

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

MOFTEC

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# **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]***

With a view to promoting foreign investors to make investment in China and introducing foreign advanced technologies and managerial experience, foreign investors are permitted to establish investment companies in China in accordance with relevant Chinese laws and regulations concerning foreign investment as well as these regulations.

## **Article 1**

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 referred to as the Chinese investor) in China which is engaged in direct investment. The form of an investment company shall be limited liability company.

## **Article 2**

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

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 territory of China, enterprises with foreign investment, with the actually paid-in contribution of registered capital exceeding US \$ 10 million and with the project proposals for more than three projects approved, or: 2. The foreign investor shall have good financial credit and shall possess the economic capability required by the establishment 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 infrastructure construction, with the actually paid-in contribution of registered capital exceeding US \$ 30 million;

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;

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

million.

### Article 3

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

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

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II. Financial credit documents of all investors, copies of the registration documents and certificates and documents of the legal representative (copies);

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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;

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

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V. Other documents required by MOFTEC.

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

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Documents not signed by the legal representative shall be accompanied by the Power of Attorney signed by the legal representative.

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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.

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### Article 4

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Investment contributed by the foreign investor as the registered capital of the company shall be provided in freely convertible currency 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.

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## Article 5

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

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

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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):

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

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

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3. To assist the enterprises in recruiting employees and to provide technical training, market development and consulting service;

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

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

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## Article 6

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For the purposes of Article 5. II of these Regulations, the enterprises in which an investment company has made investment refer to:

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

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II. Enterprises in which the investment contributed by the investment company and other foreign investors accounts for more than 25% of the registered capital of the enterprises when the investment 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 enterprises already established by other foreign investors within the territory of the People's Republic of China.

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

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

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## Article 7

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

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## Article 8

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The duration of an investment company shall be verified in light of the nature of the projects to be established by the investment company and in accordance with the state regulations concerning the term of operation of the enterprises with foreign investment.

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## Article 9

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An investment company, in establishing enterprises, shall go through separate application procedures in light of relevant regulations pertaining to the authorization for approval and approval procedures for enterprises with foreign investment.

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## Article 10

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The enterprises invested by an investment company, with the investment in foreign currency contributed by the investment company or contributed jointly with other foreign investors accounting for no less than 25% of the registered capital of the enterprises may 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.

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## Article 11

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

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## Article 12

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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.

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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

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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.

**Article 13** 50

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

**Article 14** 52

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

**Article 15** 54

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. 55

**Article 16** 56

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** 58

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. 59

**Article 18** 60

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. 61

**Article 19** 62

MOFTEC shall be responsible for the interpretation of these Regulations. 63

**Article 20**

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These Regulations shall enter into force upon promulgation.

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