

Regulations on Foreign Investment Guidelines

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Article 1.

These Regulations are formulated in accordance with the provisions of the relevant State laws concerning foreign investment and the requirements of industry policies, in order to provide guidelines for the direction of foreign investment in China, to enable the direction of foreign investment to conform with the planning of Chinese national economic and social development and to enhance the protection of the legal rights and interests of investors.

Article 2.

These Regulations shall apply to projects of Sino-foreign equity joint venture enterprises, Sino-foreign cooperative enterprises, and wholly foreign-owned enterprises established within the territory of China (hereinafter referred to as foreign investment enterprises) and projects of any other forms of foreign investment (hereinafter referred to as foreign investment projects).

Article 3.

The Guideline Catalogue of Foreign Investment Industries and the Catalogue of Priority Industries for Foreign Investment in Central and Western Regions shall be formulated by the State Development Planning Commission, the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation in conjunction with the relevant departments under the State Council, and shall be published upon receiving the approval of the State Council. Where, in view of the situation of economic and technological development in China, it is necessary to make certain adjustments to the Guideline Catalogue of Foreign Investment Industries or the Catalogue of Priority Industries for Foreign Investment in Central and Western Regions, they shall be revised and published by the State Development Planning Commission, the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation in conjunction with the relevant departments under the State Council in a timely manner.

The Guideline Catalogue of Foreign Investment Industries and the Catalogue of Priority Industries for Foreign Investment in Central and Western Regions shall be the basis for providing guidelines for the examination and approval of foreign investment projects and for the application of the relevant policies for foreign investment enterprises.

Article 4.

Foreign investment projects shall be classified into four categories: encouraged projects, permitted projects, restricted projects and prohibited projects.

Encouraged, restricted and prohibited foreign investment projects shall be listed in the Guideline Catalogue of Foreign Investment Industries. Foreign investment projects that do not fall within the encouraged, restricted and prohibited categories shall be classified as belonging to the category of permitted foreign investment projects. The category of permitted foreign investment projects will not be listed in the Guideline Catalogue of Foreign Investment Industries.

Article 5.

Foreign investment projects that are of any of the following types shall be classified as belonging to the encouraged category:

(1) projects which involve new agricultural technology, the comprehensive development of agriculture and industries in energy, transport and important raw materials;

(2) projects which involve high and new technology or advanced and applicable technology, or which involve new equipment or new materials capable of improving product quality and efficiency or are capable of improving the technological and economic efficiency of enterprises, or projects which produce new equipment or new materials where there is a shortage of supply in China;

(3) projects which satisfy market demand and are capable of upgrading product quality, opening up new markets, or increasing the capacity of products in international competition;

(4) projects which involve new technology and/or new equipment that is capable of saving energy and raw materials and of comprehensive utilisation of natural resources and renewable resources and prevention and control of environmental pollution;

(5) projects which are capable of taking advantage of human and natural resources in Central and Western regions and are in compliance with the State industry policies; and

(6) any other situations as provided by laws and administrative regulations .

Article 6.

Foreign investment projects that are of any of the following types shall be classified as belonging to the restricted category:

(1) projects involving technology which is outdated;

(2) projects which are not beneficial for the saving of resources and improvement of the biological environment;

(3) projects involving exploration or exploitation of specific mines, the exploitation of which is protected by the state;

(4) projects involving industries which are subject to the state policy of gradual opening up; and

(5) any other situations as provided by laws and administrative regulations.

Article 7.

Foreign investment projects that are of any of the following types shall be classified as belonging to the prohibited category:

- (1) projects which endanger national security or harm the public interest;
- (2) projects which pollute or damage the environment, harm natural resources or pose threats to human health;
- (3) projects which will occupy large tracts of farm land and are harmful to the protection and development of land resources;
- (4) projects which endanger the security of military installations and their effective use;
- (5) projects which utilise production techniques or technology indigenous to China; and
- (6) any other situations as provided by laws and administrative regulations.

Article 8.

The Guideline Catalogue of Foreign Investment Industries may provide that the foreign investment project is "for joint venture or cooperation only", or "the Chinese party shall hold a controlling share" or "the Chinese party shall hold a comparatively controlling share" in the foreign investment project.

The term "for joint venture or cooperation only" means that only a Sino-foreign equity joint venture or Sino-foreign cooperation is allowed. The term "the Chinese party shall hold a controlling share" means that the total investment of Chinese investors in a foreign investment project shall be 51% or higher. The term "the Chinese party shall hold a comparatively controlling share" means that the ratio of the total investment of Chinese investors in a foreign investment project shall be higher than the ratio of any single foreign investor.

Article 9.

Those projects within the category of encouraged foreign investment projects which involve the construction or operation of infrastructure for energy, transport and urban facilities (including coal, petroleum, natural gas, electricity, railway lines, public roads, ports, airports, urban roads, treatment of sewage water, treatment of waste, etc.) and which require substantial investment with slow returns, in addition to receiving the preferential treatment they enjoy in accordance with the relevant laws and administrative regulations, may, subject to approval, expand the scope of their operations relevant to their projects.

Article 10.

Foreign investment projects of the permitted category which directly export their entire products shall be deemed as foreign investment projects of the encouraged category. Foreign investment projects of the restricted category where the volume of sale of products for export accounts for 70% or more of the total sales volume of products, with the approval of the people's government of the province, autonomous region, directly administered municipality or city with separate planning or with the approval of the competent department under the State Council, shall be deemed as foreign investment projects of the permitted category.

Article 11.

Conditions may be relaxed for foreign investment projects of the permitted category and the restricted category that are definitely capable of exploiting the advantages of the Central and Western regions; those projects to be listed in the Catalogue of Priority Industries for Foreign Investment in Central and Western Regions may enjoy the preferential policies for foreign investment projects of the encouraged category.

Article 12.

Foreign investment projects shall, depending on the nature of the projects, be examined, approved or filed for the record by the development and planning departments and departments in charge of economics and trade in accordance with existing examination and approval powers. Contracts and articles of association of the foreign investment enterprises shall be examined, approved by, or filed for the record with departments in charge of foreign trade and economics. Those restricted foreign investment projects which fall within the maximum amount limits shall be examined and approved by the corresponding competent department of the people's government in the province, autonomous region, directly administered municipality or city with separate planning, and reported, at the same time, to the competent department and the department in charge of the relevant industry at the higher level, to be filed for the record. The examination and approval power for such projects must not be delegated to organs at lower levels. Foreign investment projects in the fields of service trades which are subject to the policy of gradual opening up shall be examined and approved in accordance with the relevant provisions of the State.

For foreign investment projects which involve quotas or require licences, applications for quotas or licences must first be lodged with the departments in charge of foreign economics and trade.

Where there are other procedures and methods for examination and approval of foreign investment projects as provided by the relevant laws and administrative regulations, such procedures and methods shall apply.

Article 13.

Foreign investment projects which are examined and approved in violation of these Regulations shall be cancelled by the higher examination and approval authorities within thirty (30) working days after receipt of the relevant documents for the projects to be recorded. The contracts and articles of association of such projects shall be deemed to be invalid and the enterprise registration authorities shall refuse to register such projects and the customs offices shall refuse to handle the import and export formalities for such projects.

Article 14.

Applicants to foreign investment projects who resort to fraudulent or other improper means to gain approval for their projects shall be pursued with legal liability in accordance with the law depending on the seriousness of the circumstances. The examination and approval authority shall withdraw any approval previously granted to such projects and corresponding decisions shall be made by the relevant departments in charge in accordance with the law.

Article 15.

Personnel of an examination and approval authority who abuse their powers of office or neglect their duties shall be pursued with criminal liability in accordance with the relevant provisions on the crime of abuse of office and the crime of negligence of duties; where the circumstances are not serious enough to attract criminal punishment, the administrative discipline of "recording a serious demerits" or above shall be imposed.

Article 16.

Investment projects undertaken by overseas Chinese investors and investors from Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region shall be handled with reference to these Regulations.

Article 17.

These Regulations shall take effect from 1 April 2002. The Provisional Regulations on Foreign Investment Guidelines approved by the State Council on 7 June 1995 and promulgated on 20 June 1995 by the State Planning Commission, the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation shall be annulled simultaneously.

Non for distribution