

China - Provisional Regulations of the People's Republic of China on Investment Companies Established by Foreign Investors, 1985

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Contents

Provisional Regulations of the People’s Republic of China on Investment Companies Established by Foreign Investors (Promulgated by the Ministry of Foreign Trade and Economic Cooperation on April 4, 1995, and effective upon promulgation) **1**

[Preamble] 1

Article 1 1

Article 2 1

Article 3 1

Article 4 2

Article 5 2

Article 6 3

Article 7 3

Article 8 3

Article 9 3

Article 10 3

Article 11 3

Article 12 3

Article 13 4

Article 14 4

Article 15 4

Article 16 4

Article 17 4

Article 18 4

Article 19 4

Article 20 4

Metadata **5**

 SiSU Metadata, document information 5

1 **Provisional Regulations of the People's Republic of
China on Investment Companies Established by
Foreign Investors
(Promulgated by the Ministry of Foreign Trade and
Economic Cooperation on April 4, 1995, and effective
upon promulgation)**

[Preamble]

2 With a view to promoting foreign investors to make investment in
China and introducing foreign advanced technologies and man-
agerial experience, foreign investors are permitted to establish in-
vestment companies in China in accordance with relevant Chi-
nese laws and regulations concerning foreign investment as well
as these regulations.

3 **Article 1**

4 For purposes of these Regulations, investment company refers to
a company either solely established by a foreign investor/foreign
investors (hereinafter referred to as the foreign investor) or co-
funded with a Chinese investor/Chinese investors (hereinafter re-
ferred to as the Chinese investor) in China which is engaged in
direct investment. The form of an investment company shall be
limited liability company.

5 **Article 2**

6 The following conditions shall be satisfied when applying for the
establishment of an investment company:

7 I. 1. The foreign investor shall have good financial credit and shall
possess the economic capability required by the establishment of

an investment company. The total assets of the investor one year
before the application is submitted shall be no less than US \$ 400
million. And the investor has already established, within the terri-
tory of China, enterprises with foreign investment, with the actually
paid-in contribution of registered capital exceeding US \$ 10 mil-
lion and with the project proposals for more than three projects ap-
proved, or: 2. The foreign investor shall have good financial credit
and shall possess the economic capability required by the estab-
lishment of an investment company. And the investor has already
established, within the territory of China, more than ten enterprises
with foreign investment which are engaged in production and in-
frastructure construction, with the actually paid-in contribution of
registered capital exceeding US \$ 30 million;

8 II. Where an investment company is established in the form of an
equity joint venture, the Chinese investor shall have good financial
credit and shall possess the economic capability required by the
establishment of an investment company, with the total assets of
no less than RMB100 million yuan;

9 III. The registered capital of an investment company shall be no
less than US \$ 30 million.

10 **Article 3**

11 Investors shall, in applying for the establishment of an investment
company, submit the following documents for examination and ap-
proval to the Ministry of Foreign Trade and Economic Coopera-
tion (hereinafter referred to as MOFTEC) after these documents
have been examined and approved by foreign economic relations
and trade authorities in provinces, autonomous regions, municipal-
ities directly under the central government and special cities with
independent plan where the investment company will be estab-
lished.

12 I. Project proposal of the establishment of the co-funded investment
company, feasibility study report, contract and articles of associa-
tion signed by all investors; project proposal, application form of
establishing a wholly foreign-owned enterprise, feasibility study re-
port and articles of association signed by the foreign investor of the
solely owned investment company;

13 II. Financial credit documents of all investors, copies of the regis-
tration documents and certificates and documents of the legal rep-
resentative (copies);

14 III. (Copies of) the approval certificates of the enterprises already
invested by the foreign investor, (copies of) business licenses and
(copies of) the capital verification reports issued by accountants
registered in China;

15 IV. Balance sheets of all investors in the recent three years;

16 V. Other documents required by MOFTEC.

17 The afore*-mentioned documents shall be the original documents,
unless otherwise noted as copies.

18 Documents not signed by the legal representative shall be accom-
panied by the Power of Attorney signed by the legal representa-
tive.

19 Where an intermediary organization established according to law
has been entrusted to go through the application procedures, a
Power of Attorney issued by the legal person of the investor shall
be presented.

20 **Article 4**

21 Investment contributed by the foreign investor as the registered
capital of the company shall be provided in freely convertible cur-
rency and investment contributed by the Chinese investor may be

provided in RMB yuan. The investment shall be paid within two
years from the date of the issuance of the business license.

Article 5

22 An investment company may engage in part of all of the following
23 business activities upon approval:

24 I. To make investment in areas of industry, agriculture, infrastruc-
ture and energy, etc. which are encouraged and permitted by the
state for foreign investment;

25 II. To provide the following services to the enterprises in which an
investment company has made investment (hereinafter referred to
as the enterprises), as entrusted in written form by the enterprises
(with the unanimous consent of the board of directors):

26 1. To assist the enterprises in purchasing or purchasing by proxy,
either from domestic market or from the international market, ma-
chinery, equipments* and office articles for the enterprises' own
use and raw materials, parts and components required by produc-
tion, and selling or selling by proxy the products made by the en-
terprises either on domestic or on international market and provide
after-sale services;

27 2. To balance foreign exchanges between/among the enterprises
with the consent and under the supervision of the foreign exchange
control authorities;

28 3. To assist the enterprises in recruiting employees and to pro-
vide technical training, market development and consulting ser-
vice;

29 4. To assist the enterprises in seeking for loans and to provide
guarantee.

30 III. To provide consulting service for the investors of the investment
company.

31 **Article 6**

32 For the purposes of Article 5. II of these Regulations, the enter-
33 prises in which an investment company has made investment refer
34 to:

35 I. Enterprises directly invested by the investment company or jointly
36 invested with other foreign investors and/or Chinese investors, with
37 the investment contributed by the investment company or jointly
38 contributed with other foreign investors accounting for more than
39 25% of the registered capital of the invested enterprises;

40 II. Enterprises in which the investment contributed by the invest-
ment company and other foreign investors accounts for more than
25% of the registered capital of the enterprises when the invest-
ment company has acquired part or all of the equities of its investors
or its related companies and part or all of the equities of the en-
terprises already established by other foreign investors within the
territory of the People's Republic of China.

35 An investment company may only provide the services stipulated in
Article 5.II to the enterprises, unless otherwise specially approved
by MOFTEC.

36 An investment company shall not be allowed to engage, on behalf
of its investors, in trade intermediary services in China.

37 **Article 7**

38 An investment company may provide the enterprises with financial
support as approved by the People' Bank of China.

39 **Article 8**

40 The duration of an investment company shall be verified in light of

the nature of the projects to be established by the investment com-
pany and in accordance with the state regulations concerning the
term of operation of the enterprises with foreign investment.

Article 9

41

42 An investment company, in establishing enterprises, shall go
43 through separate application procedures in light of relevant reg-
44 ulations pertaining to the authorization for approval and approval
45 procedures for enterprises with foreign investment.

Article 10

43

44 The enterprises invested by an investment company, with the in-
45 vestment in foreign currency contributed by the investment com-
46 pany or contributed jointly with other foreign investors accounting
47 for no less than 25% of the registered capital of the enterprises may
48 enjoy the treatment granted to enterprises with foreign investment.
and may be issued with certificate of approval and business license
for enterprises with foreign investment.

Article 11

45

46 Foreign investors satisfying the provisions stipulated in Article 2.
47 I. 1. of these Regulations may make investment contribution to
48 establish investment companies in the name of their wholly-owned
Subsidiaries.

Article 12

47

48 The investor, in applying for the establishment of an investment
company, shall present a letter of guarantee to the examination and

approval authority to ensure the contribution to the registered capital and technology transfer when the investment company makes investment within the territory of China. 56

49 Where an investment company is established in the name of a wholly-owned subsidiary, the parent company shall present a letter of guarantee to the examination and approval authority to ensure the finalization* of contribution to the registered capital of the investment company by its subsidiary based on the conditions approved by the examination and approval authority and to ensure the contribution to the registered capital and technology transfer when the investment company makes investment within the territory of China.

50 **Article 13**

51 Investment activities of an investment company within the territory of China shall not be restricted to the place of registration of the company.

52 **Article 14**

53 An investment company shall pay taxes according to relevant Chinese laws and regulations.

54 **Article 15**

55 An investment company shall implement its programs of project investment in an earnest manner and report the investment of each year to MOFTEC for recordation within two months of the following year.

Article 16

An investment company and the enterprises invested by the investment company are legal persons or entities independent to each other and their business contacts shall be handled as those between independent enterprises. 57

Article 17

An investment company and the enterprise invested by the investment company shall abide by Chinese laws and regulations and shall not take any measures to evade tax and administration. 58

Article 18

These Regulations shall also apply when investors from Taiwan, Hong Kong and Macao regions make investment on the Mainland of China to establish investment companies. 59

Article 19

MOFTEC shall be responsible for the interpretation of these Regulations. 60

Article 20

These Regulations shall enter into force upon promulgation. 61

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