

Provisions of the State Council on Encouraging Investment by Overseas Chinese and Compatriots from Hong Kong and Macao

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

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Article 1 — These Provisions are formulated to promote the economic development of the state and to encourage overseas Chinese and compatriots from Hong Kong and Macao (hereinafter collectively referred to as "overseas Chinese and Hong Kong and Macao investors") to invest within the territory.

Article 2 — Overseas Chinese and Hong Kong and Macao investors may invest in provinces, autonomous regions, municipalities directly under the Central Government and special economic zones within the territory.

Overseas Chinese and Hong Kong and Macao investors are encouraged to engage in land development and operation in accordance with the relevant state provisions.

Article 3 — Overseas Chinese and Hong Kong and Macao investors may invest within the territory in the following forms:

- (1) establishing enterprises wholly owned by overseas Chinese and Hong Kong and Macao investors;
- (2) establishing equity joint ventures and contractual joint ventures;
- (3) carrying out compensation trade, processing and assembly with supplied materials, and cooperative production;
- (4) purchasing shares and bonds of enterprises;
- (5) purchasing real property;
- (6) obtaining land use rights in accordance with law for development and operation; or
- (7) other forms of investment permitted by laws and regulations.

Article 4 — Overseas Chinese and Hong Kong and Macao investors may invest in industry, agriculture, the service sector and other industries consistent with the direction of social and economic development within the territory. They may select investment projects from those published by the relevant departments of local people's governments, or put forward their own investment project intentions and apply to the foreign economic relations and trade department of the intended investment area or the examination and approval authority designated by the local people's government.

The state encourages overseas Chinese and Hong Kong and Macao investors to establish export-oriented enterprises and technologically advanced enterprises, and grants corresponding preferential treatment.

Article 5 — Where overseas Chinese and Hong Kong and Macao investors establish within the territory wholly owned enterprises, equity joint ventures and contractual joint ventures (hereinafter collectively referred to as "enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao"), in addition to these Provisions, the provisions of the relevant state laws and regulations on foreign-related economic affairs shall apply by reference, and they shall enjoy the corresponding treatment of foreign-invested enterprises.

With respect to other forms of investment by overseas Chinese and Hong Kong and Macao investors within the territory, and their dividends, interest, rent, royalties and other income sourced within the territory without establishing a business institution therein, in addition to these Provisions, the provisions of the relevant state laws and regulations on foreign-related economic affairs may also apply by reference.

Article 6 — Overseas Chinese and Hong Kong and Macao investors may use freely convertible currencies, machinery and equipment or other physical objects, industrial property rights, proprietary technologies and the like as investment.

Article 7 — The investments, purchased assets, industrial property rights, profits from investment and other lawful rights and interests of overseas Chinese and Hong Kong and Macao investors within the territory shall be protected by the laws of the state, and may be transferred and inherited in accordance with law.

The activities of overseas Chinese and Hong Kong and Macao investors within the territory shall comply with the laws and regulations of the state.

Article 8 — The state shall not nationalize the investments and other assets of overseas Chinese and Hong Kong and Macao investors.

Article 9 — Where the state, based on the needs of the public interest, expropriates enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao, the expropriation shall be carried out in accordance with legal procedures and corresponding compensation shall be provided.

Article 10 — The lawful profits obtained from investment, other lawful income and funds after liquidation of overseas Chinese and Hong Kong and Macao investors may be remitted abroad in accordance with law.

Article 11 — Machinery and equipment, production vehicles and office equipment imported by enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao within their total investment for their own needs, as well as reasonable quantities of daily necessities and means of transport brought in for personal use by overseas Chinese and compatriots from Hong Kong and Macao while working in the enterprise, shall be exempt from import customs duties and the consolidated industrial and commercial tax, and from the requirement of obtaining import licenses.

Raw materials, fuels, components, parts, elements and fittings imported by enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao for the production of export products shall be exempt from import customs duties and the consolidated industrial and commercial tax, and from the requirement of obtaining import licenses, and shall be subject to customs supervision. Where the above imported materials and parts are used for products sold within the territory, the import procedures shall be completed in accordance with state provisions, and taxes shall be paid in accordance with the provisions.

Export products produced by enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao shall, except those whose export is restricted by the state, be exempt from export customs duties and the consolidated industrial and commercial tax.

Article 12 — Enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao may borrow from financial institutions within the territory or from financial institutions outside the territory, and may mortgage or pledge their assets and rights and interests.

Article 13 — With respect to enterprises wholly owned by overseas Chinese and Hong Kong and Macao investors, the operation period shall be determined by the investors themselves; with respect to equity joint ventures and contractual joint ventures, the operation period shall be determined through negotiation by the parties to the joint venture or cooperation, or no operation period may be specified.

Article 14 — The composition of the board of directors and the appointment of the chairman of an equity joint venture, and the composition of the board of directors or joint management institution and the appointment of the chairman or the head of the joint management institution of a contractual joint venture, may be

determined through negotiation by the parties to the joint venture or cooperation by reference to their respective capital contribution ratios or cooperation conditions.

Article 15 — Enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao shall conduct their business and management activities in accordance with the approved contracts and articles of association. The autonomy of enterprises in business and management shall not be interfered with.

Article 16 — Overseas Chinese and compatriots from Hong Kong and Macao investing within the territory, as well as technical and managerial personnel hired from outside the territory by enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao, may apply for certificates permitting multiple entries and exits.

Article 17 — Overseas Chinese and Hong Kong and Macao investors investing within the territory may entrust relatives or friends within the territory to act as their agents. The agent shall hold a power of attorney with legal effect.

Article 18 — In areas where enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao are concentrated, overseas Chinese and Hong Kong and Macao investors may apply to the local people's government to establish associations of overseas Chinese and Hong Kong and Macao investors.

Article 19 — Where overseas Chinese and Hong Kong and Macao investors establish equity joint ventures or contractual joint ventures within the territory, the joint venture or cooperation parties within the territory shall be responsible for the application; where they establish enterprises wholly owned by themselves, the application shall be made directly by the investors, or through relatives, friends or consulting service institutions within the territory entrusted by them. Applications for the establishment of enterprises by overseas Chinese and Hong Kong and Macao investors shall be uniformly accepted by the local foreign economic relations and trade department or the examination and approval authority designated by the local people's government.

The examination and approval of enterprises invested in by overseas Chinese and compatriots from Hong Kong and Macao shall be handled in accordance with the powers prescribed by the State Council. The foreign economic relations and trade departments at all levels or the examination and approval authorities designated by local people's governments shall decide whether to approve or not within 45 days from the date of receiving all application documents.

The applicant shall, within 30 days from the date of receiving the approval certificate, apply to the administration for industry and commerce for registration and obtain a business license in accordance with the relevant registration administration measures.

Article 20 — Disputes arising from the performance of contracts, or related to contracts, in the investment of overseas Chinese and Hong Kong and Macao investors within the territory shall, as far as possible, be resolved by the parties through consultation or mediation.

Where the parties are unwilling to consult or mediate, or consultation or mediation fails, the dispute may be submitted to an arbitration institution within the territory or another arbitration institution for arbitration in accordance with the arbitration clause in the contract or a written arbitration agreement reached subsequently.

Where the parties have not included an arbitration clause in the contract, nor reached a written arbitration agreement subsequently, they may bring an action in a people's court.

Article 21 — The Ministry of Foreign Economic Relations and Trade shall be responsible for the interpretation of these Provisions.

Article 22 — These Provisions shall take effect as of the date of promulgation.

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