

Measures for the Administration on Foreign Investment in Commercial Fields

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 epdf/e03411.pdf B3, A5 Foreign Investment, Business Enterprise, qualification, registered capital, Total Investment Amount, Operating Period, Establishment of Stores e03411 Measures for the Administration on Foreign Investment in Commercial Fields .

Article 1

In order to further expand the open-up to the outside world and improve 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 China territory and undertakes business activities, 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 business activities:

1. Commission agency: selling agents, brokers, auctioneers or other wholesalers for goods, who sell goods of other people and provide relevant attaching 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 attaching services;
 3. Retail: providing goods for consumption and use of individuals or groups or offering relevant attaching services in the fixed places or through television, telephone, mail order, internet, and automats;
 4. Franchising: authorizing other people with using its trademark, trade firm, or mode of management through signing contract for gaining remunerations or franchising fees.
- Foreign companies, enterprises, and other economic organs or individuals shall carry out the business activities as prescribed in items 1, 2, 3, and 4 of the preceding paragraph through foreign-funded enterprises established within 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 proper business activities and legal rights and interests shall be subject to the protection of the Chinese laws.

Article 5

The 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 law.

Article 6

The foreign investors of the foreign-funded commercial enterprises shall have good credit standing, and have no acts in violation of Chinese laws, administrative regulations and the relevant rules. Foreign investors who have stronger economic power, advance experiences and marketing technology in business management, and broad international marketing networks shall be encouraged to establish foreign-funded commercial enterprises.

Article 7

A foreign-funded commercial enterprise shall meet the following requirements:

1. The minimum registered capital shall conform to 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.
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 that is established in the middle and western areas shall not exceed 40 years in general.

Article 8

A foreign-funded commercial enterprise shall meet the following requirements when opening a store:

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

Article 9

Foreign-funded enterprises may operate the following business upon approval: 1. For the foreign-funded commercial enterprises that undertake retailing business:

- (1) Retailing of commodities;
- (2) Importing of self-managed commodities;
- (3) Purchasing domestic products for export;
- (4) Other relevant matching businesses. And 2. For the foreign-funded commercial enterprises that undertake wholesaling business:
 - (1) Wholesaling of commodities;
 - (2) Commission agency (excluding auction);
 - (3) Importing and exporting of goods;
 - (4) Other relevant matching businesses. A foreign-funded commercial enterprise may authorize others to open stores by way of franchising. A foreign-funded commercial enterprise may, upon approval, undertake one kind or several kinds of sales businesses. The kinds of commodities 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 handling the establishment and opening of stores by a foreign-funded commercial enterprise:

1. The project initiation, feasibility study report of the foreign-funded enterprise, and the report and verification on the establishment of the enterprises once altogether.
2. Except the provisions in items (3) and (4) of paragraph one of the present Article, the investors of the foreign-funded commercial enterprises to be established and the already established foreign-funded commercial enterprises that apply for opening stores shall submit respectively the application documents as prescribed in Article 12 and Article 13 to the competent commerce department at the level of the province where the foreign-funded commercial enterprise makes registration. The said competent commerce department at the provincial level shall, after making preliminary examination on the document submitted, report to the Ministry of Commerce within one month from the date of receiving all the application documents. The Ministry of Commerce shall make decision on whether to approve the application within 3 months from the date of receiving all the application documents. If it approves the establishment, the Certificate of Approval for Foreign-funded Enterprises shall be issued; if it does not approve it, 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 stores within the administrative region at the level of the province of its locality, and meets the following conditions and its business scope does not concern the sale of television, telephone, mail order, internet, or automats, and the commodities 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 power of its 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 does not exceed 3, 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 does not exceed 30;

- (2) The business area of a single store does not exceed 300 square meters, and the number of stores does not exceed 30, the total number of similar stores opened in China by foreign investors of these stores through the foreign-funded commercial enterprises they have established does not exceed 300.

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 concern the commodities 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 level of the province 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 planned store is 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 for industry and commerce upon the strength of 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 one year, which is audited by accountant firms;
6. The evaluation report on state-owned assets invested into the Sino-equity joint venture or contractual joint venture commercial enterprises by Chinese investors;
7. Catalogues of import and export commodities 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 for industry and commerce;
10. The certificate documents (photocopy) of the use right 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 that the documents are signed by a person who is not the legal representative, the power of attorney of the legal representative shall be issued.

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 use right 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 case the document is signed by the person who is not the legal representative, 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 deemed as the attachment of the contract (for a foreign-funded commercial enterprises, it shall be deemed as the attachment of the articles of association) and be submitted along with all the other documents.

Article 15

The foreign-funded commercial enterprises shall, when opening 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 manages the commodities on which the state has special provisions and the import and export goods involving quota or license administration, it shall go through the formalities in accordance with the relevant state provisions.

Article 17

A foreign-funded commercial enterprise shall, when undertaking the following commodities, conform to the following prescriptions in addition to the provisions of the present Measures: Where a foreign-funded commercial enterprise undertakes books, newspapers or periodicals, it shall conform to the Measures for the Administration of Foreign-funded Distribution Enterprises of Books, Newspapers, or Periodicals; Where a foreign-funded commercial enterprise undertakes gas station and deals with retail of refined oil, it shall have stable channel for supply of refined oil, conform to the construction plan of the local oil station, with the business establishments thereof corresponding with the existing state standards and the provisions on computation and checking procedures, and meet the requirements for fire control and environmental protection, etc. In addition, the specific implementation measures shall be formulated by the Ministry of Commerce. Where a foreign-funded commercial enterprise manages drugs, it shall conform to the relevant standards for the administration of the drug sale. In addition, the specific implementation measures shall be formulated by the Ministry of Commerce. Where a foreign-funded commercial enterprise manages automobiles, it shall manage within the approved business scope. In addition, the specific implementation measures shall be formulated by the Ministry of Commerce. Except the special 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 by the 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 30 stores accumulatively within 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 other commodities, and the above commodities 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 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 additionally.

Article 21

The 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 may 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 after December 11, 2004. Regional restrictions on foreign-funded wholesaling commercial enterprises shall be cancelled from the date of implementation of the present Measures.

Article 23

Where an enterprise with foreign investment 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

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

Article 25

Where 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 in addition to the following prescriptions:

1. From January 1, 2004, commercial service providers of Hong Kong and Macao may establish foreign-funded commercial enterprises in the Mainland.
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. From January 1, 2004, the commercial service providers of Hong Kong and Macao may apply according to the relevant articles of the present Measures to establish commercial enterprises that undertake automobile retail business, 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 10 million dollars; the minimum registered capital of an automobile retailing enterprise, which is established in the Mainland shall be RMB 10 million Yuan, and the minimum registered capital of an automobile retailing enterprise, which is established in the middle and western districts shall be RMB 6 million Yuan.
4. The Chinese citizens among the Hong Kong and Macao permanent residents are allowed to establish individual business according to the relevant laws, regulations and rules to undertake commercial retail activities (excluding franchising), the business areas thereof shall not exceed 300square meters.
5. The Hong Kong/Macao commercial service providers as mentioned in this Article shall conform to 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

The foreign-funded commercial enterprises shall be encouraged to join in the relevant trade associations to strengthen self-discipline of the enterprises.

Article 27

The responsibility to interpret the present Measures shall be remained 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 abolished as of the date of the implementation of the present Measures.