

## Administration of the Examination and Approval of Wholly Foreign-owned Shipping Companies Tentative Procedures

(Promulgated by the Ministry of Communications and the Ministry of Foreign Trade and Economic Cooperation on, and effective as of, 28 January 2000)

Article 1 These Procedures have been formulated pursuant to the laws of the People's Republic of China on foreign investment enterprises and shipping laws and regulations in order to standardize the investments and operations in the People's Republic of China of foreign shipping companies and to protect the lawful rights and interests of investors.

Article 2 These Procedures shall apply to the establishment in China of wholly owned shipping companies by foreign shipping companies.

For the purposes of the preceding paragraph, the term "foreign shipping company" means a shipping enterprise established in a foreign country in accordance with the laws of such foreign country (Foreign Shipping Company).

Article 3 The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the Ministry of Communications of the People's Republic of China are in charge of examining and approving the establishment in China of wholly owned shipping companies by Foreign Shipping Companies.

Article 4 The establishment in China of wholly owned shipping companies by foreign shipping companies shall be subject to examination and approval in accordance with the maritime transport treaties and related legal documents concluded between the government of China and the governments of the Foreign Shipping Companies' home countries.

Article 5 An applicant for the establishment of a wholly owned shipping company must meet the following conditions:

1. have at least 15 years experience in shipping;
2. have maintained a resident representative office approved by the Ministry of Communications in the port city where it proposes to establish its wholly owned shipping company for at least three years;
3. its scheduled vessels berth in the port city where it proposes to establish its wholly owned shipping company at least once per month (if it operates a shipping route through such cooperative forms as joint dispatch of vessels, mutual exchange of cargo space, joint operation, etc. and, upon approval, has obtained the right to operate a shipping route, it shall be deemed to satisfy this condition);

Foreign Shipping Companies which ship by unscheduled vessels must have a stable cargo source in China; and

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4. it has not violated Chinese laws, administrative regulations or rules during the course of its business activities in China for a consecutive period of two years.

Article 6 When applying to establish a wholly owned shipping company, the applicant shall submit the following documents:

1. a written application;
2. a feasibility study;
3. the articles of association;
4. documentary proof of the applicant's legal status and creditworthiness;
5. the power of attorney of the legal representative of the wholly owned shipping company and the names and résumé of the members of the board of directors;
6. a specimen of the applicant's bill of lading;
7. the approval document for the shipping routes operated and a photocopy of the resident representative office's approval document; and
8. other documents required by MOFTEC and the Ministry of Communications.

Article 7 Application for the establishment of a wholly owned shipping company shall be carried out in accordance with the following procedure:

1. The applicant shall submit all the documents enumerated in Article 6 hereof to the foreign trade and economic cooperation authority of the province, autonomous region or municipality directly under the central government where it proposes to establish its wholly owned shipping company.

The foreign trade and economic cooperation authority of the province, autonomous region or municipality directly under the central government shall conduct a preliminary examination of the documents submitted by the applicant. If it finds the application to meet the requirements upon its preliminary examination, it shall forward the same to MOFTEC for its examination and approval and send a copy of the same to the Ministry of Communications.

2. MOFTEC will examine and verify the application documents and seek the opinion of the Ministry of Communications. MOFTEC will issue its official reply after it and the Ministry of Communications achieve a unanimity of opinions. The applicant shall carry out the procedures for a Certificate of Approval for Establishment of Foreign Investment Enterprises (or a Certificate of Approval for Establishment of Enterprises With Investment of Taiwan, Hong Kong and Macao) with MOFTEC on the strength of the official reply.

3. Upon approval of the application, the applicant shall apply for registration with the administration authority for industry and commerce in accordance with relevant regulations on company registration within the specified time limit. The applicant may carry on business operations only after it has obtained its business licence and has been granted an Operating Licence for a Wholly Foreign-owned Shipping Company by the Ministry of Communications.

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Article 8 An approved wholly owned shipping company or branch thereof may engage in all or some of the following business for the vessels owned and operated by its parent company: procurement of cargo, issuance of bills of lading, settlement of shipping fees and the entry into service contracts.

Article 9 The registered capital of a wholly owned shipping company may not be less than US\$1 million.

Article 10 A wholly owned shipping company may apply to establish branches in other port cities in accordance with its business needs. A wholly owned shipping company establishing a branch shall satisfy the following conditions:

1. its registered capital has been fully paid in and it has been operating for at least one year;
2. its parent company has had scheduled vessels (including such cooperative forms as joint dispatch of vessels, mutual exchange of cargo space, joint operation, etc.) berth at the port of the place where the branch is to be established;
3. its parent company has maintained a resident representative office approved by the Ministry of Communications in the city where the branch is to be established for at least one year; and
4. it and its parent company have not violated Chinese laws, administrative regulations or rules during the course of their business activities in China for a consecutive period of one year.

The application procedure for the establishment of a branch by a wholly owned shipping company shall be carried out in accordance with the provisions of Article 7 hereof.

Article 11 For every branch it establishes, a wholly owned shipping company shall increase its registered capital by at least US\$120,000.

Article 12 At least 85% of the staff and workers of a wholly owned shipping company shall be Chinese employees.

Article 13 A wholly owned shipping company shall submit a report on the preceding year's business to MOFTEC and the Ministry of Communications annually by the end of April. The business reports shall include the following main particulars:

1. the scheduled shipping routes to Chinese ports;
2. the total number of working personnel and the number of Chinese employees;
3. the volume of cargo ('0,000 tonnes) and the number of TEU's carried in and out of Chinese ports and the amount of freight revenues; and
4. the gross business turnover, gross profits and amount of taxes paid for the year in question.

Article 14 The establishment of wholly owned shipping companies in Chinese provinces, autonomous regions and municipalities directly under the central government by shipping

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enterprises from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region shall be carried out with reference to these Procedures.

Article 15 These Procedures shall be implemented



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