

China - Provisional Regulations on the Establishment of Foreign-Funded Joint Stock Companies Limited, 1995

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(Promulgated by Decree No.1 of the Ministry of Foreign Trade and Economic Cooperation on January 10, 1995)** 1

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1 **Provisional Regulations on the Establishment of
Foreign-Funded Joint Stock Companies Limited
(Promulgated by Decree No.1 of the Ministry of
Foreign Trade and Economic Cooperation on January
10, 1995)**

2 **Article 1**

3 In order to further expand international economic and technologi-
cal cooperation and exchanges and introduce foreign investment
to boost the development of the socialist commodity economy, for-
eign companies, enterprises and other economic entities or indi-
viduals (referred to hereinafter as foreign shareholders) are al-
lowed to jointly set up foreign funded joint stock companies limited
(referred to hereinafter as company) in China jointly with Chinese
companies, enterprises and other economic entities or individuals
(referred to hereinafter as Chinese shareholders), under the prin-
ciple of mutual benefit.

4 **Article 2**

5 A foreign-funded joint stock company limited referred to in these
regulations shall be a business legal person set up in accordance
with these regulations and whose capital stock is made up of equal
value shares contributed by both domestic and foreign sharehold-
ers with total value of the shares purchased and held by the for-
eign shareholders exceeding 25% of the company's total registered
capital. The company bears its liabilities with its total assets and
each shareholders bears the liabilities in proportion to the shares
held.

6 **Article 3**

7 The companies shall be a form of the foreign-funded enterprise
(FfEs) and bound by the State's related laws and regulations on
FfEs.

8 **Article 4**

9 The companies should be set up in accordance with the State's
related policies and regulations on FfEs. The State encourages
the establishment of production-oriented companies which are
equipped with advanced technologies.

10 **Article 5**

11 A company may be established by means of promotion or public
offer.

12 **Article 6**

13 For a company established through promotion there must be at
least one foreign promoter. The promoters shall also abide by other
stipulations of the Company Law.

14 For a company established through public offer in addition to the
requirements stated in the previous paragraph, there must be at
least one promoter having a record of profit-making in the past
three consecutive years. If the promoter is a Chinese shareholder,
concerned financial statements of the past three years prepared
by registered accountants must be presented. If the promoter is a
foreign shareholder, concerned financial statements prepared by
registered accountants of the place where the shareholder resides
must be presented.

15 **Article 7**

16 Registered capital of a company shall be the total capital stock
recorded with registering departments. The registered capital of a
company shall be at least RMB 30 million yuan. Total value of the
shares purchased and held by the foreign shareholders shall be no
less than 25% of the company's total registered capital.

17 **Article 8**

18 In transfer of shares subscribed by the shareholders conditions set
in the previous article must be satisfied. Transfer of shares pur-
chased by the promoters can only be made at least three years
after the company's registration and the transactions shall be ap-
proved by the departments which approved the company's estab-
lishment.

19 **Article 9**

20 After reaching an agreement on establishing a company, the pro-
moters can entrust one of them to proceed with the following appli-
cation procedures:

21 (1) Submit a written application, a feasibility study report and assets
evaluation report for the company to competent authorities of the
provinces, autonomous regions, municipalities directly under the
Central Government or cities enjoying provincial status in planning
(referred to hereinafter as competent departments).

22 For the establishment of a company through public offer, prospec-
tus shall also be submitted.

23 (2) After being examined and approved by the competent depart-
ments, the application documents shall then be transferred to de-
partments in charge of foreign trade and economic cooperation of

the provinces, autonomous regions and municipalities directly un-
der the Central Government or cities enjoying provincial status in
planning, after whose ratification the promoters can start to sign for-
mal agreements and articles of association of the company.

(3) The agreements and articles of association of the company, af-
ter being approved by the departments in charge of foreign trade
and economic cooperation of the provinces, autonomous regions,
municipalities directly under the Central Government or cities en-
joying provincial status in planning, shall be sent to the Ministry of
Foreign Trade and Economic Cooperation (MOFTEC) for ratifica-
tion. MOFTEC shall decide within 45 days on approval or rejec-
tion.

Article 10

All application documents submitted shall be in Chinese. When
deemed necessary, the documents can also be written in a foreign
language, but the approved and effective Chinese version shall
dominate.

Article 11

The application for the establishment of a company shall briefly
define:

(1) The promoter's title, residence and legal representatives;

(2) The name, site and purpose of the company to be estab-
lished;

(3) The establishment form of the company, total shares, share
categories, face value of each share, the proportion of share
purchased by the promoters, scope and channels for the shares'
sales;

32 (4) Performance of the promoters in production and operation, including production, assets and liabilities, and profits, in the past three consecutive years. (This only applies to companies established through public offer); 47

33 (5) The company's investment orientation and scope of operation;

34 (6) The time of application, signatures of the promoters' legal representatives as well as the seal of the promoters' units;

35 (7) Other items deemed necessary.

36 Article 12

37 Promoters' agreement shall define:

38 (1) Name and residence of promoters, and the names, nationality, residence and title of the promoters' legal representative;

39 (2) The name and site of the company to be established;

40 (3) Purpose and business scope of the company to be established;

41 (4) The form of the company's establishment and organization;

42 (5) The company's registered capital, total shares, share categories, amounts, forms and expiration date of shares subscribed by promoters;

43 (6) The rights and obligations of promoters;

44 (7) Responsibilities for violating the agreement;

45 (8) Applicable laws and regulations and how to settle disputes;

46 (9) The agreement's effective date and expiration;

(10) The time and site of signing of the agreement, with the signatures of the promoters;

(11) Other items deemed necessary. 48

Article 13 49

50 Within 30 days after the approval of the agreements, articles of association of a company by MOFTEC, the promoters shall open a special bank account by presenting documents of the approval and pay in a lump sum the total value of the subscription of the shares within 90 days after the issuance of the approval. The promoters shall bear joint liability of the company before paying the total value of the subscription of the shares. Whereas the company fails to start up, the promoters shall be responsible for the expense incurred during the process of seeking the company's establishment as well as other joint liabilities.

Article 14 51

52 For companies set up through promotion, the promoters, after paying the total value of the subscription of the shares as stipulated in Article 11, shall establish a board of directors and a board of supervisors. The board of directors shall present establishment approval document, the articles of association and certificate of the assets of the company to competent departments for the registration of the company's establishment.

53 For companies set up through public offer, the promoters, after paying the total value of the subscription of the shares, shall acquire certificates testifying the company's assets from legal institutions responsible for testifying assets and liabilities. Within 30 days of the certificate's issuance, the promoters shall convene an establishment meeting and establish a board of directors and a board of

supervisors. The board of directors, within 30 days of its establishment, shall submit establishment approval documents, articles of association and certificates on the company's assets and minutes of the establishment meeting to responsible departments for the registration of the company's establishment.

The departments responsible for the registration of companies shall, within 30 days upon receipt of all the required documents, complete the registration formalities and issue a business license.

Article 15

Sino-foreign joint equity ventures, Sino-foreign joint cooperative ventures and solely foreign-funded enterprises (referred to hereinafter as FFEs), when applying to transform into companies, should submit profit-making records for the past three consecutive years. The original investors of the FFE, as sole promoter of the company, or with other promoters of the company, shall sign agreements and articles of association for the establishment of the company and submit the documents to responsible departments in the place where the FFE is located for initial approval, which will then move to MOFTEC for final ratification.

When applying for transformation into companies, the following documents shall be submitted:

- (1) Contracts and articles of association of the original FFE;
- (2) Resolution on reorganization by the board of directors of the original FFE;
- (3) Resolution on terminating the original contracts and articles of association made by the investors of the original FFE;
- (4) Evaluation report of the original FFE's assets;

(5) Agreements signed by promoters (including but not limited to former investors of the original FFE);

(6) The company's articles of association;

(7) Business license, approval documents and financial statements of the past three consecutive years of the original FFE;

(8) Written application for the company's establishment;

(9) Documents testifying the promoters' capital credibility;

(10) Feasibility study report.

Article 16

After the approval of the aforementioned applications by MOFTEC and the payment of the total value of the subscription of shares, the promoters can undergo transformation formalities with responsible departments for registering the companies.

Article 17

A company, after transformation, shall inherit all the legal rights and obligations of the original foreign-funded enterprise.

All pledged obligations laid down in the contracts and articles of association of the original FFE for the Chinese and foreign investors shall remain effective and included in the promoter's agreements and articles of association of the company to be established.

Article 18

When applying to be transformed into companies, State and

collective enterprises, in addition to the other requirements stipulated in this set of procedures, shall also meet the following conditions:

(1) The enterprise must have been in operation for at least five years and have a record of profit-making in the past three consecutive years;

(2) More than 25% of the enterprise's registered capital have been subscribed by foreign shareholders with convertible foreign currency;

(3) The scope of operation of the enterprise conforms to the industrial policy for FFEs.

Chinese and foreign shareholders, as promoters of the company, sign agreements and articles of association for the establishment of the company and submit the documents to competent departments in the place where the FFE is located for initial approval, which will then move to MOFTEC for final ratification.

When applying for transformation into companies in this case, the following documents shall be submitted:

(1) Evaluation report of the original enterprise's assets;

(2) Written application for the establishment of the company;

(3) Feasibility study reports;

(4) The promoters' agreement;

(5) The company's articles of association;

(6) The business license and financial statements of the past three consecutive years of the original enterprise;

(7) Documents testifying the promoter's capital credibility;

(8) Other documents deemed necessary.

Article 19

After the approval of the aforementioned applications by MOFTEC and the payment of the total value of the subscription of shares, the promoters can undergo transformation formalities with competent departments for registering the company.

Article 20

When applying for transformation into companies, a joint stock company limited, in addition to the other requirements stipulated in this set of regulations, shall also meet the following conditions:

(1) The joint stock company limited has been established after official State approval;

(2) More than 25% of the joint stock company limited's* registered capital have been purchased and held by foreign shareholders with the payment of convertible foreign currency;

(3) The scope of operation of the joint stock company limited conforms to the industrial policy for FFEs.

Article 21

A joint stock company limited which issues B shares, shall submit the following documents when applying for transformation into companies.

(1) Resolution on the transformation of the company reached by the shareholder's conference;

(2) Evaluation report of the assets of the original joint stock company limited;

	(3) Written application for the transformation into a company;	99	Article 24		110
100	(4) Amendments and revisions of the articles of association of the original joint stock company limited;			After the approval of the aforementioned applications, the original joint stock company limited shall submit approval certificates and papers testifying the collection of stocks to administrative departments in charge of industry and commerce to undergo the formalities for transforming into a company.	111
101	(5) Documents issued by departments in charge of securities approving the issuance of B shares;				
102	(6) Other documents deemed necessary.				
103	Article 22		Article 25		112
104	A joint stock company limited, when applying for transformation into a company through increase of shares or issuance of foreign held shares, shall submit the agreements signed by the company with the share-subscribers concerned and other necessary documents, in addition to the documents stipulated in the previous article's sections (1), (2), (3) and (4).			Other related matters not included in this set of provisional regulations shall follow the Company Law, the State Council's Special Regulations on Overseas Collection and Issuance of Stocks by Joint Stock Companies Limited and other related regulations.	113
105	Article 23		Article 26		114
106	A joint stock company limited which issues shares overseas (including but not limited to H and N shares) shall submit the following documents in addition to the documents stipulated in the section (1), (2), (3) and (4) of article 21 when applying for transformation into a company:			Companies transformed from FFEs do not enjoy further tax-exemption or tax-deduction preferences allotted to the original enterprises.	115
107	(1) Documents issued by departments in charge of securities approving the issuance of shares overseas;		Article 27		116
108	(2) Documents issued by overseas securities institutions approving the issuance of shares by the original joint stock company limited;			Companies, enterprises and other economic entities or individuals from Hong Kong, Macao and Taiwan, when establishing companies in the Mainland, shall follow this set of provisional regulations.	117
109	(3) Performance of the overseas trading of the shares issued by the original company.		Article 28		118
				This set of Provisional Regulations shall be interpreted by MOFTEC.	119

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