Several Provisions on the Establishment of Foreign-Invested Joint Stock Companies of the PRC

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures, the Law of the People's Republic of China on Sino-Foreign Cooperative Joint Ventures, the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, the Company Law of the People's Republic of China and other relevant laws and regulations for the purposes of standardizing the establishment of foreign-invested joint stock companies, expanding the channels for foreign investment, and promoting the sound development of the economy.

Article 2 — For the purposes of these Provisions, the term "foreign-invested joint stock company" shall mean a joint stock company established within the territory of China in accordance with the law by foreign investors together with domestic investors, or by foreign investors independently, in which the proportion of shares subscribed and held by foreign investors shall account for not less than 25% of the company's registered capital.

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Article 3 — A foreign-invested joint stock company shall be an enterprise legal person. Foreign investors shall be entitled to the profits, shall bear the risks and losses, and shall share the assets of the company upon its termination in proportion to their respective shares. The lawful rights and interests of foreign-invested joint stock companies and their investors shall be protected by the laws of China. Foreign-invested joint stock companies shall abide by Chinese laws and regulations in all their activities.

Chapter II — Establishment Conditions

Article 4 — The establishment of a foreign-invested joint stock company may be in any of the following forms: (1) promotion establishment, where the promoters subscribe for all the shares to be issued by the company; (2) public offering establishment, where the promoters subscribe for not less than 35% of the shares to be issued by the company and the remaining shares are offered to the public; or (3) conversion of an existing foreign-invested enterprise into a foreign-invested joint stock company.

Article 5 — The establishment of a foreign-invested joint stock company shall meet the following conditions: (1) the number of promoters shall comply with the provisions of the Company Law, and at least one of the promoters shall be a foreign investor; (2) the total share capital subscribed and fully paid by the promoters shall be not less than RMB 30 million; (3) the business scope of the company shall comply with the provisions of the Catalogue of Industries for Guiding Foreign Investment; and (4) other conditions stipulated by laws and administrative regulations.

Article 6 — A foreign investor that acts as a promoter shall have good credit standing and the ability to make investments. The foreign investor shall provide a bank credit certificate or other credit certification documents issued by a bank registered in the country or region where the foreign investor is located, or financial statements audited by a certified public accountant.

Chapter III — Approval Procedures

Article 7 — The establishment of a foreign-invested joint stock company shall be subject to the examination and approval of the Ministry of Commerce. The promoters shall submit the following documents to the Ministry of Commerce: (1) an application for establishment signed by the legal representatives of all promoters; (2) a feasibility study report jointly prepared by the promoters; (3) the articles of association of the company; (4) the promotion agreement; (5) the credit standing certificates of the promoters; and (6) other documents required by the Ministry of Commerce.

Article 8 — Upon receiving all the required documents, the Ministry of Commerce shall make a decision on approval or disapproval within the prescribed time limit. If the establishment is approved, the Ministry of Commerce shall issue a certificate of approval for a foreign-invested enterprise.

Article 9 — Within 30 days from the date of obtaining the certificate of approval, the promoters shall apply to the administrative department for industry and commerce for registration and obtain a business license. The date of issuance of the business license shall be the date of establishment of the foreign-invested joint stock company.

Chapter IV — Issuance and Transfer of Shares

Article 10 — The registered capital of a foreign-invested joint stock company shall be the total share capital registered with the registration authority, i.e., the total amount of the shares for which the promoters have subscribed or the total amount of share capital raised. The minimum registered capital of a foreign-invested joint stock company shall be RMB 30 million.

Article 11 — The shares of a foreign-invested joint stock company may be in registered form or in bearer form. Shares issued to foreign investors may be denominated in foreign currency, and the par value of each share may be expressed in RMB or foreign currency.

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Article 12 — The shares of a foreign-invested joint stock company held by foreign investors may be transferred in accordance with the law, but shall not be transferred to a domestic investor unless the proportion of shares held by foreign investors after the transfer accounts for not less than 25% of the company's total registered capital. Shares held by foreign promoters shall not be transferred within three years from the date of establishment of the company.

Article 13 — Where a foreign-invested joint stock company issues new shares to increase its capital, the company shall comply with the provisions of the Company Law and shall apply to the original examining and approving authority for approval.

Chapter V — Supervision and Administration

Article 14 — A foreign-invested joint stock company shall conduct its production and business activities within the approved business scope and shall not engage in any activity beyond the approved business scope.

Article 15 — A foreign-invested joint stock company shall set up account books within the territory of China, conduct independent accounting, and prepare financial and accounting reports in accordance with the provisions. The financial and accounting reports shall be audited by a certified public accountant registered in China.

Article 16 — Where a foreign-invested joint stock company is to be dissolved, it shall be liquidated in accordance with the relevant provisions of the Company Law and the laws and regulations on foreign-invested enterprises.

Chapter VI — Supplementary Provisions

Article 17 — Companies with investment from investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region shall be governed by reference to these Provisions.

Article 18 — The Ministry of Commerce shall be responsible for the interpretation of these Provisions.

Article 19 — These Provisions shall enter into force on March 1, 2007.

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