

Administration of Foreign-funded Telecommunications Enterprises Provisions

Promulgated by the State Council on 11 December 2001 and effective as of 1 January 2002

Article 1 These Regulations have been formulated pursuant to relevant laws and administrative regulations on foreign investment and the PRC, Telecommunications Regulations (the Telecommunications Regulations), in order to respond to the requirements of opening the telecommunications industry to foreign investment and to promote the development of the telecommunications industry.

Article 2 The term "Foreign-funded Telecommunications Enterprises" means Sino-foreign equity joint ventures that are jointly invested in and established in the People's Republic of China by foreign investors and Chinese investors in accordance with the law and that are engaged in the provision of telecommunications services.

Article 3 When engaging in telecommunications business activities, a Foreign-funded Telecommunications Enterprise must abide not only by these Regulations but also by the Telecommunications Regulations and other relevant laws and administrative regulations.

Article 4 Foreign-funded Telecommunications Enterprises may provide basic telecommunications services and/or value-added telecommunications services. The specific classification of services shall be handled in accordance with the Telecommunications Regulations.

The territory within which a Foreign-funded Telecommunications Enterprise may provide its services shall be determined by the State Council's department in charge of the information industry in accordance with relevant regulations.

Article 5 The registered capital of Foreign-funded Telecommunications Enterprises shall conform with the following regulations:

1. those that provide basic telecommunications services nationwide or beyond a single province, autonomous region or municipality directly under the central government shall have registered capital of not less than Rmb 2 billion, whereas those providing value-added telecommunications services on the same scale shall have registered capital of not less than Rmb 10 million;
2. those that provide basic telecommunications services within a province, autonomous region or municipality directly under the central government shall have registered capital of not less than Rmb 200 million, whereas those providing value-added telecommunications services on the same scale shall have registered capital of not less than Rmb 1 million.

Article 6 The ultimate capital contribution ratio of the foreign investor(s) in a Foreign-funded

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Telecommunications Enterprise that provides basic telecommunications services (except radio paging services) shall not exceed 49%.

The ultimate capital contribution ratio of the foreign investor(s) in a Foreign-funded Telecommunications Enterprise that provides value-added telecommunications services (including the radio paging services included in basic telecommunications services) shall not exceed 50%.

The capital contribution ratios of the Chinese investor(s) and the foreign investor(s) in a Foreign-funded Telecommunications Enterprise during different periods shall be determined by the State Council's department in charge of the information industry in accordance with the relevant provisions.

Article 7 In addition to complying with the conditions set forth in Articles 4, 5 and 6 hereof, a Foreign-funded Telecommunications Enterprise shall, when providing telecommunications services, comply with the conditions for the provision of basic telecommunications services or value-added telecommunications specified in the Telecommunications Regulations.

Article 8 The main Chinese investor in a Foreign-funded Telecommunications Enterprise that provides basic telecommunications services shall comply with the following conditions:

1. being a company that was lawfully established;
2. having the funds and professional personnel suitable for the business activities to be engaged in; and
3. complying with the due diligence and the industry-specific requirements specified by the State Council's department in charge of the information industry.

For the purposes of the preceding paragraph, the term "main Chinese investor in a Foreign-funded Telecommunications Enterprise" means the Chinese investor who makes the largest capital contribution of all the Chinese investors and whose capital contribution accounts for not less than 30% of the total of the capital contributions of all the Chinese investors.

Article 9 The main foreign investor in a Foreign-funded Telecommunications Enterprise that provides basic telecommunications services shall comply with the following conditions:

1. being an enterprise with the status of a legal person;
2. having a permit to provide basic telecommunications services in the country or region in which it is registered;
3. having the funds and professional personnel suitable for the business activities to be engaged in; and
4. having obtained good business results and operational experience in the provision of basic telecommunications services.

For the purposes of the preceding paragraph, the term "main foreign investor in a Foreign-funded

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Telecommunications Enterprise" means the foreign investor who makes the largest capital contribution of all the foreign investors and whose capital contribution accounts for not less than 30% of the total of the capital contributions of all the foreign investors.

Article 10 The main foreign investor in a Foreign-funded Telecommunications Enterprise that provides value-added telecommunications services shall have obtained good business results and operational experience in the provision of value-added telecommunications services.

Article 11 When establishing a Foreign-funded Telecommunications Enterprise that is to provide basic telecommunications services, or that is to provide value-added telecommunications services beyond a single province, autonomous region or municipality directly under the central government, the main Chinese investor shall submit an application and the documents set forth below to the State Council's department in charge of the information industry:

1. project proposal;
2. feasibility study;
3. documents that prove, or relevant documents that confirm, the qualifications of the Chinese and foreign investors specified in Articles 8, 9 and 10 hereof; and
4. documents that prove or confirm satisfaction of the other conditions that are required for providing basic telecommunications services or value-added telecommunications services as specified in the Telecommunications Regulations.

The State Council's department in charge of the information industry shall commence examination of the relevant documents specified in the preceding paragraph from the date of receipt thereof. For basic telecommunications services, it shall complete the examination and render its decision on whether to grant approval within 180 days. For value-added telecommunications services, it shall complete the examination and render its decision on whether to grant approval within 90 days. If it grants approval, it shall issue an Opinion, Upon Examination, in Favour of Foreign Investment in the Provision of Telecommunications Services; if it refuses, it shall notify the applicant in writing and explain the grounds for the refusal.

Article 12 When, pursuant to Article 11 hereof, submitting the application for the establishment of a Foreign-funded Telecommunications Enterprise that is to provide basic telecommunications services, or that is to provide value-added telecommunications services beyond a single province, autonomous region or municipality directly under the central government, the main Chinese investor may, in accordance with actual circumstances, first submit all documents other than the feasibility study and defer the submission of the feasibility study until the State Council's department in charge of the information industry has reviewed such other documents and issued written notification of its acceptance thereof. However, the period of time between receipt of the notice of examination and acceptance and submission of the feasibility study may not exceed one year and such time shall not count towards the time limit specified for examination and approval.

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Article 13 When establishing a Foreign-funded Telecommunications Enterprise to provide value-added telecommunications services within a province, autonomous region or municipality directly under the central government, the main Chinese investor shall submit an application and the documents set forth below to the telecommunications administration authority of the province, autonomous region or municipality directly under the central government:

1. feasibility study;
2. documents that prove, or relevant documents that confirm, the qualifications specified in Article 10 hereof; and
3. documents that prove or confirm satisfaction of the other conditions that are required for providing value-added telecommunications services as specified in the Telecommunications Regulations.

The telecommunications administration authority of the province, autonomous region or municipality directly under the central government shall issue a signed opinion within 60 days of the date of receipt of the application. If it consents, it shall forward the application documents to the State Council's department in charge of the information industry; if it does not consent, it shall notify the applicant in writing and explain the grounds therefor.

The State Council's department in charge of the information industry shall complete its examination and render its decision on whether to grant approval within 30 days of the date of receipt of the application documents for which the telecommunications administration authority of the province, autonomous region or municipality directly under the central government gave its signed consent. If it grants approval, it shall issue an Opinion, Upon Examination, in Favour of Foreign Investment in the Provision of Telecommunications Services; if it refuses, it shall notify the applicant in writing and explain the grounds for the refusal.

Article 14 The main contents of the project proposal for a Foreign-funded Telecommunications Enterprise shall include the names and basic details of each party, the total amount of investment and registered capital of the proposed enterprise, the capital contribution ratio of each party, the types of services the provision of which is applied for, the joint venture term, etc.

The main contents of the feasibility study for a Foreign-funded Telecommunications Enterprise shall include the basic details of the proposed enterprise, the services, a business forecast, a development plan, an analysis of the returns on investment, expected business hours, etc.

Article 15 If relevant State provisions provide that the investment project of a Foreign-funded Telecommunications Enterprise being established is subject to the examination and approval of the State Council's department in charge of planning or the State Council's department in charge of overall economic management, the State Council's department in charge of the information industry shall, before issuing the Opinion, Upon Examination, in Favour of Foreign Investment in the Provision of Telecommunications Services, forward the application materials to the State

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Council's department in charge of planning or the State Council's department in charge of overall economic management for examination and approval. In cases where the examination materials are forwarded to the State Council's department in charge of planning or the State Council's department in charge of overall economic management for examination and approval, the time limits for examination and approval specified in Articles 11 and 13 hereof may be extended by 30 days.

Article 16 When a Foreign-funded Telecommunications Enterprise is being established to provide basic telecommunications services, or to provide value-added telecommunications services beyond a single province, autonomous region or municipality directly under the central government, the main Chinese investor shall submit the contract for, and the articles of association of, the proposed Foreign-funded Telecommunications Enterprise to the State Council's department in charge of foreign trade and economic cooperation on the strength of the Opinion, Upon Examination, in Favour of Foreign Investment in the Provision of Telecommunications Services. When a Foreign-funded Telecommunications Enterprise is being established to provide value-added telecommunications services within a province, autonomous region or municipality directly under the central government, the main Chinese investor shall submit the contract for, and the articles of association of, the proposed Foreign-funded Telecommunications Enterprise to the department in charge of foreign trade and economic cooperation of the people's government of the province, autonomous region or municipality directly under the central government on the strength of the Opinion, Upon Examination, in Favour of Foreign Investment in the Provision of Telecommunications Services.

The State Council's department in charge of foreign trade and economic cooperation or the department in charge of foreign trade and economic cooperation of the people's government of the province, autonomous region or municipality directly under the central government shall complete its examination and render its decision on whether to grant approval within 90 days of the date of receipt of the submitted contract for, and articles of association of, the proposed Foreign-funded Telecommunications Enterprise. If it grants approval, it shall issue a Certificate of Approval for Establishment of Enterprises With Foreign Investment; if it refuses, it shall notify the applicant in writing and explain the grounds for the refusal.

Article 17 The main Chinese investor in a Foreign-funded Telecommunications Enterprise shall carry out the procedures for a Telecommunications Service Operating Permit with the State Council's department in charge of the information industry on the strength of the Certificate of Approval for Establishment of Enterprises With Foreign Investment.

The main Chinese investor in a Foreign-funded Telecommunications Enterprise shall carry out the procedures for registration of the Foreign-funded Telecommunications Enterprise with the administration authority for industry and commerce on the strength of the Certificate of Approval for Establishment of Enterprises With Foreign Investment and the Telecommunications Service

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Operating Permit.

Article 18 A Foreign-funded Telecommunications Enterprise that is to provide cross-border telecommunications services must obtain the approval of the State Council's department in charge of the information industry and provide such services through the international gateway exchanges the establishment of which has been approved by the State Council's department in charge of the information industry.

Article 19 In the event of a violation of Article 6 hereof, the State Council's department in charge of the information industry shall order rectification within a specified period of time and impose a fine of not less than Rmb 100,000 and not more than Rmb 500,000. If rectification is not carried out within the specified time limit, the State Council's department in charge of the information industry shall revoke the Telecommunications Service Operating Permit and the authority in charge of foreign trade and economic cooperation that originally issued the Certificate of Approval for Establishment of Enterprises With Foreign Investment shall revoke such certificate.

Article 20 In the event of a violation of Article 18 hereof, the State Council's department in charge of the information industry shall order rectification within a specified period of time and impose a fine of not less than Rmb 200,000 and not more than Rmb 1,000,000. If rectification is not carried out within the specified time limit, the State Council's department in charge of the information industry shall revoke the Telecommunications Service Operating Permit and the authority in charge of foreign trade and economic cooperation that originally issued the Certificate of Approval for Establishment of Enterprises With Foreign Investment shall revoke such certificate.

Article 21 If approval for the establishment of a Foreign-funded Telecommunications Enterprise is obtained by fraudulent means through the provision, during the application process, of sham or forged documents that prove or confirm qualifications, such approval shall be void and the State Council's department in charge of the information industry shall impose a fine of not less than Rmb 200,000 and not more than Rmb 1 million and revoke the Telecommunications Service Operating Permit. Furthermore, the authority in charge of foreign trade and economic cooperation that originally issued the Certificate of Approval for Establishment of Enterprises With Foreign Investment shall revoke such certificate.

Article 22 If in the course of providing telecommunications services a Foreign-funded Telecommunications Enterprise violates the Telecommunications Regulations or other relevant laws or administrative regulations, it shall be punished in accordance with the law by the relevant authority.

Article 23 Foreign listings of domestic telecommunications enterprises shall be subject to the examination and consent of the State Council's department in charge of the information industry

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and to approval pursuant to the relevant State provisions.

Article 24 Investment in and the provision of telecommunications services in mainland China by companies and enterprises from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region shall be governed, mutatis mutandis, by these Regulations.

Article 25 These Regulations shall be implemented as of 1 January 2002.



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