

Provisions on Particulars to Be Ratified for Inland Enterprises to Invest in Hong Kong or Macao Special Administrative Region to Establish New Enterprises

Article 1 These Provisions are formulated in accordance with the "Administrative Licensing Law of the People's Republic of China" and the "Decision of the State Council on Setting Administrative Licensing on the Administrative Approval Items Which Are Indeed Necessary to Be Reserved" as well as other relevant provisions.

Article 2 The State encourages and supports enterprises of all forms of ownerships in the Inland to invest in Hong Kong and Macao regions to establish new enterprises.

Article 3 Inland enterprises' investing in Hong Kong or Macao Special Administrative Region to establish new enterprises means that: Inland enterprises invest in Hong Kong and Macao regions to establish new enterprises with the status as local legal persons in the fields of trade, undertaking contract of construction projects, labor service cooperation, production, manufacturing, transportation, tourism, services, research and development, investment, science and technology, etc., and that the enterprises established by Inland enterprises in Hong Kong and Macao regions or in other countries or regions invest in Hong Kong and Macao regions to establish new enterprises.

Article 4 The methods of investing to establish new enterprises include: establishment (of wholly-owned foreign enterprises, equity joint ventures and cooperative joint ventures, etc.), acquisition, merger, holding shares, contributing capital, replacement of share rights, and so on.

Article 5 The Ministry of Commerce is the organ to ratify Inland enterprises to invest in Hong Kong or Macao Special Administrative Region to establish new enterprises (except financial enterprises). The administrative departments of commerce of the people's governments at the provincial level (hereinafter referred to as "the administrations of commerce at the provincial level") shall, upon authorization of the Ministry of Commerce, make preliminary examinations to decide whether to ratify enterprises within their respective localities to invest in Hong Kong or Macao Special Administrative Region to establish new enterprises. If it is necessary at the time of ratification, the administration of commerce at the provincial level shall solicit

opinions in advance from Hong Kong and Macao Affairs Office of the State Council, and the Central Government's liaison offices dispatched in Hong Kong and Macao.

Article 6 The ratification organ shall ratify the application of an enterprise in the following aspects: whether it is beneficial to the reform and opening as well as modernization of the Inland; whether it is beneficial to the prosperity and stability of Hong Kong and Macao regions; whether it may exert the advantages of Hong Kong and Macao regions to expand foreign trade and import funds, advanced technologies and management experiences; and whether it is beneficial to strengthening the economic and technological cooperation between the Inland and Hong Kong or Macao region.

To decide whether it is feasible in respect of economic and technical benefits to invest in Hong Kong or Macao Special Administrative Region to establish a new enterprise shall be the responsibility of the original enterprise concerned

Article 7 Enterprises under any of the following circumstances which invest in Hong Kong or Macao shall not be ratified: endangering the State sovereignty, security or public benefits; violating the laws, regulations and policies of the State, or being against the laws and regulations of Hong Kong or Macao region; violating the international, bilateral or multilateral agreements or treaties concluded or acceded to by China; committing international criminal activities by investing in Hong Kong or Macao Special Administrative Region to establish new enterprises; other circumstances not suitable for them to invest in Hong Kong or Macao Special Administrative Region to establish new enterprises.

Article 8 Ratification procedures

(1) If a local enterprise intends to invest in Hong Kong or Macao region to establish a new enterprise, it shall be ratified by the administration of commerce at the provincial level upon authorization of the Ministry of Commerce, but if it is for the purpose of engaging in indirect listing outside the Inland or for the purpose of running investment business, it shall be ratified by the Ministry of Commerce.

Where the ratification of the Ministry of Commerce is required, the local enterprise shall file an application to the administration of commerce at the provincial level. The administration of commerce at the provincial level shall, within 5 working days after preliminary examination of the application documents, submit the application to the

Ministry of Commerce if such application is qualified. The Ministry of Commerce shall, within 5 working days after receiving the application documents submitted by the administration of commerce at the provincial level, inform the applicant for once of all the contents to be supplemented if the application documents are incomplete or do not conform to the prescribed form. If the Ministry of Commerce fails to so inform the applicant within the time limit, the application shall be regarded as accepted on the day when the application documents are received by the Ministry of Commerce. If the application documents are complete and conform to the legal form, or the applicant has supplemented the application documents as required, the Ministry of Commerce shall accept the application, and must thereafter, make a decision on whether to ratify it or not within 15 working days.

Where the administration of commerce at the provincial level ratifies the application, the ratification organ shall, within 5 working days after receipt of the local enterprise's application documents, inform the applicant for once of all the contents to be supplemented if the application documents are incomplete or do not conform to the prescribed form. If the ratification organ fails to so inform the applicant within the time limit, the application shall be regarded as accepted on the day when the application documents are received by the ratification organ. If the application documents are complete and conform to the legal form, or the applicant has supplemented the application documents as required, the said administration of commerce shall accept the application, and must thereafter, make a decision on whether to ratify it or not within 15 working days.

(2) If an enterprise subordinate to the Central Government intends to invest in Hong Kong or Macao region to establish a new enterprise, the application shall be ratified by the Ministry of Commerce. The Ministry of Commerce shall, within 5 working days after receiving the application documents of the enterprise subordinate to the Central Government, inform the applicant for once of all the contents to be supplemented if the application documents are incomplete or do not conform to the prescribed form. If the Ministry of Commerce fails to so inform the applicant within the time limit, the application shall be regarded as accepted on the day when the application documents are received. If the application documents are complete and conform to the legal form, or the applicant has supplemented the application documents as required, the Ministry of Commerce shall accept the application, and must thereafter, make a decision on whether to ratify it or not within 15 working days.

(3) After the local enterprise's application has been ratified, the administration of commerce at the provincial level shall, on behalf of the Ministry of Commerce, issue the "Approval Certificate for the Inland Enterprise to Invest in Hong Kong or Macao Region" (hereinafter referred to as the "approval certificate"). The approval certificate of an enterprise subordinate to the Central Government shall be issued by the Ministry of Commerce.

Article 9 An Inland enterprise intending to invest in Hong Kong or Macao Special Administrative Region to establish a new enterprise shall provide the following application documents:

- (1) The application letter (mainly including the name of the enterprise to be established, its registered capital, investment amount, business scope, duration of operation, organizational form, share right structure and staff structure, etc.);
- (2) The articles of association, relevant agreements or contracts of the enterprise to be established;
- (3) The Inland enterprise's business license and its relevant qualification or eligibility certificates as required by laws and regulations;
- (4) The official reply issued by the administration of foreign exchange on examination of the sources of foreign exchange funds (in case of investment with foreign exchanges);
- (5) Other documents required by laws, regulations and State Council decisions.

Article 10 After an enterprise has been ratified, it must hold the approval certificate and the ratification documents to go through formalities in respect of foreign exchange, banking, customs, foreign affairs, and so on; and shall, according to the relevant provisions, submit statistical data, participate in the joint annual inspections outside China, and the appraisal on comprehensive investment performance outside China, as well.

Article 11 An enterprise that has been ratified shall, after having itself registered at the locality, submit the relevant registration documents to the Ministry of Commerce and the Hong Kong and Macao Affairs Office of the State Council for archival purposes, and in addition, check in and has itself registered at the Central Government's liaison office dispatched in Hong Kong or Macao.

Article 12 An administration of commerce at the provincial level may not, without approval from the Ministry of Commerce, authorize an inferior local administrative

department to handle the ratification. A competent administrative department at each level may not, without authorization of the Ministry of Commerce, increase any content or procedure for the ratification, nor may it handle examination and grant approval by exceeding its authority.

Article 13 In case any content listed in the application letter prescribed in Item (1) of Article 9 of these Provisions is modified, the application letter must be reported to the original ratification organ for ratification.

Article 14 In case the previous administrative measures are inconsistent with these Provisions, the latter shall prevail.

Article 15 Interpretation of these Provisions shall be the responsibility of the Ministry of Commerce.

Article 16 These Provisions shall come into force on the date of their promulgation.