

Encouraging the Development of the Software and Integrated Circuit Industries Several Policies

Promulgated on and effective as of 24 June 2000

The following policies have been formulated to encourage the development of China's software industry and integrated circuit industry, strengthen creativity and international competitiveness in the information industry, spur the reformation of traditional industries and the upgrading and replacement of products and further promote the sustained, rapid and healthy development of the national economy.

PART ONE POLICY OBJECTIVES

Article 1 To guide and encourage, through policies, the investment of such resources as funds, human talent, etc. in the software industry and the integrated circuit industry, further promote the rapid development of China's information industry, and strive to have research and development in and the production capacity of China's software industry reach or approach advanced international levels by 2010.

Article 2 To encourage enterprises in China to fully use both foreign and domestic resources and make efforts to develop the two markets. To enable domestically produced software products to satisfy most of the domestic market demand and be exported in large quantities after 5 to 10 years of effort; to enable domestically produced integrated circuit products to satisfy most of the demand in the domestic market and be exported in considerable quantities; and to further narrow the gap with developed countries in development and production technology.

PART TWO INVESTMENT AND FINANCING POLICIES

Article 3 Raising funds through different channels to increase investment in the software industry.

1. A software industry venture investment mechanism will be established and venture investment in the software industry will be encouraged. The State will support the establishment of venture investment companies and venture investment funds. Initially, the State can arrange some seed capital, while funds are also raised through such methods as private placements with non-governmental investors, the attraction of domestic and foreign venture investment funds, etc. A venture investment company shall be operated and managed as an enterprise, in accordance with the venture investment operation pattern. The shares such a company holds in a software enterprise may be circulated in the market from the day the software enterprise is listed. However, if the venture investment company is a sponsor of the software enterprise, matters shall be handled in accordance with the relevant laws and regulations.

2. The Tenth Five-Year Plan will suitably allocate some budgeted capital construction funds to infrastructure and industrialization projects in the software and integrated circuit industries. Several

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State-supported software parks will be established in areas where scientific research capacity in the form of institutes of higher learning, scientific research institutes, etc is concentrated. The State Development Planning Commission, the Ministry of Finance, the Ministry of Science and Technology and the Ministry of Information Industry shall, when formulating their annual plans, each allocate a portion of the science and technology development funds at their disposal for use in the support of basic software development or as incubator funds for the software industry.

Article 4 Conditions for financing of software enterprises by means of domestic and foreign listings will be created.

1. Stock market growth enterprise boards will be launched as soon as possible. Priority arrangements shall be made for all software enterprises that meet the listing conditions of stock market growth enterprise boards, regardless of the nature of their ownership.
2. In asset appraisals, the investors may themselves determine the proportion of net assets accounted for by intangible assets, if the software enterprise has good market potential and is strong in human talent.
3. The financing of software enterprises through foreign listings is supported. All software enterprises that are found to qualify for listing abroad may be permitted to apply abroad for financing by means of listing.

PART THREE TAX POLICIES

Article 5 The State encourages the development and production of software products in China. Until 2010, value-added tax (VAT) will be levied at the statutory rate of 17% on an ordinary VAT payer's sale of software products developed and produced by itself. The portion of the tax burden in excess of 3% shall be refunded upon collection and used by the enterprise to research and develop software products and to expand reproduction.

Article 6 Software enterprises established in China will be eligible for preferential enterprise income tax policies. Newly established software enterprises that have been recognized as such will be eligible for the preferential policy of "two years of exemption and three years of 50% reduction" of enterprise income tax from the year they become profitable.

Article 7 Key software industries falling within the State's planned arrangement that are not eligible for preferential tax exemption in a given year will have enterprise income tax levied at the reduced rate of 10%. The list of key software enterprises falling within the State's planned arrangement shall be jointly determined by the State Development Planning Commission, the Ministry of Information Industry, the Ministry of Foreign Trade and Economic Cooperation and the State Administration of Taxation.

Article 8 The necessary equipment imported by a software enterprise for its own use and technology (including software), ancillary parts and spare parts that, in accordance with the contract, are imported

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together with such equipment, may all be exempted from import duty and import VAT, provided that they are not listed in the Import Commodities Not Exempt from Taxation for Foreign Investment Projects Catalogue and the Import Commodities Not Exempt from Taxation for Domestic Investment Projects Catalogue.

Article 9 Software enterprises may list the entire amount of their actual personnel remuneration and training expenses as a before tax expense for enterprise income tax purposes.

PART FOUR INDUSTRIAL TECHNOLOGY POLICIES

Article 10 The development of major universal software and fundamental software is supported. State science and technology funds will primarily be used to support the research and development of fundamental, strategic universal software technology that is geared towards the future and of significant importance, mainly including such fundamental software and universal software as operating systems, large database management systems, network platforms, development platforms, information security, embedded systems, large application software systems, etc. The best candidates to undertake the aforementioned software research and development projects supported by the State shall be selected by open tender. Such candidates should principally be enterprises and involve a combination of production, study and research.

Article 11 The joint establishment of research and development centres by domestic enterprises, scientific research institutes and institutes of higher learning with foreign enterprises is supported.

PART FIVE EXPORT POLICIES

Article 12 The export of software will be incorporated into the scope of business of the Import and Export Bank of China. Such exports will be eligible for support in the form of preferential interest rates on loans, and State export credit insurance institutions shall provide export credit insurance.

Article 13 Software enterprises with annual software exports exceeding US\$1 million will have the right to export their own software.

Article 14 Customs shall provide convenient and flexible service to the software production and development business. When research and development centres are established in State-supported software parks to accommodate software design and services for foreign clients, Customs shall permit bonded import of equipment used to emulate user environments.

Article 15 In order to meet the actual needs of key software enterprises that participate in international exchange, the entry and exit examination and approval procedures for their senior and middle managers and technical personnel shall be simplified and the term of validity of their exit visas shall be appropriately extended. The specific procedures therefor shall be separately formulated by the

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Ministry of Foreign Affairs in conjunction with the relevant authorities.

Article 16 Exchange control procedures appropriate to the special characteristics of software trade shall be adopted. Foreign trade, customs and exchange control procedures different from those applicable to other products shall be implemented, based on the special characteristics of software product trading (including the processing of software packaging), so as to respond to the needs of software enterprises that engage in international commercial activities.

Article 17 Export-oriented software enterprises are encouraged to undergo GB/T19000 SO9000 quality assurance system certification and CMM certification. The certification fees therefore shall be appropriately subsidized by the Central Foreign Trade Development Fund.

PART SIX INCOME DISTRIBUTION POLICIES

Article 18 Software enterprises may themselves decide their total payroll and wage standard in accordance with relevant State laws and regulations and based on their business performance and the average wage paid by employers.

Article 19 An incentive mechanism to distribute income among the scientific and technical personnel of software enterprises shall be established in order to encourage enterprises to award major rewards to scientific and technical personnel who have made outstanding contributions.

Article 20 Software enterprises may permit the injection of appraised technical patents and scientific and technological achievements as capital contributions, and grant the corresponding shares to the inventors or contributors. The profits for the last three to five years earned from the transformation of the scientific and technological achievements realized by an enterprise may be converted into shares and distributed according to the prescribed ratio pursuant to the PRC, Promoting the Practical Application of Scientific and Technological Achievements Law. Patented and non-patented technology brought into an enterprise by a group or individual may be directly appraised by the enterprise, converted into shares and the shares distributed.

Article 21 If software enterprises listed on a growth enterprise board offer stock options to their senior management personnel and their principal technical personnel, they shall make a detailed disclosure thereof in their prospectuses and provide the necessary explanatory materials to the stock exchange in accordance with the listing rules of the growth enterprise board. The proportion of the publicly offered shares accounted for by the aforementioned stock options shall be decided by the company's board of directors.

PART SEVEN POLICIES FOR THE ATTRACTION AND CULTIVATION OF HUMAN TALENT

Article 22 The State education authority shall, in accordance with market demand, further expand

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the scale of cultivation of software talent and establish a number of centres for the cultivation of software talent backed by institutes of higher learning and scientific research institutes.

1. To exploit the strengths of domestic education resources, the scale of recruitment of students specializing in software by existing institutes of higher learning and technical secondary schools shall be expanded, in order to cultivate software talent at different levels. At present the number of such high-level software students as Master's students, doctoral students and post-doctoral students shall be expanded as quickly as possible and qualified institutes of higher learning shall be encouraged to establish software colleges. Software application courses shall be established in the non-computer major programs of science and engineering institutes to cultivate multi-skilled persons.

2. Adult education and part-time education programs (on-air universities, etc.) shall establish or strengthen their teaching of majors in software, actively support enterprises, scientific research institutes and social forces to launch various types of software technology training and strengthen the updating of the knowledge and continuing education of employed persons. Modern distance education shall be actively promoted in qualified departments and regions. Knowledge of software and computer application shall gradually be incorporated into the criteria for evaluating the technical positions of engineering and technical personnel.

3. The State Bureau of Foreign Experts and the Ministry of Education shall jointly establish a special fund to support high-level software researchers in furthering their studies abroad and to invite foreign software experts to teach and work in China.

Article 23 Software system analysts and system engineers who have at least mid-level technical positions or have major inventions to their credit and who are employed to work in State supported software parks shall, upon being recommended by their work units and passing assessment by the relevant authorities, be permitted to settle with their spouses and non-adult children in the place where the software park is located.

Article 24 A global human talent strategy shall be implemented to attract domestic and foreign software technology people to establish software enterprises in China. The relevant authorities shall provide a certain amount of financial support to scientific and technical personnel of domestic institutes of higher learning and scientific research institutes who establish software enterprises and shall loosen conditions in the area of personnel movement. Foreign students and foreign nationals who establish software enterprises in China will be eligible for all preferential State policies in respect of software enterprises.

PART EIGHT PROCUREMENT POLICIES

Article 25 Major State-invested projects and key application systems shall preferably be undertaken by domestic enterprises and, given equal price-performance-ratios, give preference to the use of domestically produced software systems. When preparing project budgets, software and technical services shall be treated as independent budget items and the availability of such funds shall be

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ensured.

Article 26 If the purchase cost of the software purchased by an enterprise or institution reaches the standard for fixed assets or such software constitutes an intangible asset, the software may be reflected in the accounts as a fixed asset or intangible asset and, subject to the approval of the tax authorities, the depreciation or amortization period therefor may be suitably reduced to as little as two years.

Article 27 When a government organization purchases software and such software involves State sovereignty or economic security, the government organization shall use government procurement measures to purchase such software.

PART NINE SYSTEM FOR THE RECOGNITION OF SOFTWARE ENTERPRISES

Article 28 The standards for the recognition of software enterprises shall be formulated by the Ministry of Information Industry in conjunction with such authorities as the Ministry of Education, the Ministry of Science and Technology, the State Administration of Taxation, etc.

Article 29 Software enterprises shall be subject to a system of annual inspections. An enterprise that fails an annual inspection shall have its software enterprise qualifications revoked immediately and shall cease to be eligible for the relevant preferential policies.

Article 30 The software industry associations or related associations at or above the prefectural (municipal) level authorized by the information industry authorities at a higher level shall be specifically responsible for organizing the recognition and annual inspections of software enterprises. The shortlist of software enterprises shall be drawn up by the industry associations and submitted to the higher level information industry authorities for examination and approval; the list shall be made public after it has been approved by the said authorities and been approved and countersigned by the tax authorities at the same level.

Article 31 The Ministry of Information Industry and the State Bureau of Quality and Technical Supervision shall be responsible for formulating the State standards for software products.

PART TEN: PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Article 32 The State Council's copyright administration authority shall regulate and strengthen the registration system for software copyrights, encourage the registration of software copyrights and, in accordance with State laws, give priority protection to software that has been registered.

Article 33 No work unit may use unlicensed software on its computer system, in order to protect the lawful rights and interests of domestic and foreign copyright holders.

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Article 34 The crackdown on smuggled and pirated software shall be intensified and activities of organizing the fabrication, production and/or sale of pirated software shall be strictly investigated and dealt with. Commencing in the second half of 2000, the Ministry of Public Security, the Ministry of Information Industry, the State Administration for Industry and Commerce, the State Intellectual Property Office, the State Copyright Bureau and the State Administration of Taxation shall regularly carry out joint activities directed specifically at combating pirated software.

PART ELEVEN: INDUSTRY ORGANIZATIONS AND INDUSTRY ADMINISTRATION

Article 35 The competent information industry authority at each level shall carry out the administration and supervision of the software industry.

Article 36 The competent information industry authorities shall fully exploit the functions of the software industry associations in such areas as market surveying, information exchange, consultancy, evaluation, industry self-regulation, protection of intellectual property rights, recognition of qualifications, policy research, etc. to promote the healthy development of the software industry.

Article 37 The funds needed by the software industry associations to carry out activities shall mainly be borne jointly by the association members. Upon application by the competent authority, suitable support may also be granted from public finances.

Article 38 Software industry associations must perform their software enterprise recognition function in accordance with the principles of openness, impartiality and fairness.

Article 39 Software output value and export volume shall be included in the relevant State statistics and shall be listed separately in the information industry catalog.

PART TWELVE: INTEGRATED CIRCUIT INDUSTRY POLICIES

Article 40 Domestic and foreign enterprises are encouraged to establish equity joint venture or wholly owned integrated circuit production enterprises in China and the relevant authorities shall expediently examine and approve all those enterprises that meet the conditions, in accordance with procedures.

Article 41 Until 2010, VAT will be levied at the statutory rate of 17% on an ordinary VAT payer's sale of integrated circuits (including monocrystalline silicon wafers) produced by itself. The portion of the tax burden in excess of 6% shall be refunded upon collection and used by the enterprise to research and develop new integrated circuits and to expand reproduction.

Article 42 Integrated circuit producers that fulfil one of the conditions set forth below shall be eligible for the preferential tax policies used to encourage foreign investment in energy resources and

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transportation:

1. their investment amount exceeds Rmb 8 billion; or
2. their integrated circuits have a line width of less than 0.25 microns.

Article 43 Customs shall facilitate customs clearance for producers that conform with the provisions of Article 42 hereof. The specific procedures therefor shall be formulated by the General Administration of Customs.

Article 44 Producers that conform with the provisions of Article 42 hereof shall be exempt from customs duties and import VAT on the import of raw materials and consumables for use in their production. The Ministry of Information Industry in conjunction with such authorities as the State Development Planning Commission, the Ministry of Foreign Trade and Economic Cooperation and the General Administration of Customs, etc. shall be responsible for drawing up a list of integrated circuit merchandise to be exempted from duty and tax. Such list shall be submitted to the State Council for its approval before implementation.

Article 45 Enterprises that conform with the provisions of Article 42 hereof shall be permitted to deposit their after tax profits earmarked for reinvestment in China in foreign currency into a special account, in order to avoid exchange risks. Such accounts shall be overseen by the exchange control authority.

Article 46 The depreciation period on the production equipment of integrated circuit producers may be as short as three years.

Article 47 The import of integrated circuit technology and whole sets of production equipment as well as imports of single pieces of specialized equipment and instruments for integrated circuits by integrated circuit producers shall be handled in accordance with the relevant provisions of the Foreign Investment Industrial Guidance Catalogue and the Industries, Products and Technologies Currently Particularly Encouraged by the State for Development Catalogue, and such imports shall be exempt from customs duties and import VAT.

Article 48 If an integrated circuit designed by a domestic integrated circuit design enterprise truly cannot be produced in China, the chips may be produced abroad and, subject to the recognition of the processing contract (including the specifications and quantity) by the authority in charge of the industry, customs duty shall be levied on the import thereof at a provisional preferential rate.

Article 49 The decision whether to recognize an enterprise as an integrated circuit enterprise shall be made by the examination and approval authority for the integrated circuit project after seeking the opinion of the tax authorities at the same level.

Article 50 Integrated circuit design products shall be treated like software products and given the

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legal protection for intellectual property. The State encourages the evaluation, testing and registration of integrated circuit design products.

Article 51 The integrated circuit design industry shall be treated like the software industry and the policies relevant to the software industry shall apply thereto.

PART THIRTEEN: SUPPLEMENTARY PROVISIONS

Article 52 All software enterprises and integrated circuit enterprises established in China, regardless of the nature of their ownership, may enjoy these Policies.

Article 53 These Policies shall be implemented as of the date of promulgation.



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