

China - Interim Provisions on Guidance for Foreign Investment, 1995

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Interim Provisions on Guidance for Foreign Investment 1
(Jointly promulgated by Decree No.5 of the State Planning
Commission, the State Economic and Trade Commission and the
Ministry of Foreign Trade and Economic Cooperation on June 20,
1995)

Article 1 2

The following provisions are formulated in accordance with the stipulations of state laws 3
related to foreign investment and the requirements of relevant industrial policies in order
to guide foreign investment, adapt foreign investment to China's national economic and
social development programs, and adequately protect the legal rights and interests of
investors.

Article 2 4

The provisions are applicable to projects involving Sino-foreign joint ventures, cooper- 5
ative ventures and solely foreign-funded enterprises, as well as other forms of projects
involving foreign funding (hereinafter referred to as foreign-funded projects).

Article 3 6

The State Planning Commission, acting in concert with relevant State Council depart- 7
ments, will regularly compile and intermittently amend the Industrial Catalog Guiding
Foreign Investment (hereinafter referred to as the Catalog) in accordance with the pro-
visions and national economic and technological development. The Catalog will be
released with the approval of the State Council.

The Catalog shall serve as the basis for guiding the examination and approval of 8
foreign-funded projects.

Article 4 9

Projects involving foreign investment shall be divided into four categories: Projects 10
in which foreign investment shall be encouraged, permitted, restricted or prohibited
(hereinafter referred to as Group I, Group II, Group III, and Group IV).

Projects in which foreign investment shall be encouraged, restricted or prohibited are 11
listed in the Catalog. Remaining projects in which foreign investment shall be permitted
are not listed in the Catalog.

The Catalog may explicitly list projects in which exclusive foreign investment shall not 12
be allowed and projects in which state-owned assets shall take a controlling or dominant
position.

Article 5

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Projects in which foreign investment shall be encouraged are as follows:

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(1) Projects involving new agricultural technology, comprehensive agricultural development and the development of energy, communications and essential raw materials;

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(2) Projects involving new, high and advanced technology, improved products, energy and raw materials conservation, enhanced technological and economic returns of enterprises, or the production of new equipment and materials with high market demand which remains unfulfilled due to inadequate domestic production capacity;

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(3) Projects which meet the demand of international market, and help raise the grade of products, open new markets, expand overseas marketing of products and increase the export volume;

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(4) Projects involving new technologies and new equipment for the comprehensive use of resources and renewable resources, and the prevention and control of environmental pollution;

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(5) Projects which tap the advantages of human and natural resources in China's central and western regions, and which fulfill the requirements of State industrial policies;

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(6) Other projects encouraged by stipulations of State laws and administrative rules and regulations.

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Article 6

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Projects in which foreign investment shall be restricted are as follows:

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(1) Projects already developed nationally or those which have absorbed technology and developed a production capacity capable of fulfilling demand on the domestic market;

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(2) Sectors in which foreign investment is absorbed by the state on a trial basis or monopolistic industries;

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(3) Exploration and exploitation of rare and valuable mineral resources;

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(4) Industries subject to overall State planning;

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(5) Other projects restricted by stipulations of State laws and administrative rules and regulations.

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Projects in which foreign investment shall be restricted are classified as Category A or Category B in accordance with State industrial policies and the requirements of macro-economic control.

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Article 7

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Projects in which foreign investment shall be prohibited are as follows:

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(1) Projects which jeopardize state security or harm public interest;

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(2) Projects which create environmental pollution, damage natural resources or threaten the health of the people;

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(3) Those which occupy large tracts of arable land or are otherwise unfavorable to the protection and development of land resources, as well as those which are detrimental to the safety and the efficiency of the use of military installations;

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(4) Projects involving products made with the country's specific technical processes or technology;

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(5) Other projects prohibited by stipulations of State laws and administrative rules and regulations.

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Companies, enterprises, other economic entities and individuals are prohibited from setting up projects listed in the preceding article.

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Article 8

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Apart from enjoying preferential treatment in accordance with relevant State laws and administrative rules and regulations, when approved, projects in which foreign investment is encouraged shall be permitted to expand their pertinent business scope if they involve the construction and management of energy and communications facilities (coal mining, power generation, regional railway, highway and port facilities) which require large investments and long-term recovery of investment.

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Article 9

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Projects in which foreign investment is restricted shall observe relevant State laws and administrative rules and regulations, and shall be subject to the following provisions:

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(1) In cases involving Sino-foreign joint ventures, time limits for operations shall be agreed upon between pertinent parties;

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(2) In cases involving foreign-funded projects listed in Category A, the fixed assets invested by the Chinese party shall be funds or assets owned by the Chinese investor.

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Article 10

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Projects in which foreign investment is encouraged or permitted shall be examined, approved and put on file according to procedures stipulated in working regulations.

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Foreign-funded projects listed in Category A shall be examined, approved and put on file in accordance with procedures stipulated in working regulations. In cases when investment projects in Category A are below the examination and approval level determined by the State Council, such projects shall, in accordance with their construction characteristics, be examined and approved by the planning department or department in charge of the technical renovation of enterprises in related provinces, autonomous regions, municipalities directly under the Central Government or cities listed separately in state budget. The examination and approval of such projects shall not be granted to departments at lower levels. 45

Should the level of investments of projects in Category B be below the examination and approval level determined by the State Council, the letter of proposal for such projects shall be examined and approved by the department assigned by the State Council to take charge of the specific trade sector, while the feasibility study report shall, in accordance with their characteristics of construction, be examined and approved by the planning department or the department in charge of the technical renovation or enterprises in related provinces, autonomous regions, municipalities directly under the Central Government or cities listed separately on State plans. A report shall be submitted to the State Planning Commission or the State Economic and Trade Commission for record. The responsibility for examining and approving such projects shall not be transferred to any department at a lower level. However, in cases when investments in projects surpass the examination and approval level determined by the State Council, examination and approval shall be carried out in accordance with the procedures and methods in force. 46

Projects involving quotas or licenses shall apply for the quotas or licenses required from departments in charge of foreign trade and economic cooperation. 47

Additional stipulations on the procedures and methods for project examination and approval provided in relevant laws or administrative decrees or regulations shall be observed. 48

Article 11 49

In cases when foreign-funded projects in the category described in Article 6, Clause 1, export more than 70 percent of their products, when approved, such projects shall be treated as those in which foreign investment is permitted and shall not be subject to restrictions outlined in Article 9. Controls may be appropriately lifted on projects which take full advantage of the superior resources in China's central and western regions and which at the same time operate in accordance with state industrial policies. 50

Article 12 51

With regard to foreign-funded projects in violation of these provisions, departments examining and approving such projects shall cancel their approvals within 30 days after 52

receiving documents of record concerning projects concerned. The articles of association and contract of such projects shall be invalidated, enterprise registration departments shall refuse or cancel registration, and custom houses shall reject import or export procedures.

Article 13

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Any party which uses deceit or other illegal means to win approval of foreign-funded project shall bear legal responsibility in accordance with law and in line with the seriousness of the case. At the same time, the examination and approval organ shall revoke the approval. The case shall be adjudicated by the responsible department in accordance with law.

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Article 14

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Members of the staff of a department responsible for examination and approval found to have abused their power and position, resorted to fraud for personal gain, neglected their prescribed duties, or otherwise overstepped their authority shall be subject to administrative discipline or shall be held criminally responsibility in accordance with the law if the case is extremely serious and falls into requisites to constitute a crime.

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Article 15

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Projects funded by overseas Chinese, Hong Kong, Macao and Taiwan investors shall be treated in accordance with the aforementioned provisions.

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Article 16

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The State Planning Commission, the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation shall be responsible for organizing implementation of these provisions.

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Article 17

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These Provisions shall go into effect on the date of promulgation.

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