or omissions. This translation does not constitute legal advice. Dan Young Business Consultancy assumes no liability for any reliance placed on this translation.