

Notice on Issues relating to Strengthening Administration of Approval, Registration, Foreign Exchange and Tax Collection for Foreign Investment Enterprises

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Based on provisions of Sino-foreign Equity Joint Venture Law, Sino-foreign Cooperative Joint Venture Law, Wholly Foreign-owned Enterprise Law, Company Law, Contract Law, Regulations on Foreign Exchange Administration and other relevant laws and regulations and for the purposes of adaptation to new trends of attraction of foreign investment attraction, regulation of administration of foreign investment enterprises, assurance of proper development of foreign investment enterprises, protection of legal rights and interests local and foreign investors, notice is hereby given on issues relating to strengthening administration of approval, registration, foreign exchange and tax collection for foreign investment enterprises:

1. Examination and approval for establishment of foreign investment enterprises and contracts and articles of association (including amendments to contracts and articles of association) shall be carried out in accordance with provisions of relevant State laws and regulations and existing examination and approval procedures for foreign investment enterprises.

2. Based on provisions of existing laws and regulations, the percentage of capital contribution by foreign investors in Sino-foreign equity joint venture enterprises and Sino-foreign cooperative joint venture enterprises shall not be lower than 25%. Examination, approval and registration for foreign investment enterprises with less than 25% of capital contribution by foreign investors shall be carried out in accordance with existing examination, approval and registration procedures for establishment of foreign investment enterprises, unless otherwise provided by laws and regulations. The "Approval Certificate for Foreign Investment Enterprise" issued to such enterprises shall state "foreign investment percentage below 25%". The "Business

Licence for Foreign Investment Enterprise" issued to such enterprises upon registration shall state "foreign investment percentage below 25%".

3. Foreign investment enterprises with less than 25% of capital contribution by foreign investors shall not enjoy tax reduction and exemption for equipment and goods imported for self-consumption under their overall investment and other preferential tax policies for foreign investment enterprises, unless otherwise provided by laws and regulations.

Foreign investment companies limited by shares which enjoy preferential treatment for foreign investment enterprises, may continue to enjoy such treatment in accordance with relevant regulations upon increase of capital or transfer of shares to foreign investors.

4. Foreign investors of foreign investment enterprises with less than 25% of capital contribution shall complete capital contribution within 3 months from the issue of business licence where the capital contribution is made in cash and within 6 months from the issue of business licence if the capital contribution is in kind or in the form of industrial property rights.

5. Local enterprises with shares acquired by foreign investors shall apply for examination and approval for establishment as a foreign investment enterprise in accordance with provisions of relevant State laws and regulations and existing examination and approval procedures for foreign investment enterprises and shall comply with foreign investment industrial policies. Upon approval, the "Approval Certificate for Foreign Investment Enterprise" shall be issued by the examination and approval authorities and the "Business Licence for Foreign Investment Enterprise" shall be issued by the industrial and commercial administrative department.

Chinese individual shareholders holding shares in such local enterprises for more than 1 year prior to conversion of such enterprise into a foreign investment enterprise may continue to hold shares as Chinese investors in the foreign investment enterprise.

Chinese individuals shall not establish foreign investment enterprises with any foreign company, enterprise, commercial organisation or individual through the means of establishment or acquisition.

6. Foreign investors acquiring shares in local enterprises shall make full payment of the acquisition amount within 3 months from the issue of "Business Licence for Foreign Investment Enterprise". Payment of 60% or above of the acquisition shall be made within 6 months from the issue of business licence where approval has been granted by examination and approval authorities to such investors who require an extension under exceptional circumstances and the balance amount shall be paid up within 1 year. Such investors shall receive distributed earnings in accordance with the proportion of their paid-up capital contribution. Such investors with controlling shareholding shall not participate in decision-making or consolidate their interests in shares and assets of such enterprises into their own financial statements prior to full payment of the acquisition amount. The "Foreign Exchange Registration Certificate for Foreign Investment" issued by the foreign exchange administrative department at the location of the transferor shall be valid certification of payment of acquisition amount by the foreign investor.

Foreign investors acquiring shares in local enterprises shall stipulate the deadline for payment of acquisition amount in the share transfer agreement with the transferor. Approval shall not be granted by examination and approval authorities where the relevant deadline is not stipulated in the agreement.

7. Foreign investment enterprises shall complete foreign exchange registration with the foreign exchange administrative department at the place of registration with the "Approval Certificate for Foreign Investment Enterprise" and "Business Licence for Foreign Investment Enterprise".

Examination and approval authorities shall copy approval documents for share transfer in respect of acquisition of shares in local enterprises by foreign investors to the foreign exchange administrative departments where the local enterprise and the transferor are located. The foreign exchange administrative department at the location of the transferor shall administer foreign exchange receipt.

8. Provisions of this Notice shall be strictly implemented by local examination and approval authorities, industrial and commercial registration authorities and foreign exchange administrative departments. Enterprises which do not comply with examination and approval procedures stipulated in this Notice with effect from implementation of this Notice shall not be approved or granted industrial and commercial registration or foreign exchange registration.

Enterprises with foreign capital contribution of less than 25% established prior to the implementation of this Notice shall complete additional approval and registration formalities within 6 months from the implementation of this Notice. Enterprises which do not complete additional formalities in accordance with regulations shall be ordered by industrial and commercial registration authorities to complete the formalities within a deadline, failing which penalties shall be imposed by industrial and commercial registration authorities in accordance with Article 63 of Regulations on Administration of Company Registration. Enterprises which do not complete the relevant formalities after penalties were imposed shall fail annual inspection for current year.

Local industrial and commercial registration authorities shall collect statistics of relevant enterprises, restructure registration jurisdiction and transfer enterprise records in accordance with provisions of this Notice. Amendments to enterprise registration following approval for supplementary formalities shall be subject to jurisdiction of registration authorities with powers to register foreign investment enterprises at the location of such enterprises.

9. Provisions of this Notice shall prevail in the event of discrepancies between provisions of earlier regulations and this Notice.

10. This Notice shall apply to Taiwan, Hong Kong and Macao investors establishing foreign investment enterprises in China.

11. This Notice shall be effective 1 January 2003.