

The Provisions on The Administration of Foreign-funded Advertising Enterprises

Order of the State Administration for Industry and Commerce and the Ministry of Commerce No. 8

Article 1 With a view to strengthening the administration on the foreign-funded advertising enterprises, and promoting the sound development of advertising industry, the present Provisions are formulated in accordance with the laws and administrative regulations governing the management of foreign investments and advertisements.

Article 2 "Foreign-funded advertising enterprises" as mentioned in the present Provisions refers to the Sino-foreign equity joint enterprises and Sino-foreign contractual joint ventures lawfully engaging in advertising operations (hereinafter referred to as Sino-foreign equity joint or contractual advertising enterprises, the same below) and foreign-funded advertising enterprises.

Article 3 Establishing a foreign-funded advertising enterprise, one shall abide by the present Provisions as well as the Law of the People's Republic of China on Sino-foreign Equity Joint Enterprises, the Law of the People's Republic of China on Sino-foreign Contractual Joint Enterprises, the Law of the People's Republic of China on Foreign-funded Enterprises, the Advertising Law of the People's Republic of China, Regulations on the Management of Advertisements, the Regulations on the Qualifications of Advertising Operators or Issuers of Advertisements and the Phraseology for Determining the Business Scope of Advertising, and other relevant laws, regulations and rules.

Article 4 The project proposal and the feasibility study report of a foreign-funded advertising enterprise shall be subject to the examination and approval of the State Administration for Industry and Commerce (SAIC) and its authorized administration for industry and commerce of provincial level. The contracts and articles of associations of a foreign-funded advertising enterprise shall be subject to the examination and approval of the Ministry of Commerce and its authorized administrative department of the provincial level.

Article 5 A foreign-funded advertising enterprise that meets the prescribed conditions may engage in designing, making, issuing, or agency of various advertisements businesses both home and abroad. The specific business scope shall be subject to the examination and approval of the SAIC and its authorized administration for industry and commerce of provincial level in pursuance of the Regulations on the Qualifications of Advertising Operators or Issuers of Advertisements and the Phraseology for Determining the Business Scope of Advertising.

Article 6 The establishment of a Sino-foreign equity joint and contractual advertising enterprise, one shall conduct according to the procedures as follows:

(1) The main Chinese partner shall submit the documents as listed in Article 12 to the local administration for industry and commerce competent for examining and approving the registration

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of foreign-funded enterprises, who shall give an opinion on the preliminary examination, then submit the aforesaid documents to the administration for industry and commerce of the provincial level authorized by the SAIC for examination and approval, or submit them to the SAIC for examination and approval via the administration for industry and commerce of a province, autonomous region, municipality directly under the Central Government or city directly under State planning upon examination and approval.

The SAIC and its authorized administration for industry and commerce of the provincial level shall make a decision on approval or disapproval within 20 days as of the day when they received the complete set of documents.

(2) After obtaining the Opinion on the Examination and Approval of Foreign-funded Advertising Enterprise Project issued by the SAIC or its authorized administration for industry and commerce of the provincial level, the main Chinese partner shall submit the documents as listed in Article 13 to the administrative department of commerce of the provincial level where the to-be-established enterprise is located. After it is approved by the administrative department of commerce of the provincial level upon examination, a Foreign-funded Enterprise Approval Certificate shall be issued. If it is disapproved, written explanations shall be given.

(3) The main Chinese partner shall, pursuant to the relevant regulations on enterprise registration, handle the enterprise registration formalities in the SAIC or in its authorized administration for industry and commerce competent for examining and approving the registration of foreign-funded enterprise on the strength of the Opinion on the Examination and Approval of the Foreign-funded Advertising Enterprise Project issued by the SAIC and its authorized administration for industry and commerce, the Foreign-funded Enterprise Approval Certificate issued by the administrative department of commerce of the provincial level and other documents as required by the laws and regulations.

Article 7 The establishment of a foreign-funded advertising enterprise, one shall conduct according to the procedures as follows:

(1) The foreign investor shall submit to the SAIC the documents as listed in Article 14.

The SAIC shall make a decision on approval or disapproval within 20 days as of the day it receives the complete set of documents.

(2) After obtaining the Opinion on the Examination and Approval of Foreign-funded Advertising Enterprise Project issued by the SAIC, the foreign investor shall submit the documents listed in Article 15 to the administration for industry and commerce of the provincial level where the to-be-established enterprise is located. The administration for industry and commerce of the provincial level shall give a preliminary examination opinion and submit the aforesaid documents to the Ministry of Commerce for examination and approval within 20 days.

The Ministry of Commerce shall make a decision on approval or disapproval within 20 days as of the day it receives the documents. After examination and approval, a Foreign-funded Enterprise Approval Certificate shall be issued.

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(3) The foreign investor shall, according to the relevant regulations on the enterprise registration, go through the enterprise registration formalities in the SAIC on the strength of the Opinion on the Examination and Approval of the Foreign-funded Advertising Enterprise Project issued by the SAIC, the Foreign-funded Enterprise Approval Certificate issued by the administrative department of commerce of the provincial level and other documents as prescribed in the laws and regulations.

Article 8 Where a foreign-funded advertising enterprise files an application for establishing a branch, it shall conduct according to the procedures as follows:

- (1) It shall submit the documents as listed in Article 16 to the local administrative department of commerce and the administration for industry and commerce of the provincial level separately;
- (2) The local administrative department of commerce of the provincial level shall make a decision on approval or disapproval after consulting the administration for industry and commerce of the same level. Where it approves, it shall simultaneously send a copy of approval document to the administrative department of commerce of the provincial level where the to-be-established branch is located and the administration for industry and commerce of the provincial level; if it disapproves, it shall give written explanations; and
- (3) It shall handle the enterprise registration formalities in the administration for industry and commerce competent for examining and approving the registration of foreign-funded enterprises where the to-be-established branch is located on the strength of the approval documents on establishment of branches and other documents as prescribed by the laws and regulations.

Article 9 Establishing a Sino-foreign equity joint or contractual advertising enterprise, the applicant shall not only meet the conditions as provided for in the relevant laws and regulations, but also meet the following requirements:

- (1) All partners shall be enterprises engaging in advertising business;
- (2) All partners shall have existed and have engaged in advertising business for not less than 2 years since establishment; and
- (3) Having advertising achievements.

Article 10 Establishing a foreign-funded advertising enterprise, the applicant shall not only meet the relevant conditions as provided for in the laws and regulations, but also meet the following conditions:

- (1) The investor shall be an enterprise mainly engaging in advertising business; and
- (2) The investor has existed and has engaged in advertising business for not less than 3 years since establishment.

Article 11 Where a foreign-funded advertising enterprise files an application for establishing a branch, it shall meet the following basic conditions:

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- (1) Having paid up the registered capital; and
- (2) Its annual business volume is not less than RMB 20 million Yuan.

Article 12 Applying for the establishment of a Sino-foreign equity joint or contractual advertising enterprise, the main Chinese partner shall submit the following documents to the SAIC or its authorized administration for industry and commerce of the provincial level according to the procedures as provided for in Article 6:

- (1) The application for the establishment of Sino-foreign equity joint or contractual enterprise;
- (2) The Notice on the Pre-approval of Enterprise Name;
- (3) The resolutions made by the partners' shareholders' assembly (board of directors);
- (4) The project proposal for the establishment of Sino-joint equity joint or contractual enterprise and the feasibility research report jointly formulated by all partners;
- (5) The registration certifications of all partners;
- (6) The credit-standing certifications of all partners;
- (7) The bylaws for advertising management; and
- (8) The preliminary examination opinions of the local administration for industry and commerce.

Article 13 Applying for the establishment of a Sino-foreign equity joint or contractual advertising enterprise, the applicant shall, in accordance with Article 6, submit the following documents to the administrative department of commerce of the provincial level:

- (1) The Opinion on the Examination and Approval of Foreign-funded Advertising Enterprise Project issued by the SAIC or its authorized administration for industry and commerce of the provincial level;
- (2) The contract for establishing a foreign-funded advertising enterprise and articles of association;
- (3) The project feasibility research report;
- (4) The registration certifications of all partners;
- (5) The credit-standing certifications of all partners;
- (6) The Notice on the Pre-approval of Enterprise Name;
- (7) The bylaws for advertising management; and
- (8) The preliminary examination opinions of the local administrative department of commerce.

Article 14 Applying for the establishment of a foreign-funded advertising enterprise, the investor shall submit the following documents to the SAIC according to the procedures prescribed in Article 7:

- (1) The application for the establishment of foreign-funded advertising enterprise;
- (2) Resolutions of the investor's shareholder's assembly (board of directors);
- (3) The project proposal formulated by an investor and the feasibility research report;
- (4) The registration certification of the investor;
- (5) The credit-standing certification of the investor; and

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(6) The Notice on the Pre-approval of Enterprise Name.

Article 15 Establishing a foreign-funded advertising enterprise, the foreign investor shall submit the following documents to the Ministry of Commerce according to the procedures prescribed in Article 7:

- (1) The application for establishing a foreign-funded advertising enterprise;
- (2) The Opinion on the Examination and Approval of Foreign-funded Advertising Enterprise Project;
- (3) The project proposal and feasibility research report formulated by the investor;
- (4) The registration certification of the investor;
- (5) The credit-standing certification of the investor; and
- (6) The articles of association for the establishment of the foreign-funded advertising enterprise.

Article 16 Where a foreign-funded advertising enterprise files an application for establishing a branch, it shall submit the following documents to the administrative department of commerce of the provincial level and the administration for industry and commerce of the same level:

- (1) The application of a foreign-funded advertising enterprise for establishing a branch;
- (2) The resolution of the board of directors;
- (3) The annual audit report on advertising operations;
- (4) The Enterprise Business License;
- (5) The business place certification; and
- (6) The enterprise" capital verification report.

Article 17 After establishing a foreign-funded advertising enterprise, it shall, if any of the following circumstances occurs, report for approval separately and modify the registration of the enterprise according to the procedures as provided for in Articles 6 and 7:

- (1) Modifying a partner or transferring equity;
- (2) Modifying the scope for advertising business; or
- (3) Modifying the registered capital.

Article 18 while establishing an advertising enterprise, a foreign investor may entrust a qualified agency to handle the application formalities for it.

Article 19 All the documents required to submit according to the present Provisions shall be expressed in Chinese.

Article 20 Where a foreign investor who invests in advertising industry by merging a domestic advertising enterprise, he shall handle the formalities as provided for in the relevant regulations and the present Provisions on merge of domestic enterprises by foreign investors.

Article 21 Where investors from Hong Kong, Macao and Taiwan establish advertising enterprises in

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the Mainland of China, they shall handle the formalities by referring to the present Provisions.

Article 22 Where a foreign-funded enterprise files an application for increasing advertising business, it shall handle the formalities by referring to the present Provisions.

Article 23 Foreign investors are allowed to hold majority equity as of the promulgation date of the present Provisions, which shall be not more than 70% of the total equity. Foreign investors are allowed to establish foreign-funded advertising enterprises as of December 10th, 2005.

Article 24 The responsibility to interpret the present Provisions shall remain with the SAIC and the Ministry of Commerce.

Article 25 The present Provisions shall come into effect as of the promulgation. Some Provisions on the Establishment of Foreign-funded Advertising Enterprises ([1994] No. 304) printed and distributed by the State Administration for Industry and Commerce shall be repealed simultaneously, and any other documents contradictory to the present Provisions shall be null and void simultaneously.

Attachment:

With a view to promoting the establishment of Hong Kong and Mainland and Macao and Mainland closer economic partnership, encouraging Hong Kong service providers and Macao service providers to establish advertising enterprises in the Mainland, the following supplementary provisions governing Hong Kong and Macao investors' investments in advertising industry are formulated in accordance with the Mainland and HK Closer Economic Partnership Arrangement and the Mainland and Macao Closer Economic Partnership Arrangement:

1. As of January 1st, 2004, Hong Kong service providers and Macao service providers are allowed to establish wholly-funded advertising enterprises.
2. Hong Kong service providers or Macao service providers shall meet the definition of "the service providers" and other relevant requirements in the Mainland and HK Closer Economic Partnership Arrangement or in the Mainland and Macao Closer Economic Partnership Arrangement.
3. A Hong Kong service provider or Macao service provider shall be a legal person engaging in advertising operations (including the circumstance that the advertising isn't its major business).
4. Where any other provisions on investments in the Mainland advertising industry made by Hong Kong service providers and Macao service providers contradictory to the present Provisions, the latter shall prevail

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