

Administrative Measures of Chinese-Foreign Co-operative Audio-Video Products Distribution Enterprises

(Order No.28 of the Ministry of Culture and the Ministry of Commerce February 9, 2004)

The present Measures and the Attachment thereof shall be implemented as of January 1, 2004. The Measures for the Administration of Chinese-Foreign Cooperative Audio-video Product Distribution Enterprises promulgated by the Ministry of Culture and the Ministry of Foreign Trade and Economic Cooperation on December 10, 2001 shall be repealed simultaneously.

Sun Jiazheng, Minister of Culture of the People's Republic of China

December 8, 2003

Article 1 The present Measures are hereby formulated in accordance with the Law of the People's Republic of China on Chinese-Foreign Cooperative Enterprises, the Regulations on the Administration of Audio-video Products and other laws and regulations for the purpose of enlarging foreign cultural exchanges and economic cooperation as well as strengthening administration on Chinese-foreign cooperative audio-video product distribution enterprises.

Article 2 The present Measures shall be applicable to the Chinese-foreign cooperative audio-video product distribution enterprises established within the territory of the People's Republic of China.

The "Chinese-foreign cooperative audio-video product distribution enterprises" as mentioned in the present Measures refer to the enterprises that are, upon the approval of relevant departments of the Chinese government, cooperatively established inside the territory of China in light of the principles of equality and mutual benefits between foreign enterprises, other economic organizations or individuals (hereinafter referred to as the foreign cooperators) and Chinese enterprises and other economic organizations (hereinafter referred to as the Chinese cooperators) to engage in the business of wholesaling, retailing or leasing audio-video products.

Audio-video products as mentioned in the present Measures refer to audio tapes, video tapes, gramophone records, laser audio discs and laser video discs, etc. on which contents are recorded.

Article 3 The Chinese-foreign cooperative audio-video product distribution enterprises must abide by the relevant laws and regulations, and disperse thoughts, ethics, science and technologies, and cultural knowledge that are beneficial to economic development and social progress.

Article 4 The legitimate business activities of Chinese-foreign cooperative audio-video product distribution enterprises and the legitimate rights and interests of the cooperators shall be subject to the protection of Chinese law.

Article 5 The Ministry of Culture and the Ministry of Commerce and their authorized competent departments of culture and commerce at the provincial level shall be responsible for the examination and approval of and supervision over the Chinese-foreign cooperative audio-video

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product distribution enterprises.

The competent departments of culture and commerce of the local people's governments at the county level or above shall, on the basis of their respective duties, be responsible for the daily supervision over and administration on the Chinese-foreign cooperative audio-video product distribution enterprises within their own administrative regions.

Article 6 The establishment and development of the Chinese-foreign cooperative audio-video product distribution enterprises must be in conformity with the development planning of the audio-video market.

Article 7 Both the Chinese and foreign cooperators who apply for establishing a Chinese-foreign cooperative audio-video product distribution enterprise shall have the corresponding capabilities, shall be able to bear civil liabilities independently, and shall have no record of illegal acts during the three consecutive years before the establishment.

Article 8 A Chinese-foreign cooperative audio-video product distribution enterprise shall meet the following conditions:

1. Having independent status as a legal person;
2. Meeting the requirements of the state on the establishment of audio-video product distribution enterprises;
3. Having funds adequate to its operational scale;
4. The equity owned by the Chinese cooperator is no less than 51%;
5. The cooperation period shall not exceed 15 years.

Article 9 Where a Chinese-foreign cooperative audio-video product distribution enterprise applies for engaging in the chain operation of audio-video products or for operating audio-video products by using information networks, it shall go through the procedures for examination and approval in accordance with the provisions of the state on chain operation of audio-video products and on operating audio-video products by using information networks.

Article 10 Where a Chinese cooperator uses state-owned assets as a means of cooperation, it shall obtain the approval of its upper level administrative department of state-owned assets. The state-owned assets involved shall be valued by a valuation institution confirmed by the administrative department of state-owned assets in accordance with the relevant provisions on valuation and administration of state-owned assets. The valuation result shall be confirmed by the corresponding administrative departments of state-owned assets in accordance with the relevant provisions on state-owned assets administration.

Article 11 The establishment of a Chinese-foreign cooperative audio-video product distribution enterprise shall be in compliance with the following procedures:

1. The Chinese cooperator shall apply to the competent department of culture of the province,

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autonomous region or municipality directly under the Central Government where the Chinese-foreign cooperative audio-video product distribution enterprise to be established is located. The said competent department of culture shall, after examining and approving the application, submit the application to the Ministry of Culture for project initiation and approval. The Ministry of Culture shall, within 60 working days, make a decision on whether to approve the application. If the application is not approved, the reason thereof shall be stated in writing.

2. The Chinese cooperator shall, within 6 months as of the date when the project initiation is approved by the Ministry of Culture, apply to the competent administrative department of commerce of the province, autonomous region or municipality directly under the Central Government where the Chinese-foreign cooperative audio-video product distribution enterprise to be established is located for the establishment of such an enterprise. The said competent department of commerce shall, after examining and approving the application, submit the application to the Ministry of Commerce for approval. The Ministry of Commerce shall, within 30 working days, make a decision on whether to approve the application. If the application is approved, an “Approval Certificate for Enterprises with Foreign Investment” shall be issued to the applicant. If the application is rejected, the reasons thereof shall be stated in writing.

3. The Chinese cooperator shall, within 30 days as of receiving the “Approval Certificate for Enterprises with Foreign Investment” issued by the Ministry of Commerce, apply to the Ministry of Culture on behalf of the Chinese-foreign cooperative audio-video product distribution enterprise to be established for the “Operation Permit for Audio-video Products” upon strength of the approval documents on project initiation issued by the Ministry of Culture and the “Approval Certificate for Enterprises with Foreign Investment” issued by the Ministry of Commerce.

4. The Chinese cooperator shall, within 30 days as of obtaining the “Operation Permit for Audio-video Products” issued by the Ministry of Culture, and upon strength of the “Operation Permit for Audio-video Products” and the “Approval Certificate for Enterprises with Foreign Investment”, go through the registration procedures and obtain the “Business License of an Enterprise Legal Person” in accordance with the provisions on industrial and commercial administration.

Article 12 The Chinese cooperator shall submit the following documents when applying to the Ministry of Culture for the project initiation:

1. The application for project initiation, which shall specify the name, address, business scope, sources and amount of the investment funds of the Chinese-foreign cooperative audio-video product distribution enterprise to be established;
2. The project proposal or feasibility study report worked out or recognized by both/all cooperators;
3. The cooperators’ business licenses or registration certificates, credit certificates and the valid certificates of the legal representatives;
4. (If the Chinese cooperator uses state-owned assets as a means of cooperation) the confirmation documents issued by the administrative department of state-owned assets on the appraising report of state-owned assets to be used as investment by the Chinese cooperator;

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5. Other documents as required by the Ministry of Culture.

Article 13 The Chinese cooperator shall submit the following documents when applying to the Ministry of Commerce for the establishment:

1. An application for establishment;
2. A project proposal or feasibility study report worked out or recognized by both/all cooperators and approved by the Ministry of Culture;
3. The approval documents by the Ministry of Culture on the initiation of the project under cooperation;
4. The contract and articles of association of the Chinese-foreign cooperative audio-video product distribution enterprise to be established, which are executed by the representatives authorized by both/all cooperators;
5. (If the Chinese cooperator uses state-owned assets as a means of cooperation) the confirmation documents issued by the administrative department of state-owned assets on the appraising report of the state-owned assets to be used as investment by the Chinese cooperator;
6. The cooperators' business licenses or registration certificates, credit certificates and the valid certificates of the legal representatives;
7. The notice of pre-approval for the name of the cooperative enterprise to be established;
8. The name list of chairman, vice chairman and members of the board of directors or of the joint management committee of the cooperative enterprise, which is determined by both/all cooperators through negotiation; and
9. Other documents as required by the Ministry of Commerce.

Article 14 In case of any major change in a Chinese-foreign cooperative audio-video product distribution enterprise, such as change of any investor, adjustment of interest proportion of the investors, change of investment amount or means of cooperation, change of scope of business, change of operational period, or establishment of branches, the enterprise shall go through the procedures for approval in accordance with Article 11 of the present Measures.

In case of any change in a Chinese-foreign cooperative audio-video product distribution enterprise other than those as provided for in the preceding paragraph, the enterprise shall, in accordance with the relevant provisions on enterprises with foreign investment, report to the Ministry of Commerce for approval or put on records there. Where a Chinese-foreign cooperative audio-video product distribution enterprise changes its legal address, legal representative, main responsible person, or terminates its business activities due to expiry of operational period, it shall also report to the Ministry of Culture for putting on records there within 30 days.

Article 15 The establishment of a Chinese-foreign cooperative audio-video product distribution enterprise that engages in the retail and leasing businesses, shall be handled in accordance with the following procedures:

1. The Chinese Cooperator shall apply to the competent department of culture at the level of the

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province where the Chinese-foreign cooperative audio-video product distribution enterprise to be established is located. The said competent department of culture shall, within 30 working days, make a decision on whether to approve the project initiation. If the application is rejected, the reasons for it shall be stated in writing.

2. The Chinese cooperator shall, within 6 months as of the date when the project initiation is approved by the competent department of culture at the provincial level, apply to the competent department of commerce at the level of the province where the Chinese-foreign cooperative audio-video product distribution enterprise to be established is located for the establishment of such an enterprise. The competent department of commerce at the provincial level shall, within 30 working days, make a decision on whether to approve the application. If the application is approved, the “Approval Certificate for Enterprises with Foreign Investment” shall be issued to the applicant. If the application is rejected, the reason for it shall be stated in writing.

3. The Chinese cooperator shall, within 30 days as of receiving the “Approval Certificate for Enterprises with Foreign Investment” issued by the competent department of commerce at the provincial level, apply to the competent department of culture at the provincial level on behalf of the Chinese-foreign cooperative audio-video product distribution enterprise to be established for the “Operation Permit for Audio-video Products” upon strength of the approval documents on project initiation issued by the competent department of culture at the provincial level and the “Approval Certificate for Enterprises with Foreign Investment” issued by the competent department of commerce at the provincial level.

4. The Chinese cooperator shall, within 30 days as of obtaining the “Operation Permit for Audio-video Products” issued by the competent department of culture at the provincial level, and upon strength of the “Operation Permit for Audio-video Products” and the “Approval Certificate for Enterprises with Foreign Investment”, go through the registration procedures and obtain the “Business License of an Enterprise Legal Person” in accordance with the provisions on industrial and commercial administration.

Article 16 The Chinese cooperator shall submit the following documents when applying to the competent departments of culture at the provincial level for the project initiation:

1. The application for project initiation, which shall specify the name, address, business scope, sources and amount of the investment funds of the Chinese-foreign cooperative audio-video product distribution enterprise to be established;
2. The project proposal or feasibility study report worked out or recognized by both/all cooperators;
3. The cooperators’ business licenses or registration certificates, credit certificates and the valid certificates of the legal representatives;
4. (If the Chinese cooperator uses state-owned assets as a means of cooperation) the confirmation documents issued by the administrative department of state-owned assets on the appraising report of state-owned assets to be used as investment by the Chinese cooperator;
5. Other documents as required by the competent department of culture at the provincial level.

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Article 17 The Chinese cooperator shall submit the following documents when applying to the competent departments of commerce at the provincial level for the establishment:

1. An application for establishment;
2. A project proposal or feasibility study report worked out or recognized by both/all cooperators and approved by the competent departments of commerce at the provincial level;
3. The approval documents by the competent departments of culture at the provincial level on the initiation of the project under cooperation;
4. The contract and articles of association of the Chinese-foreign cooperative audio-video product distribution enterprise to be established, which are executed by the representatives authorized by both/all cooperators;
5. (If the Chinese cooperator uses state-owned assets as a means of cooperation) the confirmation documents issued by the administrative department of state-owned assets on the appraising report of the state-owned assets to be used as investment by the Chinese cooperator;
6. The cooperators' business licenses or registration certificates, credit certificates and the valid certificates of the legal representatives;
7. The notice of pre-approval for the name of the cooperative enterprise to be established;
8. The name list of chairman, vice chairman and members of the board of directors or of the joint management committee of the cooperative enterprise, which is determined by both/all cooperators through negotiation; and
9. Other documents as required by the competent departments of commerce at the provincial level.

Article 18 In case of any major change in a Chinese-foreign cooperative audio-video product retail or leasing enterprise, such as change of any investor, adjustment of interest proportion of the investors, change of investment amount or means of cooperation, change of scope of business, change of operational period, or establishment of branches, the enterprise shall go through the procedures for approval in accordance with Article 15 of the present Measures.

In case of any change in a Chinese-foreign cooperative audio-video product distribution enterprise other than those as provided for in the preceding paragraph, the enterprise shall, in accordance with the relevant provisions on enterprises with foreign investment, report to the competent department of commerce at the provincial level for approval or put on records there. Where a Chinese-foreign cooperative audio-video product distribution enterprise changes its legal address, legal representative, main responsible person, or terminates its business activities due to expiry of operational period, it shall also report to the competent department of culture at the provincial level for putting on records there within 30 days.

Article 19 A Chinese-foreign cooperative audio-video product distribution enterprises must engage in the business activities of audio-video products within the approved scope of business.

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Article 20 No Chinese-foreign cooperative audio-video product distribution enterprise may operate any audio-video product, which contains any content prohibited by the state from being dispersed, or which is published by non-audio-video product publishing entities or reproduced by non-audio-video product reproducing entities, or which is imported without the approval of the Ministry of Culture, or which infringes upon the copyright of others.

Article 21 No Chinese-foreign cooperative audio-video product distribution enterprise may engage in the business of importing audio-video products.

Article 22 Whoever, without the approval of the Ministry of Culture and the Ministry of Commerce and without authorization, establishes a Chinese-foreign cooperative audio-video product distribution enterprise or uses foreign funds by other means to engage in the business of distributing audio-video products, shall be punished by the relevant department of the state according to law. And the relevant person liable shall be prosecuted for liabilities.

Article 23 When investors from Hong Kong and Macao Special Administrative Regions, and Taiwan Region establish audio-video product distribution enterprises in other provinces, autonomous regions, and municipalities directly under the Central Government, the present Measures shall be referred to.

Article 24 The power to interpret the present Measures shall remain with the Ministry of Culture and the Ministry of Commerce.

Article 25 The present Measures and the Attachment thereof shall be implemented as of January 1, 2004. The Measures for the Administration of Chinese-Foreign Cooperative Audio-video Product Distribution Enterprises promulgated by the Ministry of Culture and the Ministry of Foreign Trade and Economic Cooperation on December 10, 2001 shall be repealed simultaneously.

Attachment

In order to promote the establishment of closer economic partnership between Hong Kong, Macao and the mainland, encourage the service providers of Hong Kong and Macao to establish audio-video product distribution enterprises in the mainland, and according to the Mainland/Hong Kong Closer Economic Partnership Arrangement and the Mainland/Macao Closer Economic Partnership Arrangement as approved by the State Council, we hereby make the following special provisions on issues concerning the establishment of audio-video product distribution enterprises by service providers of Hong Kong and Macao:

1. From January 1, 2004, the service providers of Hong Kong and Macao shall be allowed to establish audio-video product distribution enterprises in the mainland in the form of joint ventures.
2. The service providers of Hong Kong and Macao may own majority share right in the joint

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ventures, but the proportion thereof shall not exceed 70%.

3. The service providers of Hong Kong and Macao may own equity less than 70% in the cooperative enterprises.

4. Other provisions on the establishment of cooperative audio-video product distribution enterprises in the mainland by the service providers of Hong Kong and Macao may still be abided by in accordance with the Measures for the Administration of Chinese-foreign Cooperative Audio-video Product Distribution Enterprises. Other provisions on the establishment of audio-video product distribution equity joint venture enterprises in the mainland by the service providers of Hong Kong and Macao may still be complied with by referring to the Measures for the Administration of Chinese-Foreign Cooperative Audio-video Product Distribution Enterprises.

5. The service providers of Hong Kong and Macao in these special provisions shall be in compliance with the definition of “Service Provider” and the requirements of relevant provisions as prescribed in the Mainland/Hong Kong Closer Economic Partnership Arrangement and the Mainland/Macao Closer Economic Partnership Arrangement.

6. The power to interpret the present special provisions shall remain with the Ministry of Culture and the Ministry of Commerce according to their own functions separately.



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