

Foreign Investment in Civil Aviation Provisions (CCAR-201)

(Promulgated by the Civil Aviation Administration of China, the Ministry of Foreign Trade and Economic Cooperation and the State Development Planning Commission on 21 June 2002 and effective as of 1 August 2002.)

Article 1 These Provisions have been formulated pursuant to the PRC, Sino-foreign Equity Joint Venture Law, the PRC, Sino-foreign Cooperative Joint Venture Law, the Guiding the Direction of Foreign Investment Provisions, the Foreign Investment Industrial Guidance Catalogue (hereafter the Provisions and the Catalogue respectively) and relevant laws and regulations on the civil aviation industry (Civil Aviation), in order to further open China's Civil Aviation to foreign investment, promote the reform and development of Civil Aviation and protect the lawful rights and interests of investors.

Article 2 These Provisions shall govern the investment in Civil Aviation by foreign companies, enterprises and other economic organizations and individuals (Foreign Investors).

Article 3 The scope of investment in Civil Aviation by Foreign Investors shall include civilian airports, public air transport enterprises, general aviation enterprises and air transport related projects. Foreign Investors are forbidden from investing in and managing air traffic control systems.

1) Investment in the construction of civilian airports by Foreign Investors is encouraged. For the purposes of these Provisions, the term "civilian airport" does not include military-civilian dual use airports. Civilian airport projects in which Foreign Investors may invest are divided into the two following categories:

a) civilian airport flight areas, including runways, taxiways, connecting taxiways, parking aprons and lights to aid navigation; and

b) Terminal buildings.

2) Investment in existing public air transport enterprises by Foreign Investors is encouraged.

Foreign Investors are encouraged to invest in general aviation enterprises servicing the agricultural, forestry and fishing industries.

Foreign Investors are permitted to invest in general aviation enterprises that operate executive flights or air tours or that provide services to industry but may not invest in projects for operations that involve State secrets.

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3) The term “air transport related projects” includes aviation fuel, aircraft maintenance and repair, transport and storage of cargo, ground services, air catering, parking lots and other approved projects.

Article 4 Investment vehicles available to Foreign Investors include the following:

- 1) Equity and cooperative joint ventures (Joint Ventures);
- 2) Purchase of civil aviation enterprise shares, including shares issued outside mainland China and listed foreign investment shares issued in mainland China by civil aviation enterprises; and
- 3) Other approved investment vehicles.

Public air transport enterprises, and general aviation enterprises that operate executive flights or air tours, organized as cooperative joint ventures invested in by Foreign Investors must obtain the status of Chinese legal person.

Article 5 When Foreign Investors wish to invest in public air transport enterprises or civilian airports, all things being equal, preferential consideration shall be given to foreign enterprises in the same industry whose operations and management have reached an advanced level internationally.

Article 6 When Foreign Investors invest in civilian airports, the Chinese party shall have a relative controlling interest.

When Foreign Investors invest in public air transport enterprises, the Chinese party shall have a controlling interest and the investment ratio of any one Foreign Investor (including its affiliates) may not exceed 25%.

When Foreign Investors invest in general aviation enterprises that operate executive flights or air tours or that provide services to industry, the Chinese party shall have a controlling interest; when Foreign Investors invest in general aviation enterprises that service the agricultural, forestry and fishing industries, the investment ratio of the Foreign Investors shall be determined by the parties.

When Foreign Investors invest in aircraft repair and maintenance (with the obligation to contract for business from the international repair and maintenance market) or aviation fuel projects, the Chinese party shall hold a controlling interest; when Foreign Investors invest in projects for the transport and storage of cargo, ground services projects, air catering projects, parking lot projects, etc., the investment ratio of the Foreign Investors shall be determined by the parties.

Article 7 The term of operation of Joint Ventures invested in by Foreign Investors shall in general

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not exceed 30 years.

Article 8 The aviation service fees charged by civilian airport enterprises invested in by Foreign Investors shall follow uniform State rates, whereas the rates for fees charged for non-aviation services shall be determined through consultations between the enterprise and the local pricing department.

Public air transport enterprises and general aviation enterprises invested in by Foreign Investors must implement State pricing policies.

Article 9 Procedures for the appraisal of land and for the examination and approval of the disposal of leaseholds required for the construction of civilian airports with investment by Foreign Investors shall be carried out in accordance with State laws and regulations on the administration of land and the provisions of the Civil Aviation Administration of China (CAAC) on the administration of land for airports.

Article 10 Foreign Investors that invest in the construction of civilian airports shall enjoy preference in investing in the operation of air transport related projects.

Article 11 The project proposal and the feasibility study for a Civil Aviation project above the investment limit invested in by a Foreign Investor shall, depending on the nature of the project, be subject to the examination and approval of either the State Development Planning Commission (for capital construction projects) or the State Economic and Trade Commission (for technical transformation projects) after such commission has obtained the agreement of the CAAC. The contract for, and the articles of association of, the project shall be subject to the examination and approval of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC). The project proposal and the feasibility study for a project not exceeding the investment limit shall be subject to the examination and approval of the CAAC and the contract therefor and the articles of association thereof shall be subject to the examination and approval of MOFTEC.

Examination and approval procedures for such air transport related projects as projects for the transportation and storage of cargo, ground service projects, air catering projects, parking lot projects, etc. that are invested in by Foreign Investors shall be handled in accordance with the procedures and limits of authority set forth in the Provisions and the Catalogue.

Article 12 After the contract for and the articles of association of a civilian airport project invested in by a Foreign Investor have been approved, an approval certificate for a foreign investment enterprise shall be obtained from MOFTEC, after which the relevant registration procedures shall be carried out with the administration for industry and commerce.

After the contract for and the articles of association of a public air transport enterprise or a general

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aviation enterprise invested in by a Foreign Investor have been approved, an enterprise operation permit shall be obtained from, or procedures for amendment thereof shall be carried out with, the CAAC, an approval certificate for a foreign investment enterprise shall be obtained from MOFTEC and the relevant registration procedures shall be carried out with the administration for industry and commerce.

Article 13 If a civil aviation enterprise wishes to issue shares outside mainland China, issue foreign investment shares in mainland China or otherwise attract investment by Foreign Investors, it shall carry out the examination and approval procedures with the relevant competent State authorities in accordance with relevant State law provisions and procedures.

Article 14 Capital and share increases, changes in equity, etc. of civil aviation enterprises (projects) invested in by Foreign Investors shall be reported to the original examination and approval authority for examination and approval.

Article 15 The CAAC and its regional offices will, in accordance with the law, implement industry administration and supervision of the business activities of civil aviation enterprises invested in by Foreign Investors.

Article 16 Investments in Civil Aviation which companies, enterprises and other economic organizations or individuals from the Hong Kong and Macao Special Administrative Regions and Taiwan make in other Chinese provinces, autonomous regions and municipalities directly under the central government shall be handled with reference to these Provisions.

Article 17 These Provisions shall be implemented as of 1 August 2002. The Relevant Policy Concerning Foreign Investment in Civil Aviation Industry Circular (ref. Min Hang Zong Ju Han [1994] No. 448) issued by the CAAC and MOFTEC on 6 May 1994 and the Issue of the Several Issues of the Interpretation Circular (ref. Min Hang Zong Ju Fa [1994] No. 271) promulgated by the CAAC and MOFTEC on 25 October 1994 shall be repealed on the same date.

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