

PROVISIONS ON ADMINISTRATION OF FOREIGN INVESTMENT IN INTERNATIONAL MARITIME TRANSPORTATION

(Promulgated by Decree No. 1 of the Ministry of Communications and the Ministry of Commerce on March 2nd, 2004, and effective as of June 1st, 2004)

Article 1 These Provisions are formulated in accordance with the Regulations of the People's Republic of China on International Maritime Transportation (hereinafter referred to as the Maritime Transportation Regulations) and the relevant laws and administrative regulations of the People's Republic of China on foreign investment, for the purposes of regulating the establishment of foreign-funded enterprises by foreign investors to engage in international maritime transportation business and auxiliary business relating thereto and safeguarding the lawful rights and interests of Chinese and foreign investors.

Article 2 These Provisions are applicable to the investment in and operation of international maritime transportation business and auxiliary businesses relating thereto (hereinafter referred to as international maritime transportation) by foreign investors within the territory of China.

Article 3 The Ministry of Communications and the Ministry of Commerce of the People's Republic of China as well as their authorized agencies are responsible for the approval and administration of the establishment of foreign-funded enterprises within the territory of the People's Republic of China by foreign investors to engage in international maritime transportation.

Article 4 With the approval of the Ministry of Communications and the Ministry of Commerce, a foreign investor may invest in and operate international maritime transportation in the following forms:

- (1) to establish a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture to engage in international shipping services, international shipping agency services, international ship management services, loading and unloading of international shipments and international maritime container freight station and container yard services;
- (2) to establish a Chinese-foreign equity joint venture, a Chinese-foreign contractual joint venture or a wholly foreign-owned enterprise to engage in international maritime cargo warehousing services;
- (3) to establish a Chinese-foreign equity joint venture, a Chinese-foreign contractual joint venture or a wholly foreign-owned enterprise to offer routine services for the vessels owned or operated by the investor.

Article 5 A foreign-funded international shipping enterprise to be established shall meet the following conditions:

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- (1) having vessels suitable for employment in international maritime transportation, among which there must be vessels of Chinese nationality;
- (2) vessels under employment shall be in compliance with the technical standards for maritime traffic safety as set forth by the State;
- (3) having bills of lading, passenger tickets or multimodal transportation documents;
- (4) having senior executives with the professional qualifications as set forth by the Ministry of Communications;
- (5) in case of establishing a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture, the proportion of investment made by foreign investors shall not exceed 49%;
- (6) the chairperson of the board of directors and the general manager shall be appointed by the Chinese side after consultation between the both sides;
- (7) other conditions specified by laws or administrative regulations.

Article 6 Where anyone is to establish a foreign-funded enterprise to engage in international shipping services, it shall firstly make an application to the Ministry of Communications in accordance with the provisions of the Maritime Transportation Regulations and the Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation (hereinafter referred to as the Implementing Rules of the Maritime Transportation Regulations); if such application is approved by the Ministry of Communications, the applicant shall, in accordance with the laws and administrative regulations on foreign investment of the State and on the strength of the approval document issued by the Ministry of Communications, go through the approval procedures for establishing a foreign-funded enterprise with the Ministry of Commerce by submitting the documents specified in Article 15 of these Provisions and obtain the Approval Certificate for Foreign-funded Enterprise.

The applicant shall, by presenting the approval document issued by the Ministry of Communications, the Approval Certificate for Foreign-funded Enterprise issued by the Ministry of Commerce and other relevant documents, go through the industrial and commercial registration formalities with the administrative department for industry and commerce according to law and obtain the business license.

After the establishment of a foreign-funded international shipping enterprise, the applicant shall, by presenting the business license issued by the administrative department for industry and commerce, apply to the Ministry of Communications for obtaining the Permit for Operation of International Shipping Services. Only those that have obtained such Permit may engage international shipping services.

Article 7 A foreign-funded international shipping agency enterprise to be established shall meet the following conditions:

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- (1) having at least two senior executives with no less than three years' experience in international maritime transportation business operations. The term "senior executives" refers to Chinese citizens who have secondary or higher technical or academic titles and serve as department managers or above in enterprises engaging in international maritime transportation business or the auxiliary business relating thereto;
- (2) having a fixed place of business and necessary business facilities, including the ability to have electronic data interchange (EDI) with ports, the Customs and other departments;
- (3) in case of establishing a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture, the proportion of investment made by foreign investors shall not exceed 49%;
- (4) other conditions specified by laws or administrative regulations.

Article 8 Where anyone is to establish a foreign-funded enterprise to engage in international shipping agency services, it shall firstly make an application to the Ministry of Communications in accordance with the provisions of the Maritime Transportation Regulations and the Implementing Rules of the Maritime Transportation Regulations; if such application is approved by the Ministry of Communications, the applicant shall, in accordance with the laws and administrative regulations on foreign investment of the State and on the strength of the approval document issued by the Ministry of Communications, go through the approval procedures for establishing a foreign-funded enterprise with the Ministry of Commerce by submitting the documents specified in Article 15 of these Provisions and obtain the Approval Certificate for Foreign-funded Enterprise.

The applicant shall, by presenting the approval document issued by the Ministry of Communications, the Approval Certificate for Foreign-funded Enterprise issued by the Ministry of Commerce and other relevant documents, go through the industrial and commercial registration formalities with the administrative department for industry and commerce according to law and obtain the business license.

After the establishment of a foreign-funded international shipping agency enterprise, the applicant shall, by presenting the business license issued by the administrative department for industry and commerce, apply to the Ministry of Communications for obtaining the Registration for Operation of International Shipping Agency Services. Only those that have obtained such Registration may engage international shipping agency services.

Article 9 A foreign-funded international ship management enterprise to be established shall meet the following conditions:

- (1) having at least two senior executives with no less than three years' experience in international maritime transportation business operations;
- (2) having staff members in possession of master's or chief engineer's documents of competence that are commensurate with the types of vessels under their management and the

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navigation zones;

(3) having the equipment or facilities commensurate with the international ship management services.

Article 10 Where anyone is to establish a foreign-funded enterprise to engage in international ship management services, it shall firstly make an application to the Ministry of Communications in accordance with the provisions of the Maritime Transportation Regulations and the Implementing Rules of the Maritime Transportation Regulations; if such application is approved by the Ministry of Communications, the applicant shall, in accordance with the laws and administrative regulations on foreign investment of the State and on the strength of the approval document issued by the Ministry of Communications, go through the approval procedures for obtaining the Approval Certificate for Foreign-funded Enterprise with the competent commerce administration department of the people's government of the province where such enterprise is to be located by submitting the documents specified in Article 15 of these Provisions.

After the establishment of a foreign-funded international ship management enterprise, the applicant shall, by presenting the business license issued by the administrative department for industry and commerce, apply to the competent communications administration department of the people's government of the province where such enterprise is located for obtaining the Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation. Only those that have obtained such Registration may engage in international ship management services.

Article 11 Where anyone is to establish a foreign-funded enterprise to engage in international maritime container freight station and container yard services or international maritime cargo warehousing services, it shall firstly make an application to the Ministry of Communications in accordance with the provisions of the Maritime Transportation Regulations and the Implementing Rules of the Maritime Transportation Regulations; if such application is approved by the Ministry of Communications, the applicant shall, in accordance with the laws and administrative regulations on foreign investment of the State and on the strength of the approval document issued by the Ministry of Communications, go through the approval procedures for obtaining the Approval Certificate for Foreign-funded Enterprise with the competent commerce administration department of the people's government of the province where such enterprise is to be located by submitting the documents specified in Article 15 of these Provisions.

After the establishment of a foreign-funded enterprise engaging in international maritime container freight station and container yard services or international maritime cargo warehousing services, the applicant shall, by presenting the business license issued by the administrative department for industry and commerce, apply to the competent communications administration department of the people's government of the province where such enterprise is located for obtaining the Registration for Operation of Auxiliary Businesses Relating to International

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Maritime Transportation. Only those that have obtained such Registration may engage in the relevant services.

The establishment of a foreign-funded enterprise engaging in loading and unloading of international shipments shall be governed by the relevant provisions of the State.

Article 12 Where an established foreign-funded enterprise applies to add international maritime transportation business or the auxiliary business relating thereto to its business scope, it shall go through the corresponding formalities in accordance with the procedures for establishing a foreign-funded enterprise engaging in specific international maritime transportation businesses set forth in these Provisions.

Where an established foreign-funded enterprise engaging in international maritime transportation is to establish branches, it shall go through the corresponding formalities with the Ministry of Communications and the Ministry of Commerce or their authorized agencies in accordance with the laws and administrative regulations on foreign investment of the State, the Maritime Transportation Regulations and the Implementing Rules of the Maritime Transportation Regulations.

Where an established foreign-funded enterprise engaging in international maritime transportation is to modify the essential contents such as investment contribution, structure of the shares or scope of business of its contract of joint venture or articles of association, it shall go through the corresponding formalities with the Ministry of Commerce or its authorized agencies in accordance with the laws and administrative regulations on foreign investment of the State. Any modification to the matters specified in Article 21 of the Implementing Rules of the Maritime Transportation Regulations shall be filed with the Ministry of Communications for the record.

Article 13 A foreign company engaging in shipping may establish a Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or wholly foreign-owned enterprise to offer such routine services as canvassing of cargoes, issuance of bills of lading, settlement of freight and signing of service contracts for the vessels owned or operated by investors. The procedures for establishment application of such an enterprise shall be governed by the relevant provisions jointly issued by the Ministry of Communications and the Ministry of Commerce on approval of establishment of wholly foreign-owned shipping companies.

Article 14 Where a foreign-funded enterprise within the territory of China is to engage in non-vessel-operating services, it shall, in accordance with the provisions of the Maritime Transportation Regulations and the Implementing Rules of the Maritime Transportation Regulations, make an application to the Ministry of Communications for registration and obtaining the Registration of Non-vessel-operating Services Qualification, and go through the approval formalities with the Ministry of Commerce in accordance with the relevant laws and

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administrative regulations on foreign investment of the State.

Article 15 Where an applicant makes an application to the Ministry of Communications, it shall submit the documents specified in the Maritime Transportation Regulations and the Implementing Rules of the Maritime Transportation Regulations. Where an applicant makes an application to the Ministry of Commerce or its authorized agencies, he shall submit the following documents:

- (1) the letter of application;
- (2) the feasibility study report;
- (3) the contract of the joint venture and the articles of association of the company (in case of a wholly foreign-owned company, the articles of association of the company only);
- (4) the registration certificate and credit-standing certificate of investors;
- (5) the identity certification of the chairperson of the board of directors and the general manager of the enterprise to be established;
- (6) other documents required by laws or administrative regulations.

Article 16 These Provisions are mutatis mutandis applicable to the establishment of enterprises engaging in international maritime transportation and the auxiliary services relating thereto in other provinces, autonomous regions or municipalities directly under the Central Government by the investors from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan region.

Article 17 In accordance with the relevant provisions of the Mainland and Hong Kong Closer Economic Partnership Arrangement, the Mainland and Macao Closer Economic Partnership Arrangement and their Annexes, from January 1st, 2004, service suppliers from Hong Kong or Macao may established a wholly Hong Kong or Macao-owned enterprise in Chinese mainland to engage in international ship management services, international maritime cargo warehousing, international maritime container freight station and container yard services, and non-vessel-operating services; they may also establish a wholly Hong Kong or Macao-owned shipping company in Chinese mainland to offer such routine services as canvassing of cargoes, issuance of bills of lading, settlement of freight and signing of service contracts for their owned or operated vessels.

Article 18 The Ministry of Communications and the Ministry of Commerce are responsible for the interpretation of these Provisions.

Article 19 These Provisions shall take effect as of June 1st, 2004.

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