

Provisions on the Examination and Approval of Investment to Run Enterprises Abroad

Article 1 For the purpose of promoting the development of overseas development, the present Provisions are formulated in accordance with the Administrative License Law of the People's Republic of China, the Decision of the State Council about Setting Administrative Licensing for the Administrative Examination and Approval Items Necessary To Be Preserved and other relevant provisions.

Article 2 The state should help and encourage relatively competitive enterprises with various forms of ownership to invest to run enterprises abroad.

Article 3 The expression "to invest to run enterprises" refers to the operational acts of the enterprises of our country such as establishing enterprises abroad or acquiring the ownership, managerial right or any other right and interest of the existing enterprises by way of establishing (solely-funded, equity joint or contractual joint ventures), purchasing, merging, holding shares, injecting fund, changing stock rights, etc.

Article 4 Domestic enterprises (excluding the financial enterprises) that intend to invest to run enterprises abroad shall be subject to the examination and approval of the Ministry of Commerce. The Ministry of Commerce shall authorize the commerce administrative departments of the people's governments of all provinces, autonomous regions, municipalities directly under the Central Government and cities under separate state planning (hereinafter referred to as "the provincial commerce administrative departments" to handle the matters related to the examination and approval of the enterprises other than the enterprises directly under the Central Government to run enterprises in the countries as listed in the annex.

The Ministry of Commerce shall timely adjust the countries as listed in the Annex in light of circumstances and promulgate them.

Article 5 With regard to the domestic enterprises to invest to run enterprises abroad, the Ministry of Commerce and the provincial commerce administrative departments shall examine and approve them by taking the following aspects into consideration:

- (1) The investment environment of different countries (regions);
- (2) The status of safety of different countries (regions);
- (3) The political and economic relationship between the investment destination

countries (regions) and China;

- (4) The policies for guiding investment abroad;
- (5) The reasonable distribution in different countries (regions);
- (6) The obligations in relevant international treaties; and
- (7) Safeguarding the legitimate rights and interests of enterprises.

A domestic enterprise itself shall be responsible for whether it is economically or technically feasible to invest to run an enterprise abroad.

Article 6 A domestic enterprise shall not be allowed to invest abroad if:

- a. it impairs the state sovereignty, security and public interests;
- b. it violates any law, regulation or policy of the state;
- c. it is likely to cause the Chinese Government to break any international treaty it has concluded;
- d. involves any technology or goods banned from exporting by China;
- e. the political situation of the investment destination country is turbulent and there is serious safety problem;
- f. it is contradictory to the laws, regulations or customs of the investment destination country or region; or
- g. it is employed for committing transnational crimes.

Article 7 Examination and Approval Procedures

(1) The enterprises directly under the Central Government shall directly file an application to the Ministry of Commerce, while other enterprises shall file an application to the provincial commerce administrative departments.

(2) After the Ministry of Commerce or a provincial commerce administrative department receives the application materials of an applicant, if the application materials are incomplete or are inconsistent with the statutory form, it shall, within 5 working days, notify the applicant of the to-be-supplemented items once and for all; if it fails to do so, it shall be deemed to have accepted them from the day when it receives them. As for the application materials that are complete and consistent with the statutory forms or that have been supplemented by the applicant according to the pertinent requirements, it shall accept them.

(3) A provincial commerce administrative department shall solicit the opinions of our economic and commercial counselor's office of the embassy (consulate) to that country (or region). An enterprise directly under the Central Government shall directly consult the opinions of our economic and commercial counselor's office of

the embassy (consulate) to that country or region. The economic and commercial counselor's office of the embassy (consulate) to the foreign country (region) shall make a reply within 5 working days after it receives a letter for soliciting opinions.

(4) The provincial commerce administrative department shall, according to the authorized power, decide whether to approve or not within 15 working days as of the acceptance date; if it is necessary to report to the Ministry of Commerce for approval, it shall conduct preliminary examination within 5 working days from the acceptance day, and if approves, it shall report to the Ministry of Commerce.

(5) The Ministry of Commerce shall decide whether to approve or not within 15 working days as of the acceptance date.

(6) Where the Ministry of Commerce or the provincial commerce administrative department approves, it shall issue a written approval decision; if it doesn't approve, it shall issue a decision of disapproval.

Article 8 Application Materials

(1) The application materials to be submitted by an enterprise include:

(a) an application (mainly cover the name, registered capital, amount of investment, business scope, business period, form of organization and equity structure, etc., of the enterprise to be established);

(b) the articles of association of the enterprise abroad and relevant agreement or contract;

(c) the opinions issued by the foreign exchange administrative department about the examination over the source of foreign exchange fund to invest abroad (having to purchase foreign exchange or remit abroad foreign exchange from China);

(d) the business license of the domestic enterprise and other relevant qualification certifications as required by the laws and regulations; and

(e) other documents as required by the laws, regulations, and decisions of the State Council.

(2) The materials which the provincial commerce administrative departments shall submit to the Ministry of Commerce include:

(a) the preliminary examination opinions of this department;

(b) the opinions of the economic and commercial counselor's office of the embassy (consulate) of China;

(c) the complete application materials submitted by the enterprise.

Article 9 After the application of an enterprise directly under the Central Government is approved, the Ministry of Commerce shall issue an Approval Certificate of the People's Republic of China To Invest Abroad (hereinafter referred to as the Approval Certificate) to the applicant. As for an enterprise not directly under the Central Government, the provincial commerce administrative department shall issue an Approval Certificate to it on behalf of the Ministry of Commerce.

A domestic enterprise shall handle the matters relating to foreign exchange, bank, customs, foreign affairs, etc. upon the strength of the Approval Document.

Article 10 A domestic enterprise, which has obtained an approval, shall submit the statistical materials and accept the joint annual examination on overseas investment and comprehensive performance evaluation of overseas investment. As for an enterprise invested abroad upon approval, after it have been registered at the locality, it shall submit the registration documents to the Ministry of Commerce for archival purpose and register in the economic and commercial counselor's office of the embassy (consulate) of China.

Article 11 Where any of the items listed in Article 8 (1) of the present Provisions is modified, it shall be subject to the examination and approval of the original approval organ.

Article 12 The foreign-funded enterprise to invest to run enterprises shall abide by relevant laws and regulations. They shall be subject to the examination and approval of the provincial commerce administrative department or superior. Among the said foreign-funded enterprises, those established upon approval of the Ministry of Commerce shall be subject to the examination and approval of the Ministry of Commerce before they invest to run enterprises abroad, the others shall be subject to the examination and approval of the provincial commerce administrative departments before they invest to run enterprises abroad. The specific requirements shall be distributed by the Ministry of Commerce in a separate document.

Article 13 The Ministry of Commerce will separately formulate measures concerning the e-government approaches such as on-line applications, and the issuance of approval certificates.

Article 14 A provincial commerce administrative department shall not authorize its

subordinate commerce administrative departments to handle the matters relating to the examination and approval of the investments to run enterprises abroad, nor may it insert any approval link, application material or approval content.

Article 15 A mainland enterprise to establish an enterprise in Hong Kong or Macao Special Administrative Region shall be subject to the examination and approval under relevant provisions.

Article 16 Where any administrative measure promulgated prior to the present Provisions is inconsistent with the present Provisions, the latter shall be followed.

Article 17 The power to interpret the present Provisions shall remain with the Ministry of Commerce.

Article 18 The present Provisions shall be implemented as of the promulgation date.