

The Ministry of Commerce of the People's Republic of China

[2004] No. 8

Measures for the Administration on Foreign Investment in Commercial Fields has been examined and approved at the sixth executive meeting of the Ministry of Commerce of the People's Republic of China and shall be promulgated. It shall be implemented as of June 1, 2004.

Bo Xilai, Minister
April 16, 2004

Measures for the Administration on Foreign Investment in Commercial Fields

Article 1 For the purpose of further expanding the open-up to the outside world and improving the construction of market circulation system, the present Measures are hereby 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 Contractual Joint Ventures, Law of the People's Republic of China on Wholly Foreign-owned Enterprises, and the Company Law, and other relevant laws and administrative regulations.

Article 2 Where a foreign company, enterprise and other economic organization or individual (hereinafter referred to as "foreign investors") establishes foreign-funded commercial enterprises within the territory of China and engages in commercial business, the present Measures shall be observed.

Article 3 The "foreign-funded commercial enterprises" shall refer to the enterprises with foreign investment which undertake the following commercial activities:

1. Commission agency: agents, brokers, auctioneers or other wholesalers for sale of goods, who sell goods of someone else and provide relevant attached services through collecting fees on the basis of contract;
2. Wholesale: Selling goods to retailers, customers of industry, commerce and organizations, or to other wholesalers or providing relevant attached services;
3. Retail: Selling goods for consumption and use of individuals or groups or providing relevant attached services in fixed places or through television, telephone, mail order, internet, and automats; or
4. Franchising: vesting other people with using its trademark, trade firm, or mode of management by signing contract for the purpose of gaining remunerations or franchising fees.

Foreign companies, enterprises, and other economic organizations or individuals shall carry out business activities as prescribed in items 1, 2, 3, and 4 of the preceding paragraph through foreign-funded enterprises they establish in China.

Article 4 Foreign-funded commercial enterprises shall abide by laws, administrative regulations and the relevant rules of the People's Republic of China. Their legitimate business activities and legal rights and interests shall be subject to the protection of Chinese laws.

Article 5 Competent commerce departments of the state shall make supervision over and administration on foreign investment in commercial fields and the business activities of foreign-funded commercial enterprises according to laws.

Article 6 Foreign investors of the foreign-funded commercial enterprises shall have good credit and no history in violation of Chinese laws, administrative regulations and relevant rules. Foreign investors with substantial financial strength, advance experiences, marketing techniques in business management, and broad international marketing networks shall be encouraged to establish foreign-funded commercial enterprises.

Article 7 Foreign-funded commercial enterprise shall meet the following conditions:

1. The minimum registered capital shall accord with the relevant provisions of the Company Law.
2. Conforming to the relevant provisions on the registered capital and total investment of the enterprises with foreign investment. And
3. The term of operation of a foreign-funded commercial enterprise shall not exceed 30 years in general, and the term of operation of a foreign-funded commercial enterprise which is established in the middle and western regions shall not exceed 40 years in general.

Article 8 Foreign-funded commercial enterprise shall meet the following conditions when opening up a store:

1. Where it applies for establishing a store when applying for establishing a commercial enterprise, it shall follow the relevant provisions on city development and urban commercial development. And
2. Where a established foreign-funded commercial enterprise applies for establishing additional stores, it shall meet the following conditions in addition to meeting the requirements of item 1:
 - (1) Participating in the joint annual examination on enterprises with foreign investment and having passed the annual examination; and
 - (2) The registered capital of the enterprise has been fully paid.

Article 9 Foreign-funded enterprises may deal with the following business upon approval:

1. For the foreign-funded commercial enterprises that undertake retailing business:
 - (1) Retailing;
 - (2) Importing of self-managed goods;
 - (3) Purchasing domestic products for export; and
 - (4) Other relevant businesses. And
2. For the foreign-funded commercial enterprises that undertake wholesaling business:
 - (1) Wholesaling;
 - (2) Commission agency (excluding auction);
 - (3) Importing and exporting of goods; and
 - (4) Other relevant businesses.

A foreign-funded commercial enterprise may authorize others to open stores by franchising.

A foreign-funded commercial enterprise may, upon approval, undertake one kind or several kinds of sales businesses. The kinds of goods it manages shall be specified in the contents regarding business scope as prescribed in the contract or articles of association.

Article 10 The following procedures shall be followed when a foreign-funded commercial enterprise is to be established or opens up stores:

1. One-off application and approval of the start-up, feasibility study report and establishment of foreign-funded commercial enterprises.

2. Except the provisions in items (3) and (4) of Article one of the present Article, the investors of the foreign-funded commercial enterprises to be established and the established foreign-funded commercial enterprises that apply for opening up stores shall submit respectively the application documents as prescribed in Article 12 and Article 13 to the competent commerce department at the provincial level where the foreign-funded commercial enterprise makes registration. The said competent commerce department at the provincial level shall, after making preliminary examination on the documents submitted, report to the Ministry of Commerce within one month after the date of receiving all the application documents. The Ministry of Commerce shall make decision on whether to approve the application within three months after the date of receiving all the application documents. If it approves the establishment, the Certificate of Approval for Foreign-funded Enterprises shall be issued; otherwise, the reasons thereof shall be explained.

The Ministry of Commerce may authorize the competent commerce departments at the provincial level to examine and approve the foregoing applications in accordance with the present Measures.

3. Where a foreign-funded commercial enterprise which undertakes the retail business opens up stores within the administrative region at the provincial level of its locality, and meets the following conditions and its business scope does not relate the sale of television, telephone, mail order, internet, or automats, and the goods as enumerated in Articles 17 and 18 of the present Measures, the said competent commerce department of the province shall examine and approve it within the purview of examination and approval and report it to and put it on records at the Ministry of Commerce.

(1) The business area of a single store does not exceed 3,000 square meters, and the number of stores is no more than three, and the total number of the similar stores established by foreign investors of the stores within China through the foreign-funded commercial enterprises they have established is no more than thirty; and

(2) The business area of a single store does not exceed 300 square meters, and the number of stores is no more than thirty, the total number of similar stores opened in China by foreign investors of these stores through the foreign-funded commercial enterprises they have established is no more than three hundred. And

4. Where the owners of the trademark or business name of a sino-foreign equity joint venture or cooperative commercial enterprise are Chinese-funded enterprises or Chinese natural persons, and the Chinese investors have the controlling shares in the foreign-funded commercial enterprise, and the business scope of the foreign-funded commercial enterprise does not relate the goods as enumerated in Articles 17 and 18 of the present Measures, its applications for establishment and opening stores shall be examined and approved by the competent commerce department at the provincial level where the enterprise is located. If a store is opened in a different province, the opinions of the competent commerce department at the level of the province where the store is to be located shall also be consulted.

The competent commerce department at the provincial level shall not transfer the power for examination and approval as prescribed in items (3) and (4) of paragraph 1 of the present Article by itself to a lower level without the authorization of the Ministry of Commerce.

Article 11 The investors shall, within one month after receiving the

certificate of approval, go through the registration formalities at the administrative department of industry and commerce together with the Certificate of Approval for Foreign-funded Enterprises.

Article 12 The following documents shall be submitted when applying for establishing a foreign-funded commercial enterprise:

1. Application letter;
2. Feasibility study report signed by all the investors together;
3. Contract, articles of association (for a foreign-funded commercial enterprise, only the articles of association should be submitted) and the attachment;
4. Bank credit certificates of all investors, registration certificate (photocopy), certificate of the legal representative (photocopy), if the foreign investor is an individual, his/her identity certificate shall be provided;
5. The audit report of all investors in the recent year, which is audited by accountant firms;
6. The evaluation report on state-owned assets invested into the sino-foreign equity joint venture or contractual joint venture commercial enterprises by Chinese investors;
7. Catalogues of import and export goods of the planned foreign-funded commercial enterprise;
8. Name list of the members of the board of directors of the planned foreign-funded commercial enterprise and the power of attorney for directors of each investor;
9. Notice of pre-approval of the enterprise name as issued by the administrative department of industry and commerce;
10. The certificate documents (photocopy) of the usufruct of the land used for the planned store and (or) house lease agreement (photocopy), except when the business area of the store to be opened is less than 3,000 square meters; and
11. The documents of statement in conformity with the requirements for city development and urban commercial development as issued by the competent commerce department of the government at the locality of the store.

In case the documents are signed by a person who is not the legal representative, the power of attorney of the legal representative shall be showed.

Article 13 Where an already established foreign-funded commercial enterprise applies for opening a store, it shall submit the following documents:

1. Application letter;
2. The revised contract or articles of association shall be submitted in case the amendments to the contract or articles of association are involved;
3. Feasibility study report on opening the store;
4. Resolutions of the board of directors on opening the store;
5. The audit report of the enterprise in the recent one year;
6. The capital verification report of the enterprise (photocopy);
7. Registration certificate (photocopy) of all the investors, and the certificate of the legal representative (photocopy);
8. Certificate documents of the usufruct of the land that is used for the store to be opened and (or) house lease agreement (photocopy), except when the business area of the store opened is less than 3,000 square meters; and
9. The documents of statement in conformity with the requirements for city development and the commercial development of the city as issued by the government where the planned store is located.

In the case that the document is signed by someone who is not the legal

person, the power of attorney of the legal representative shall be issued.

Article 14 The license contract for use of a trademark or a business name, technology transfer contract, management contract and service contract signed by a foreign-funded commercial enterprise, and other legal documents shall be submitted as the attachment of the contract (for a foreign-funded commercial enterprises, it shall be deemed as the attachment of the articles of association).

Article 15 Foreign-funded commercial enterprises shall, when opening up a store, obtain the land for commercial use by way of public invitation of bidding, auction or listing in accordance with the provisions of the relevant laws and administrative regulations of the state on land management.

Article 16 Where a foreign-funded commercial enterprise deals with goods on which the state has special provisions or import and export goods involving quota or license administration, it shall go through the formalities in accordance with the relevant state provisions.

Article 17 Foreign-funded commercial enterprises shall, when managing the following goods, conform to the following prescriptions in addition to the provisions of the present Measures:

Where a foreign-funded commercial enterprise manages books, newspapers or periodicals, it shall accord with the Measures for the Administration of Foreign-funded Distribution Enterprises of Books, Newspapers, or Periodicals;

Where a foreign-funded commercial enterprise manages gas station and undertakes retail of refined oil, it shall have stable channel of supply of refined oil, conform to the construction plan of the local oil station, with the business establishments thereof corresponding with the state standards and the provisions on computation and checking procedures, and meet the requirements for fire control and environmental protection, etc. The specific implementation measures shall be formulated by the Ministry of Commerce separately.

Where a foreign-funded commercial enterprise manages drugs, it shall conform to the relevant standards for the administration of drug sale. The specific implementation measures shall be formulated by the Ministry of Commerce separately.

Where a foreign-funded commercial enterprise manages automobiles, it shall manage within the approved business scope. The specific implementation measures shall be formulated by the Ministry of Commerce separately.

Except the specific provisions in Article 18 of the present Measures and the present Article, if foreign investors establish commercial enterprises of farm products and by-products, and agricultural production materials, they shall not be restricted in region, proportion of share, and the amount of investment.

No wholesaling foreign-funded commercial enterprises may manage drugs, pesticides and agricultural films before December 11, 2004, nor shall they manage fertilizers, refined oil and crude oil before February 11, 2006.

No retailing foreign-funded enterprises may manage drugs, pesticides, agricultural films and refined oil before December 11, 2004, nor shall they manage fertilizers before December 11, 2006.

No wholesaling foreign-funded commercial enterprises may manage salt or tobacco, and no retailing foreign-funded commercial enterprises may manage tobacco.

Article 18 Under the circumstance that the same foreign investor opens more than thirty stores accumulatively in China, if the goods it manages include books, newspapers, magazines, automobiles (this restriction shall be cancelled

from December 11, 2006), drugs, pesticides, agricultural films, fertilizers, refined oils, food, vegetable oil, sugar, cotton, and etc., which are of different brands and come from different suppliers, the proportion of capital contribution of the foreign investors shall not exceed 49%.

Article 19 Where a foreign-funded commercial enterprise authorizes others to open up stores by way of franchising, it shall, in addition to observing the provisions of the present Measures, observe the special provisions of the state on franchising, if any.

Article 20 Where a foreign-funded commercial enterprise manages auction business, it shall accord with the Auction Law, Laws on Cultural Relics, and other relevant laws, and shall be examined and approved by the Ministry of Commerce. The specific implementation measures shall be formulated separately.

Article 21 Establishment of foreign-funded commercial enterprises shall be allowed from December 11, 2004.

Article 22 The regions where a foreign-funded retail commercial enterprise and its stores are to be established shall be restricted to the provincial capital cities, metropolis of autonomous regions, municipalities directly under the Central Government, cities directly under state planning, and special economic zones before December 11, 2004, and the regional restrictions shall be cancelled at December 11, 2004.

Regional restrictions on foreign-funded wholesaling commercial enterprises shall be cancelled at the date of implementation of the present Measures.

Article 23 Where an foreign-funded commercial enterprise invests in commercial fields within the territory of China, it shall accord with the Interim Provisions on Investment of Foreign-funded Enterprises in China, and refer to the present Measures.

Article 24 Foreign-funded enterprises undertaking the business activities as enumerated in Article 3 of the present Measures other than foreign-funded commercial enterprises, shall conform to the provisions of the present Measures, and alter by law the business scope accordingly.

Article 25 Investors from Hong Kong Special Administrative Region, Macao Special Administrative Region, and from Taiwan region, who invest to establish commercial enterprises in other provinces, autonomous regions, and municipalities directly under the Central Government, shall refer to the present Measures except for the following prescriptions:

1. Commercial service providers of Hong Kong and Macao may establish foreign-funded commercial enterprises in the Mainland after January 1, 2004.
2. The regional scope of retail enterprises established in the Mainland by Hong Kong and Macao commercial service providers shall be extended to cities at the prefecture level, and the cities at the county level in Guangdong province.
3. Commercial service providers of Hong Kong and Macao may apply after January 1, 2004 to establish commercial enterprises that undertake automobile retail business according to the relevant articles of the present Measures, but their average sales volume per annum in the past three years before application shall be no less than one hundred million dollars; and the amount of capital in the previous year before application shall be no less than ten million dollars; the minimum registered capital of an automobile retailing enterprise, which is established in the Mainland shall be RMB ten million Yuan, and the minimum registered capital of an automobile retailing enterprise, which is established in the middle and western districts shall be RMB six million Yuan.
4. Chinese citizens among the Hong Kong and Macao permanent residents are

allowed to establish individual business according to relevant laws, regulations and rules to undertake commercial retail activities (excluding franchising), the business areas thereof shall not exceed 300 square meters. And

5. The Hong Kong/Macao commercial service providers as mentioned in this Article shall correspond with the definitions of and the relevant requirements for "service providers" as prescribed in the "Mainland/Hong Kong Closer Economic Partnership Arrangements" and the "Mainland/Macao Closer Economic Partnership Arrangements".

Article 26 Foreign-funded commercial enterprises shall be encouraged to take part in the relevant trade associations so as to strengthen self-discipline of the enterprises.

Article 27 The power to interpret the present Measures shall remain with the Ministry of Commerce.

Article 28 The present Measures shall be implemented as of June 1, 2004.

Article 29 The Measures for Trial Implementation of the Foreign-funded Commercial Enterprises as promulgated jointly by the former State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation shall be repealed as of the date of the implementation of the present Measures.