

**Provisional Regulations of the Ministry of Foreign Trade and Economic Cooperation on  
Certain Issues Concerning the Establishment of Companies Limited by  
Shares with Foreign Investment**  
(Promulgated on January 10, 1995)

Article 1 In order to further expand international economic co-operation and technological exchange, to absorb foreign investment and to promote the development of socialist market economy, foreign companies, enterprises and other economic organizations or individuals (hereinafter referred to as foreign shareholders) may incorporate themselves into a company limited by shares with foreign investment (hereinafter referred to as the company) with Chinese companies, enterprises or other economic organizations (hereinafter referred to as Chinese shareholders) within Chinese territory on the principle of equality and mutual benefit.

Article 2 In these Regulations, the term "a company limited by shares with foreign investment" refers to an enterprise legal person established in accordance with these Regulations, with the entire capital being divided into shares of equal value, where the shareholders bear responsibilities to the company to the extent of the number of the shares they hold and the company bears responsibilities for its debts with all its assets, and where the Chinese and foreign shareholders jointly hold the company's stock, with the shares subscribed and held by foreign shareholders being more than twenty-five per cent of the company's registered capital.

Article 3 The company is one of the forms of enterprises with foreign investment and shall be governed by the relevant laws and regulations of the state concerning enterprises with foreign investment.

Article 4 The establishment of such company shall be in conformity with the state industrial policies concerning foreign investment. The state encourages the establishment of production-oriented enterprises using advanced technologies.

Article 5 The company may be established by means of promotion or offer.

Article 6 The company set up by means of promotion shall meet the conditions as provided for in the Company Law on promoters, with at least one of the promoters being a foreign shareholder. The company established by means of offer shall meet the requirements as provided for in the preceding paragraph, with at least one of the promoters having records of continuously making profits in the recent three consecutive years prior to the offer. In case the aforementioned promoter is a Chinese shareholder, the last three years' financial statements audited by a Chinese certified public accountant should be furnished. In case the aforementioned promoter is a foreign shareholder, the financial statements audited by a certified public accountant registered in its country of residence should be furnished.

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Article 7 The registered capital of the company shall be the total share capital registered with the registration authority and actually paid in. The minimum amount of the registered capital of the company shall be RMB 30 million, with the shares subscribed and held by foreign shareholders being no less than twenty-five per cent of the registered capital.

Article 8 The transfer of the shares subscribed by the shareholders shall meet the conditions stipulated in Article 7 of these Regulations. The promoters' shares may be transferred after three years from the date of registration of the company, subject to the approval by the original examination and approval authority.

Article 9 After the promoters conclude an agreement to establish the company, they may jointly entrust one of them to handle all matters regarding the application for setting up the company. The detailed procedures are as follows:

(1) the applicant shall submit an application for the setting up of the company, feasibility study report, asset evaluation report, etc. to the competent departments of the provinces, autonomous regions, municipalities directly under Central Government and cities with independent planning (hereinafter referred to as the competent departments) where the applicant is located. Prospectus shall also be submitted for the application of establishing a company through offer of shares.

(2) the aforementioned documents, upon examination by and with the consent of the competent departments, shall be submitted, through the competent departments, to the foreign economic and trade departments of the same provinces, autonomous regions, municipalities directly under Central Government and cities with independent planning. Upon approval of the documents by foreign economic and trade departments, the promoters shall officially sign an agreement for the establishment of the company and its articles of association.

(3) the agreement for the establishment of the company and the articles of association signed by the promoters shall, upon examination by and with consent of the foreign economic and trade departments of the provinces, autonomous regions, municipalities directly under the Central Government and cities with independent planning, be submitted to the Ministry of Foreign Trade and Economic cooperation for examination and approval. The Ministry of Foreign Trade and Economic Cooperation shall decide to approve or disapprove it within 45 days.

Article 10 All kinds of documents provided by the promoters shall be written in the Chinese language. Where all promoters consider it necessary, a foreign language agreed upon by all the promoters can be used simultaneously. However, the examined, approved and effectuated Chinese version shall be authentic.

Article 11 The application for establishing a company shall lay down the following:

- (1) names, domiciles and the legal representative of the promoters;
- (2) name, domicile and aims of the company to be established;

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- (3) method to establish the company, total value of shares, share category, value per share, proportion of the shares subscribed by promoters and the scope and means of the offer;
- (4) the production and management situations of the promoters, including information about production and management, assets and liabilities and profitability in the recent three years (only applicable to promoters who establish a company by means of offer);
- (5) the fields of capital investment and business scope of the company;
- (6) time of the application, signature of the legal representative of the promoters and official stamp of the promoters' unit;
- and. (7) other matters that need to be elaborated.

Article 12 The promoters' agreement shall include the following main contents:

- (1) names and domiciles of the promoters; name, nationality, domicile and post of the legal representative;
- (2) name and domicile of the company to be established;
- (3) objectives and business scope of the company;
- (4) means of establishment and structure of the company;
- (5) the company's registered capital, total shares, share category and the number, form and subscription period of the shares subscribed by promoters;
- (6) rights and obligations of the promoters;
- (7) liability for breach of agreement;
- (8) application of law and settlement of disputes;
- (9) effectiveness and termination of the agreement;
- (10) time and place of signature of the agreement, signature of the promoters;
- and (11) other matters that need to be notified.

Article 13 After the promoters' agreement to establish the company and the articles of association are approved by the Ministry of Foreign Trade and Economic Cooperation, the promoters shall, within 30 days, open a special-purpose bank account with a bank by presenting the certificate of approval issued by the Ministry of Foreign Trade a

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