

## **Other Abstracted Policies in English**

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## Content

|                                                                                                                                                                  |           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Shanghai</b> .....                                                                                                                                            | <b>4</b>  |
| SH05 This is a notice of.....                                                                                                                                    | 4         |
| SH06 Notice about the shut down the preferential policies on the Income Tax for Foreign Investment.....                                                          | 4         |
| SH07 Notice about Cancel and revised some process of administrative examination and approval.....                                                                | 5         |
| SH08 Notice about the free VAT on the importing equipment which the project investment is loan from Foreign government or international finance organization.... | 6         |
| <b>Jiangsu</b> .....                                                                                                                                             | <b>8</b>  |
| JS01 Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises .....                                                      | 8         |
| <b>Suzhou</b> .....                                                                                                                                              | <b>34</b> |
| SZ02 National encouraged industry list for foreign investment .....                                                                                              | 34        |
| SZ03 Provisions on Guiding the Orientation of Foreign Investment.....                                                                                            | 34        |
| SZ05 The Preferential Policies for Foreign Investment in Suzhou Industrial Park.....                                                                             | 39        |
| SZ06 The encourage and important List for foreign investment in Suzhou. ....                                                                                     | 42        |
| <b>Changshu</b> .....                                                                                                                                            | <b>43</b> |
| CS01 Preferential Policies.....                                                                                                                                  | 43        |
| <b>Zhejiang</b> .....                                                                                                                                            | <b>45</b> |
| ZJ02 Provisions of the State Council concerning the encouragement of investments by compatriots from Taiwan .....                                                | 45        |
| ZJ04 Provisions of the State Council concerning the encouragement of Investments by overseas Chinese and Compatriots from HongKong and Macao.....                | 51        |
| ZJ05 Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions .....                                                                   | 56        |
| ZJ06 Interim Provisions on the Takeover of Domestic Enterprises by Foreign Inverstors .....                                                                      | 66        |
| <b>Ningbo</b> .....                                                                                                                                              | <b>85</b> |
| NB04 Preferential Policy on foreign investment in Ningbo Science & Technology Zone.....                                                                          | 85        |
| NB08 Preferential Policy on foreign investment in Ningbo Science & Technology Zone.....                                                                          | 90        |
| NB09 Preferential Policy on foreign investment in Ningbo Economic & Technology Development Zone. ....                                                            | 91        |
| NB11 Preferential Policy in Ningbo Export & Processing Zones.....                                                                                                | 92        |
| NB13 Tax Decrate on Declaring Technology Contract by Foreign Invest Company.93                                                                                   | 93        |

One Additional Policy of Ningbo.....94  
Another additional explain on the Preferential Policies of Ningbo .....97

## Shanghai

### SH05 This is a notice of the treatment of tax treaty to

#### JFC

**This document announce that "Japan Finance Corporation" can acquire the duty free policy.**

SH05 关于转发《国家税务总局关于日本政策金融公库享受协定待遇的通知》的通知

信息来源：上海市财政局 发布时间：2010-03-19 09:45:46

各省、自治区、直辖市和计划单列市国家税务局、地方税务局：

“日本金融公司”（Japan Finance Corporation,简称JFC）可以享受中日税收协定第二十一条第一款规定的免税待遇。

国家税务总局

二〇一〇年三月十九日

### SH06 Notice about the shut down the preferential policies on the Income Tax for Foreign Investment.

**This document is for the unqualified investments which violate the preferential policies such like invest period, products export etc. They will be drawing back their allowance , preferential tax and related preference.**

SH06 关于转发《国家税务总局关于政府对外商投资企业所得税优惠政策处理问题的批复》的通知

信息来源：上海市财政局 发布时间：2010-03-15 09:32:11

江苏省国家税务局：

你局《关于政府对外商投资企业所得税优惠政策处理问题的请示》（苏国税发[2009]88号）收悉。关于外商投资企业因国家发展规划调整（包括城市建设规划等）被实施关停并转、导致其不符合《中华人民共和国外商投资企业和外国企业所得税法》及过渡性政策规定条件税收优惠处理问题，经研究，批复如下：

一、根据《中华人民共和国外商投资企业和外国企业所得税法实施条例》第七十九条的规定，应当在原政策规定的条件已享受的企业所得税优惠税款

二、外商投资企业和外国企业依照原《财政部国家税务总局关于外商投资企业和外国企

业购买国产设备投资抵免企业所得税有关问题的通知》(财税字[2000]049号)有关规定将已经享受投资抵免的2007年12月31日前购买的国产设备,在购置之日起五年内出租、转让,不论出租、转让行为发生在2008年1月1日之前或之后的,均应在出租、转让时补缴就该购买设备已抵免的企业所得税税款。

三、依照《中华人民共和国外商投资企业和外国企业所得税法》第十条的规定,将从企业取得的利润于2007年12月31日前直接再投资于该企业,增加注册资本,或者作为资本投资开办其他外商投资企业,如经营期不少于五年并经税务机关批准已退还其再投资部分已缴纳所得税的40%税款,再投资不满五年撤出的,应当缴回已退的税款

国家税务总局

二〇〇八年一月十一日

## SH07 Notice about Cancel and revised some process of administrative examination and approval

This document is for cancel the process of some government administration flow and procedures. It aims to progress the performance and efficient of the government work.

SH07 关于撤销《上海市人民政府关于公布本市第四批取消和调整行政审批事项的通知》中有关税务方面行政审批项目的通知

信息来源: 上海市财政局 发布时间: 2010-01-20 09:24:08

来源:

上海市人民政府第四批取消和调整的税务方面  
行政审批项目目录

- (一)对耕地占用税纳税人申请困难性减免税审批
- (二)拆本使用发票的许可
- (三)使用计算机开票的许可
- (四)携带、运输空白发票的许可
- (五)发票防伪鉴格查询许可
- (六)建立收支凭据黏贴簿、凭证销货登记簿或者使用税控装置的许可
- (七)纳税人缴纳车船使用税确有困难的减免审批
- (八)外国企业改变经营性质的审批
- (九)外商投资企业和外国企业购买国产设备投资抵免企业所得税审批
- (十)企业技术改造国产设备投资抵免企业所得税核准
- (十一)甲种、发票购用印制簿
- (十二)外国投资者再投资退税审批
- (十三)外商投资企业分派股权投资或追加投资享受税收优惠的审批
- (十四)中外合资、合作经营企业可行将研究费用列入开办费核准
- (十五)外商投资企业在规定期限内不可抗力提前解散免于补税审批
- (十六)外商投资企业特定项目企业所得税减低税率审批
- (十七)从事农林牧业的外商投资企业延长减征企业所得税期限的初审
- (十八)从事能源交通项目的外商投资企业减低税率缴纳企业所得税(初审)

- (十九)对外商投资企业固定资产缩短折旧年限的审批(初审)
- (二十)对外国企业汇总申报企业所得税的审批
- (二十一)企业集中提取技术开发费审批
- (二十二)企业跨地域改组、分立、合并整体资产置换的税收待遇的确认
- (二十三)纳税人按规定支付给总机构的与生产、经营有关的管理费税前扣除审批
- (二十四)对金融企业呆账损失税前扣除的审核确认
- (二十五)外商投资企业特许使用费预提所得税减免的审批(初审)
- (二十六)外力以优惠利率贷款给我方取得利息免征预提所得税的审批
- (二十七)国家银行和金融机构在境外发行债券所得利息符合优惠标准免征所得税的审批(初审)

## 附件 2:

上海市人民政府第四批共六项税务行政审批项目目录

- (一) 办理税务登记(开业、变更和注销、换证、停业和复业、外出经营报验)的核准(审批期限 30 日, 开业和变更缩短为 7 个工作日内)

## SH08 Notice about the free VAT on the importing equipment which the project investment is loan from Foreign government or international finance organization.

**This document is for the free VAT on the import machinery, not only to the funds from investors themselves but also to the loan by foreign finance organizations.**

SH08 关于转发《财政部、海关总署、国家税务总局关于外国政府贷款和国际金融组织贷款项目进口设备免征进口环节增值税政策的通知》的通知

信息来源: 上海市人民政府 发布日期: 2010-01-08 09:25:12

财政部、海关总署、国家税务总局关于外国政府贷款和国际金融组织贷款项目进口设备免征进口环节增值税政策的通知

财关税[2009]63号

各省、自治区、直辖市、计划单列市财政厅(局)、国家税务局, 新疆生产建设兵团财务局, 海关总署广东分署, 各直属海关:

经国务院批准, 自 2009 年 1 月 1 日起, 对按有关规定其增值税进项税额无法抵扣的外国政府和国际金融组织贷款项目进口的自用设备, 继续按《国务院关于调整进口设备税收政策的通知》(国发[1997]37 号)中有关规定执行, 除《外商投资项目不予免税的进口商品目录》所列商品外, 免征进口环节增值税。

按如下方式办理手续:

- 一、对于附件 1 所列贷款项目单位可以按相关规定到海关直接办理免征进口环节增值

### 税的手续

二、对于附件 1 所列的贷款项目单位以外的其他外国政府贷款和国际金融组织贷款项目单位，首先须经主管国家税务局审核后报地(市)级国税主管机关认定其购置设备缴纳的增值税进项税因不属于增值税一般纳税人或该项目项下进口设备完全用于增值税免税业务等因素而无法抵扣，并为其出具税务确认书(税务确认书格式见附件 2)后，方可按相关规定到海关办理进口设备免征进口环节增值税的手续。

三、2009 年 1 月 1 日以后进口外国政府和国际金融组织贷款项目项下设备，符合本通知上述免税条件和相关要求的，在补办海关免税审批手续后，已征收的进口环节增值税准予退还。但对于按照重大技术装备专项进口税收政策有关进口环节征收关税和进口环节增值税的规定，外商投资和国际金融组织贷款项目项下进口属于专项政策规定范围外的设备不能享受上述免征进口环节增值税的待遇，已征收的进口环节增值税不予退还。

# Jiangsu

## JS01 Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises

www.jsgs.gov.cn 2004年09月21日 11:34:03

Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises

Preferential Turnover Tax Policy

Items shall be exempt from VAT

Preferential tax policies for agricultural means of production

Preferential VAT policies for part of the products made through multiple utilization of resources

Preferential consumption tax policies for scented soap and vehicle tire

Preferential Tax Policies of EFIs and FEs Income Tax

Taxation at reduced rates

Taxation on enterprise income at 15%

Taxation on enterprise income at 24%

Fixed term tax reductions and exemptions

Two year's exemptions adjoining three year's 50% reduction

Other fixed term tax reductions and exemptions

Tax refund on reinvestment

Comprehensive regional tax incentives

Other tax incentives

Withholding tax

Profit (Dividend)

Interest

Royalty

Rentals

Benefits Received from Transfer of Property

Preferential Turnover Tax Policy

1. Items shall be exempt from VAT:

1. Self-produced agricultural products sold by agricultural producers;
2. Contraceptive medicines and devices;
3. Antique books;
4. Instruments and equipment imported which is directly used in scientific research, experiment and education,
5. Materials and equipment imported from foreign government and international



organizations as assistance free of charge;

6. Equipment and machinery required to be imported under contract processing, contract assembly and compensation trade,

7. Articles imported directly by organizations for the disabled for special use by the disabled;

8. Sale of goods which have been used by the sellers.

II. Preferential tax policies for agricultural means of production:

1. Following goods are exempted from VAT:

i. Forage, including large amount unitary forage, mixed forage, compound feed, concentrated forage,

ii. Agricultural films;

iii. Certain kind of chemical fertilizer;

iv. Agricultural pesticides within designated scope produced and sold by pesticide factories,

v. Seeds, seedling, chemical fertilizer, pesticide and agriculture machinery marketed by whole sales and retail.

III. Preferential VAT policies for part of the products made through multiple utilization of resources:

1. The construction building materials, which combined with content of 30% coal gangue, stone coal, powdered coal and furnace slag (not including blast furnace wet slag), should be exempted from VAT.

2. The gold extracted from liquid waste and offscum should be exempted from VAT.

IV. Preferential consumption tax policies for low pollution emission vehicles:

Beginning from Jan. 1st 2000, cars, cross-country vehicles and mini-buses with low pollution emission will be granted with 30% reduction of the consumption tax.

V. Preferential consumption tax policies for scented soap and vehicle tire:

1. Beginning from Jan. 1st, 2001, scented soap listed in the taxation item of "Skin & Hair Care Product" would be exempted from consumption tax.

2. Beginning from Jan. 1st, 2001, "radial tire" listed in the vehicle tire taxation item will be exempted from consumption tax. The renovated tire will be free from consumption tax. The consumption tax on the rest of the tires will be levied at 10%.

## Part II Preferential Tax Policies of EFIs and FE Income Tax

I. Taxation at reduced rates

1. Taxation on enterprise income at 15%

A 15% Enterprise Income Tax rate shall apply to those EFIs located in Special Economic Zones, Foreign Enterprises (hereinafter referred to as FE) with establishments or fixed places in Special Economic Zones engaged in production and business operation, as well as those EFI of production nature which have establishments in Economic and Technological Development Zones.

The Enterprise Income Tax on EFI in Coastal Economic Open Zones, in old urban districts of cities where the Special Economic Zones or the Economic and Technological

Development Zones are located, or other places specified by the State Council, may be imposed at the reduced rate of 15%, provided that the operation activities of those enterprises are centered on power and energy, transportation and communication, harbor and port, dock and wharf, and other projects inspired by the State Council. The specific rules shall be stipulated by the State Council.

(Section 1, 3 of Article 7, the Tax Law)

The application of 15% reduced Enterprise Income Tax rate mentioned in paragraph 1 of article 7, Tax Law, is limited to incomes procured by enterprises from production and business operation in the respective areas specified in paragraph 1, article 7.

(Section 1 of Article 71, the Detailed Rules)

The Special Economic Zones mentioned in paragraph 1, article 7, refers to those special areas sanctioned by the State Council including Shenzhen, Zhuhai, Shantou, Xiamen, Hainan Island; the Economic Technological Development Zones refers to areas set up in coastal port cities which are under the approval of the State Council.

(Article 69, the Detailed Rules)

The enterprises that may enjoy 15% of the reduced income tax rate, as stipulated in paragraph 3, article 7 of the Income Tax Law, are mainly listed below:

1. EFIs of production nature which have establishments in the old urban districts of the cities where the Coastal Economic Open Zones, Special Economic Zones, the Economic Technological Development Zones are located, and which are engaged in the following projects:

- a. Technology intensive or knowledge intensive projects;
  - b. Projects with foreign investment of \$30 million or more, and with a long period of recovery of investment;
  - c. Projects engaged in energy, transportation and communication, port constructions
2. Foreign-Chinese Equity Joint Ventures engaged in the construction of ports and docks;
  3. Foreign banks, Foreign-Chinese Joint Invested Banks and other financial institutions located in Special Economic Zones or other places approved by the State Council, with the capital provided by foreign investors or operation funds acquired from the headquarters of foreign banks totaling no less than \$10 million; and at the same time with an operation period of ten years or more;
  4. EFIs of production nature set up in Pudong New Area, Shanghai; and any EFI engaged in energy exploitation and transportation construction projects such as airports, ports, railways, highways, and electricity power stations;
  5. The accredited high technological EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council; or the accredited new technological EFI situated in Beijing New Technology Development and Experiment Zones;
  6. Any EFI established in other places specified by the State council and engaged in such projects as encouraged by the State.

Any EFI which meet the criteria set in item 1 of this Article shall, upon the application's having been endorsed by the State Administration of Taxation, be eligible for a reduced income tax rate of 15%.

(Article 73, the Detailed Rules)

2. Taxation on enterprise income at 24%

Any EFI of a production nature situated in the urban district of the cities which boast a Coastal Economic Open Zone, a Special Economic Zone or an Economic and Technology Development Zone shall be eligible for a reduced income tax rate of 24%.

(Section 2 of Article 7, the Tax Law)

The tax objectives enjoying a 24% rate, as stated in paragraph 2, Article 7 of the Income Law, shall only be limited to income derived from production or business operation within the areas specified in paragraph 2, Article 7 of the Income Law.

(Section 2 of Article 71, the Detailed Rules)

The 'Coastal Economic Open Zones' stated in paragraph 2, Article 7 of the Income Law, refers to any coastal city, county, or district sanctioned by the State Council.

(Article 70, the Detailed Rules)

## II. Fixed term tax reductions and exemptions

### 1. Two year's exemptions adjoining three year's 50% reduction

Any EFI of a production nature intended to conduct business in China for at least 10 years shall, from its first profits-making year, be entitled to two year's income tax exemption adjoining three year's 50% reduction. However, such exemptions and reductions shall not apply to those EFI engaged in the exploitation of such natural resources as oil, natural gas, rare and precious metals, since tax policies of these lines shall be formulated separately by the State Council. In addition, it is compulsory for those EFIs which have already enjoyed tax exemptions and reductions to spit out the exact amount if their actual operation period is no more than 10 years.

(Section 1 of Article 8, the Tax Law)

The tax incentives specified in paragraph 1, Article 8 of the Tax Law shall not be put on those EFIs engaged in the exploitation of such natural resources as petroleum, natural gas, rare and precious metals, unless and until other related regulations are made by the State Council.

(Article 78, the Detailed Rules)

Any EFI which meet the qualifications of paragraph 1, Article 8 of the Tax Law, which may enjoy tax exemptions or concessions, shall report its line, main products, operation period, etc to the local competent tax authorities for approval, otherwise its tax incentives shall be denied.

(Section 2 of Article 74, the Detailed Rules)

### 2. Other fixed term tax reductions and exemptions

Any relevant regulation issued by the State Council prior to the effectiveness of this Law will still hold to the extent that the relevant regulation has provided more attractive tax treatment as of a longer period of exemption or reduction for those EFIs which undertake production and construction projects like energy, communications, harbor, docks etc, or has provided such preferential tax treatment as exemptions and reductions for those EFIs engaged in non-production nature projects.

(Section 2 of Article 8, the Tax Law)

'Any relevant regulation issued by the State Council prior to the effectiveness of this Law' in paragraph 2, Article 8 of the Tax Law covers the following regulations of tax exemptions and reductions decreed by the State Council:

a. Any Chinese-foreign equity joint ventures undertaking port or dock construction with an

operation period exceeding 15 years shall, upon its application having been endorsed by the competent tax authorities at the provincial level, from the first year of its making profits, be exempted from enterprise income tax for five consecutive years adjoining another five years of 50% reduction.

b. Any EFI established in Hainan Special Economic Zone with its operation period no less than 15 years shall, upon its application having been endorsed by Hainan provincial tax authorities, be granted income tax exemption starting from the first profit-making year, for 5 consecutive years adjoining another 5 years of 50% tax reduction, provided that that EFI should fall into the category of undertaking the construction of such infrastructure projects as airports, ports, docks, railways, highways, power stations, coal mines, water conservancy, or in the development and operation of agriculture.

c. Any EFI established in Pudong New District, Shanghai, with its operation period no less than 15 years shall, upon its application having been endorsed by the Shanghai tax authorities, be granted income tax exemption starting from the first profit-making year, for 5 consecutive years adjoining another 5 years of 50% tax reduction, provided that that EFI should fall into the category of undertaking the construction of such energy and communication projects as airports, ports, railways, highways, and power stations.

d. Any EFI of the service sector situated in Special Economic Zones, with its total foreign investment amounting to \$5 million or more, and with its operation period exceeding 10 years shall, upon its application having been endorsed by the competent tax authorities, be granted income tax exemption for the first profit-making year, tagged along with 50% tax reduction for the second and third year.

e. Foreign banks, Foreign-Chinese Joint Invested Banks and other financial institutions located in Special Economic Zones or other places approved by the State Council shall, upon the application having been endorsed by the competent tax authorities, be exempted from income tax for the first profit-making year adjoining another two years of 50% tax reduction, provided that the capital granted by foreign investors or operation funds acquired from the headquarters of foreign banks is no less than \$10 million, and that those financial institutions shall conduct business in China for no less than ten years.

f. Any Chinese-foreign equity joint venture recognized as new and high-technology enterprise and established in new and high-technology industrial development zones approved by the State Council, with its operation period exceeding 10 years shall, upon its application having been endorsed by the competent tax authorities, be eligible for exemption from Enterprise Income Tax for the first and second profit-making years. To those EFIs located in the Special Economic Zones and in the Economic Technology Development Zones, the appropriate tax incentives of those zones shall remain applicable.

g. Any export-oriented EFI shall, after its expiration of exemption or reduction stated in the Tax Law, be entitled to a further 50% reduction on Enterprise Income Tax at a rate specified in the Tax Law, provided that at least 70% of its annual products have been exported. In addition, for those export-oriented EFIs which are situated in the Special Economic Zones, the Economic Technological Development Zones or which have already enjoyed 15% rate and exported 70% of its annual products or more, the Enterprise Income Tax rate shall be further reduced from 15% to 10%.

h. Technological advanced enterprises with foreign investment may, upon the expiration of the Enterprise Income Tax exemption and reduction period as stipulated by the Tax Law, enjoy a further 50% reduction in Enterprise Income Tax for three years based on the rate stipulated by the Tax Law, provided that they remain technologically advanced enterprises.

i. Other regulations relating to the exemption and reduction of enterprise income tax having been promulgated, or having been approved for promulgation by the State Council. In applying for Enterprise Income Tax exemption or reduction pursuant to the provisions of Item 6, and Item 7, and Item 8 of this Article, any EFI shall submit the relevant certifying documents issued by the competent departments to the local tax authorities for examination and confirmation.

(Article 75, the Detailed Rules)

### III. Tax refund on reinvestment

Foreign investors of any EFI who reinvest directly in the same EFI with his (her) share of profits so as to increase registered capital, or use his share of profits as capital investment to set up other EFIs whose operation period is no less than 5 years shall, upon the investors' application having been approved by the relevant competent tax authorities, be refunded 40% of Income Tax already paid on the reinvestment amount. However, other preferential tax regulations shall be applicable if there exist such regulations issued by the State Council. Furthermore, a foreign investor is bound to repay his (her) refunded tax if he (she) withdraws investment before the expiration of a period of 5 years.

(Article 10, the Tax Law)

#### 1. Prerequisite and qualification for rebate on reinvestment

The expression of 'reinvest directly' mentioned in Article 10, the Tax Law, means that foreign investors of any EFI increase their proportion of registered capital with their share of profits derived from the same EFI or use those profits as capital to set up new EFIs.

In assessing the refundable tax amount in accordance with the provisions of Article 10 of the Tax Law, the said foreign investor shall provide supporting documents certifying the attributable year in which the profits were reinvested; where no supporting documents can be provided, the local tax authorities shall determine the year using appropriate methods. Foreign investors shall, within one year from the date the funds are actually invested, apply to the original tax collecting authorities for tax refund and submit a document certifying the amount and duration of the added or new capital investment.

(Article 80, the Detailed Rules)

The 'period of operation' in Article 10 of the Tax Law shall be counted according to the following principals: the period of operation shall be counted from the date when the reinvestment funds are actually invested, if foreign investors in any EFI directly reinvest the profits allocated from that EFI into the same enterprise or other EFIs who have already started production or operations (including trial production, trial operation); however, the period of operation shall be counted from the date when the new enterprise starts production or operation (including trial production or operation), if the foreign investors reinvest in establishing new EFIs.

(GUO SHUI FA NO. 009 [1993])

Regarding reinvesting in China with the profits obtained from his EFI, a foreign investor

must first use the said profits to make up his insufficient legal capital, if such is the case; therefore, only the rest of that profit in the form of reinvestment shall be eligible for tax refund according to relevant regulations.

(GUO SHUI HAN FA NO. 304 [1990])

Any foreign investor in EFIs shall not enjoy such incentives as tax refund if the profits with which he reinvests are derived from liquidation.

(GUO SHUI FA NO. 009 [1993])

Where a foreign partner of any Chinese-foreign equity joint venture first remits his share of profits outside China, saves it in foreign banks or uses it as working capital for trade, and then reinvests it in Chinese-foreign equity joint venture, the provisions for the tax refund on reinvestment shall not apply.

(CAI SHUI WAI ZI NO. 82)

#### 2. Repayment of 60% of tax refund

Any foreign investor making reinvestment so as to establish and expand export-oriented or technologically advanced enterprises shall repay 60% of tax refund if he fails to meet the standards of export-oriented enterprises in three years after starting production or operation; or if he fails to be recognized as technologically advanced enterprises within the said three years.

(Section 3 of Article 81, the Detailed Rules)

#### 3. Other regulations concerning tax refund

EFIs whose total shares are held by foreign investors, and who are totally engaged in investment business shall be treated as foreign investors, thus enjoying the incentives of tax refund specified in the Detailed Rules and other relevant regulations.

(CAI SHUI ZI NO. 083)

The preferential regulations regarding a tax refund on reinvestment stipulated in the Tax Law and in the Detailed Rules only apply to foreign investors. EFIs in China who invest in other places as investors are not foreign investors. The preferential regulations regarding a tax refund on the reinvestment stipulated in the Tax Law and the Detailed Rules for foreign investors only apply to EFIs whose total share are held by foreign investors and who are totally engaged in investment business, since such EFIs may be regarded as foreign investors according to the provisions of Section 2 in Article 1 of CAI SHUI ZI [083] 1994 "Notice on Several Taxation Problems Regarding the Enterprises with Foreign Investment Engaged in Investment Business" issued by the Ministry of Finance and the State Administration of Taxation. Apart from that, no other EFIs shall be granted tax refund on reinvestment specified in the Tax Law and its Detailed Rules.

(GUO SHUI HAN FA NO. 154 [1995])

#### IV. Comprehensive regional tax incentives

##### 1. Special Economic Zones, Economic Technological Development Zones and Coastal Open-up Cities

###### a. Special Economic Zones (SEC)

Income Tax shall be collected at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in SEC obtained by foreign investors who have no establishments in China except where tax exemption are carried out according to tax laws. The SEZ People's Governments shall make decisions on more favorable tax

exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or who transfer advanced know-how.

b. Economic Technological Development Zones (ETDZ)

Income Tax shall be collected at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in ETDZ obtained by foreign investors who have no establishments in China except where tax exemption are carried out according to tax laws. The People's Government of the city where ETDZ is located shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or who transfer advanced know-how.

c. Coastal Open-up Cities (COC)

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in OLD URBAN DISTRICTS obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of the city shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(GUO FA NO. 161[1984])

2. Coastal Open Areas

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in Economic Open Areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of the provinces, autonomous regions and municipalities shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(CAI SHUI ZI NO. 091 [1988])

3. New and High technology Industrial Development Zones

According to provisions specified in Section 2 of Article 7, Section 1 of Article 8, the Tax Law, and Item 5 & 6 in Section 1 of Article 75, the Detailed Rules, those tax incentives applied to New-and-High Technology EFIs (NHTEFI) can be further expounded as the following:

a. Those new-and-high technology EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council, or the new technological EFIs situated in Beijing New Technology Development and Experiment Zones, shall, from the date when their status as NHTEFI have been recognized, be levied on income tax at a reduced rate of 15%.

b. Aside from New-and-High Technology set up in Beijing New Technology Development and Experiment Zones (BNTDEZ), any other New-and-High Technology EFI of production nature intended to conduct business in China for at least 10 years shall, from its first profit-making year, be entitled to two year's income tax exemption adjoining three year's 50% reduction.

c. Where the tax year in which an EFI is recognized as New-and-High Technology EFI comes after its profit-making year, or where the tax year in which an EFI located in

BNTDEZ is recognized as New-and-High Technology EFI comes after its starting operation year, the remaining tax exemption period (if any) shall still take hold. However, if the time when an EFI is recognized as New-and-High Technology EFI comes after the expiration of tax exemption period, no relevant tax incentives shall be available.

(GUO SHUI FA NO. 151 [1994])

#### 4. Tourist and Holiday Resort Areas

Enterprise Income Tax shall be levied at the reduced rate of 24% for EFIs established in these areas; of which the production EFIs scheduled for an operating period no less than 10 years shall, from the year it begins to make profit, be exempted from Income Tax for the first and second years and allowed a 50% reduction of Income Tax for the third to the fifth years.

Tax incentives already implemented in the region where the national tourist holiday resort area is located shall be continued in the national tourist holiday resort area.

(GUO SHUI FA NO. 248 [1992])

#### 5. Provincial Capital and Coastal Open-up Cities

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in the said city areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Municipal Government shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(GUO SHUI FA NO. 218 [1992])

#### 6. Suzhou Industrial Park

a. According to the provisions in 'Reply to the Relevant Questions About Development and Construction of Suzhou Industrial Park' (Document No. 9 [1994]) made by the State Council (hereinafter referred to as 'Reply'), EFIs engaged in construction projects for infrastructure facilities regarding communication and energy resources such as the construction of ports, docks, railways, highways and power stations shall enjoy a reduced income tax rate of 15% according to Section 1 of Article 7, the Tax Law. The enterprise income tax shall be levied at the reduced rate of 15% on EFIs who are engaged in the above projects and who operate outside the Suzhou Industrial Park but still in Suzhou city, provided the said EFIs conform to the provisions in Item 1 of Section 1 in Article 73, the Detailed Rules and at the same time get the approval from the State Administration of Taxation.

b. On the basis of the existing tax incentives policies of the State, Chinese-foreign equity joint ventures engaged in construction of ports and docks in Suzhou city shall enjoy exemption from Enterprise Income Tax for 5 years from the first profit making year and a 50% reduction of the Enterprise Income Tax for the following 5 years according to Item 1 of Section 1 in Article 75, the Detailed Rules. The EFIs engaged in construction projects regarding communication, energy resources and infrastructure such as railways, highways, power stations and the accessory facilities in Suzhou Industrial Park shall enjoy a fixed term tax exemption and reduction of Income Tax according to Section 1 of Article 8, the Tax Law. However, for the very large scale and special projects which need more tax incentives, the relevant enterprise may file a report to the competent taxation authorities



for approval according to the provisions in Article 3 of the Reply.

c. Chinese-Singapore Equity Development Company responsible for the development and construction of Suzhou Industrial Park and mainly engaged in the construction of infrastructure and public facilities in the Park may enjoy tax incentives applying to the production EFIs established in Economic and Technological Development Zones.

(GUO SHUI HAN FA NO. 128 [1995])

#### 7. Bonded Areas

The Enterprise Income Tax shall be levied at the reduced rate of 15% for production EFIs engaged in processing products for export in the bonded areas.

(GUO SHUI HAN FA NO. 1123 [1991])

① To those production EFIs in Zhangjiagang Bonded Area (ZBA) who process products for export purposes, the reduced rate of 15% shall be applicable.

No local income tax shall be levied on EFIs located in ZBA.

② Any production EFIs in ZBA scheduled for an operating period no less than 10 years shall, from the year it begins to make profit, be exempted from Income Tax for the first and second years and allowed a 50% reduction of Income Tax for the third to the fifth years. In addition, the export-oriented EFI shall, after its expiration of exemption and reduction period, be entitled to a more preferential income tax rate of 10%, provided that at least 70% of its annual products have been exported. And those technological advanced enterprises with foreign investment may, upon the expiration of the Enterprise Income Tax exemption and reduction period as stipulated by the Tax Law, enjoy a further reduced rate of 10% on Enterprise Income Tax for three years, provided that they remain technologically advanced enterprises.

③ Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in the said city areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of Jiangsu Province shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

④ Foreign investors of any EFI who reinvest directly in the same EFI with his (her) share of profits so as to increase registered capital, or use his share of profits as capital investment to set up other EFIs whose operation period is no less than 5 years shall, upon the investors' application having been approved by the relevant competent tax authorities, be rebated 40% of Income Tax already paid on the reinvestment amount. Furthermore, if the said profits are reinvested in order to establish or expand export-oriented enterprises and high-tech enterprises, all the paid tax for the said profits shall be refunded.

(SU SHUI WAI FA NO. 020 [1993])

#### 8. Kunshan Economic and Technology Development Zone (KETDZ)

Any EFI established in Kunshan Economic and Technology Development Zone shall be levied at the reduced rate of 15% on its Enterprise Income Tax.

Aside from the above tax incentive, no other preferential tax policies applying to Economic and Technology Development Zones in Coastal Open Cities are available for EFIs established in Kunshan Economic and Technology Development Zone.

(HUO SHUI HAN FA NO. 424 [1992])

IV. Other tax incentives

1. Tax incentives concerning agriculture, forestry, animal husbandry, and tax incentives in remote undeveloped areas

EFIs engaged in agriculture, forestry and animal husbandry, or established in remote undeveloped areas may, upon the enterprises' applications having been approved by the competent tax authorities under the State Council, be allowed a 15% to 30% reduction of the amount of Income Tax payable for a period of 10 years following the expiration of the period for tax exemption or reduction provided for in the previous provisions.

(Section 3 of Article 8, the Tax Law)

2. Tax exemption on long-term investment

Where an EFI invests in another enterprise within China, the profits (dividends) obtained from the enterprise receiving the investment may be excluded from the taxable income of that EFI; however, expenses and losses incurred in such above-mentioned investments shall not be deducted from the taxable income of that EFI.

(Article 18, the Detailed Rules)

3. Tax incentives for two kinds of enterprises

As stipulated in Section 8 of Article 1, the Detailed Rules, any technologically advanced EFI may, upon the expiration of tax exemption & reduction on Enterprise Income, be granted a further 50% reduction on Enterprise Income Tax for another three consecutive years, provided that the EFI remains to be technologically advanced enterprise after the said expiration; however, if the half reduced rate falls under 10%, the effective tax rate shall still be 10%, according to the provisions in Section 3, Article 3 of "Implementation of the Tax Incentives Regarding 'Regulations on Encouraging Investment of Foreign Enterprise' by the State Council".

(GUO SHUI FA NO. 165 [1991])

As stipulated in Section 7 of Article 75, the Detailed Rules, any export-oriented EFI may, upon the expiration of tax exemption & reduction as provided in the Tax Law, be granted a further 50% reduction in Enterprise Income Tax based on the rate listed in the Tax Law, provided that the said EFI export no less than 70% of its annual products. As regards the determination of what makes up the total value of exported goods, some specific rules have been laid down in "Implementation Regulation of the Ministry of Foreign Trade and Economic Cooperation on Recognition and Confirmation of Export-oriented EFIs and Technologically Advanced EFIs" promulgated on January, 26, 1995, by the Ministry of Foreign Trade and Economic Cooperation. Furthermore, the SAT (State Administration of Taxation) shares the same view in this respect, which indicates that the total value of goods exported by export-oriented EFIs shall be composed of the following parts:

1. Value of goods exported by the EFI itself;
2. Value of goods exported by Imp. & Exp. Corporations as agency of the EFI;
3. Value of the goods exported by Imp. & Exp. Corporations buying those goods from the EFI.
4. Expenses of processing materials supplied by clients outside China;
5. Value of goods exported in such approaches as recognized by the Ministry of Foreign Trade and Economic Cooperation.

In computation of the proportion of exported goods to total output of any EFI, some reference can be drawn upon figures in the Performance Statements which are inspected and confirmed by the Ministry of Foreign Trade and Economic Cooperation.

(GUO SHUI HAN FA NO. 645 [1995])

1. Any EFI undertaking port-and-docks-related projects shall, upon the approval of its application, be granted relevant tax incentives for revenues derived from such special activities as loading or unloading of cargo, transshipment, deposit, storage, container assembling or dismantling, transportation within port areas, fixing or maintenance of ships within the docks etc, since such revenues can be regarded as business or operation revenues of the said EFI. However, activities like goods delivery outside ports, ships maintenance outside docks, offshore rescue, productions on the basis of utilization of waste or remnant materials shall not be considered as business or operation activities of the foregoing EFI, hence the corresponding revenues shall be given no tax incentives and shall be calculated and filed separately as required by Article 2 of this Circular.

2. According to relevant provisions in the Detailed Rules, tax incentives shall be given to a port-and-dock-related EFI conducting special activities as specified above, only after it submits its application for approval to the competent tax authorities at provincial level or the State Administration of Taxation (SAT); no tax offices in any city or county are granted the right of sanctioning such applications.

3. In pursuance of Article 2 of this Circular, field tax offices should submit to competent provincial tax authorities for approval the enterprise's methods of discriminating between revenues & costs from common activities and revenues & costs derived from special activities.

4. The gamut of documents presented to tax authorities by an EFI which requires tax incentives for revenues from special activities is as follows:

- a. Enterprise's application,
- b. Business license,
- c. Contract or business charter,
- d. Certificate for undertaking special activities,
- e. Capital assessment reports by Chinese Certified Public Accountant.

(SU GUO SHUI FA NO. 440 [1995])

4. Deduction of research & development (R&D) expenses from taxable income

Recent resolution made by the State Council indicates that any EFI's actual incurred R&D expenses shall, upon the application having been endorsed by competent tax authorities, be allowed a 50% deduction from its annual taxable income, provided that the said EFI's annual R&D expenses go up by 10% or more. Some specific rules concerning implementation of the corresponding tax incentives are put as follows:

1. The filing period limit, checking or inspecting procedure and the approval rights shall be regulated, after having taken in account of the local pragmatic situation, by the provincial competent tax authorities with reference to the current tax laws & regulations as well as this Circular, and shall be further reported to the State Administration of Taxation for future reference.

The R&D expenses mentioned in the foregoing provision include: new product designing fee or art and craft process designing fee arising from developing new products, new

technology, and new manufacturing process; equipment performance test fee; material or semi-products developing fee; expenses on purchasing technological books and reference materials; periodical trial fee outside the scope of State Strategy Planning; salaries or wages of research workers; depreciation of research equipment; other expenses relevant to the research and development of new products and technology. However costs of buying technology or its utilization rights from another enterprise, as well as costs for maintenance and after-sales service of resulted technology shall fall outside the scope of R&D expenses.

2. Where an EFI's annual R&D expenses have increased by 10% or more over the previous year, and the 50% of the said R&D exceeds the amount of its annual taxable income, only the overlapped amount shall be deducted, while the excess amount is disallowed deduction in that year and the year that comes after.

In case that an EFI's annual taxable income is zero resulting from the profits being carried over to offset its previous year's losses, as permitted by Article 11, the Tax Law, the annual R&D expenses deduction shall not be applicable.

3. This Circular shall also apply for the R&D expenses arising from business activities or operations of any Foreign Enterprises with permanent establishment or fixed places in China.

4. This Circular shall be effective as of January 1st, 2000.

(GUO SHUI FA NO. 173 [1999])

5. Income tax credit for investment with purchased domestic equipment

To carry out the CCCC\* and the State Council's guidelines of attracting foreign investment and encouraging EFIs and Foreign Enterprises to utilize domestic equipment, this regulation addressing some problems on income tax credit for investment with purchased domestic equipment has been promulgated and made public as follows:

1. For any EFI established in China, 40% of the investment with purchased domestic equipment may be credited from the annual increased parts of income tax on the said EFI when purchasing domestic equipment, provided that three requirements are satisfied:

a. The value of the purchased domestic equipment must be within the total amount of investment;

b. The purchased domestic equipment must be in the list of "encouraged category" or "restricted category (B)" of the "Industry Guidance Catalogue for Foreign Investment", as stipulated in "Circular of the State Council on Adjustment of Tax Policies for Imported Equipment"

(GUO FA NO 37 [1997])

c. The purchased domestic equipment must not be in the list of catalogue of "Imported Commodities for Foreign Invested Projects without Tax Exemption" as stipulated in the Circular NO 37 issued by the State Council.

This regulation shall also be applicable to Foreign Enterprises with permanent establishment or fixed places in China.

Any purchased domestic equipment whose value is beyond the total amount of investment, shall also enjoy 40% credit from the EFI's annual increased parts of income tax provided that the said equipment is used for the following purposes:

To increase economic profits; raise product quality; diversify products categories; promote

update of products; lower costs and energy consumption; utilize comprehensively the natural resources; dispose or handle of wastes; enhance work security and safety; modify the present facilities and production process with advanced and appropriate new technology, new process, new equipment and new materials.

2. The purchased domestic equipment eligible for tax credit refers to any equipment produced domestically for the purpose of business activities and operations, whereas equipment imported from abroad or manufactured through a vehicle of "SAN LAI YI BU" shall not be legally recognized as purchased domestic equipment.

3. Where any EFI or FI is entitled to tax credit from its annual income as a result of investment with domestic equipment, the amount of its annual increased taxable income shall be the maximum credit threshold. For those EFIs whose annual increased taxable income are insufficient for the said credit, the non-credited amount can be deferred to subsequent years for later credit, provided that there is an annual increase in taxable income. However, the credit period shall be no more than 5 years.

In addition, any EFI or FI eligible for tax reductions and exemptions, as stipulated in tax laws or regulations promulgated by the Standing Committee of People's Congress, the People's Congress, and the State Council, shall, during its tax exemption and reduction period, be granted an appropriate extension of credit period with a maximum threshold of 7 years.

4. When applying for income tax credit on investment with domestic purchased equipment, any EFI or FI shall present the competent tax authorities with invoices of domestic purchased equipment and other relevant vouchers.

5. The original value of any domestic equipment purchased by an EFI or FI shall not include the refunded amount of Value Added Tax.

6. When computing taxable income, the value of purchased domestic equipment, part of which is to be credited, can still be depreciated on the basis of its original value.

7. In case that an EFI or FI leases or sells out the domestic equipment within 5 years from the date it is purchased, the said EFI or FI shall repaid the credited amount of enterprise income tax.

8. This regulation shall be effective as of July 1st, 1999. The detailed compliance rules shall be regulated by the State Administration of Taxation.

6. Preferential tax policies for development of software industry and integrated circuit industry

#### Article 1. Tax incentives for software makers

a. Beginning from June 24th, 2000 to the end of 2010, the self-developed & self-manufactured software products sold by any general VAT taxpayer shall, upon the VAT having been levied at the legal rate of 17%, be granted VAT refund at a rate of 14%. However, the amount of VAT refunded shall only be used for the purpose of developing new software products or expanding business activities, and thus no enterprise income tax will be imposed on that amount since it is not considered as part of taxable income of the said taxpayer.

b. Enterprises newly established in China shall, upon having been recognized as software makers, be entitled to an income tax exemption, starting from its first profit-making year, for two years, and then be further granted a 50% reduction for the next 3 consecutive

years.

c. In any tax year, those key software makers listed in the National Strategic Layout Projects who in the mean time fail to be treated with income tax exemptions, shall be levied at a reduced rate of 10% on enterprise income tax.

d. Remuneration of employees in any software enterprise and the training expenses can be deducted from the enterprise's taxable income on the basis of their actual incurred amount.

e. Any purchased software whose value amounts to the standard value of fixed assets or intangible assets, shall be treated and accounted as fixed assets or intangible assets. For domestic enterprises buying this software, this accounting method shall be endorsed by the corresponding competent authorities, whereas EFIs whose total investment exceeds \$30 million, such approval shall go to the State Administration of Taxation. In addition, for those EFIs whose total investment is less than \$30 million, the depreciation period or amortization period for the purchased software may be cut short after being approved by competent tax authorities. However the minimum depreciation or amortization period shall be 2 years.

f. Enterprises engaged in design of integrated circuit shall be taxed as software makers, thus enjoying relevant tax incentives for software industry.

The 'design of integrated circuit' refers to the process during which the design requirements of system, logic, and properties are converted into concrete physical process.

#### Article 2. Tax incentives for integrated circuit industry

a. Starting from July 24th, 2000 to the end of 2010, the self-manufactured integrated circuit products (including single transistor silicon unit) sold by any general VAT taxpayer shall, upon the VAT having been levied at the legal rate of 17%, be granted VAT refund at a rate of 11%. However, the amount of VAT refunded shall only be used for the purpose of developing new integrated circuit products or expanding business activities, and thus no enterprise income tax shall be imposed on that amount since it is not considered as part of taxable income of the said taxpayer.

The 'integrated circuit products' refers to those products whose electronic components are integrated into a placard of semi-transistor or a ceramics plane, enclosed in certain bulks so as to perform specific electronic or systematic functions.

For those integrated circuit products exported or sold to other export-oriented enterprises for export purpose, the VAT refund incentives shall not be applicable.

b. For the manufacture equipment of any domestic integrated circuit enterprise, its depreciation period can be reduced after being approved by the competent tax authorities, whereas the approval of manufacture equipment of any EFI with total investment no less than \$30 million goes to the State Administration of Taxation. In addition, even for EFIs whose investment is no more than \$30 million, the depreciation period may still be cut short after being endorsed by the competent tax authorities. However, the minimum depreciation period shall be 3 years.

c. For integrated circuit manufacturers whose total investment exceeds 8 billion RMB or whose integrated circuit line width is less than 0.25  $\mu\text{m}$ , the following extra tax incentives shall be available:

i. Sharing the same tax incentives for investment in energy and transportation and communication projects;

ii. The imported raw materials for production purpose shall be exempted from custom duty and VAT at imported stage.

The Custom shall facilitate the declaration process for those integrated circuit enterprises which satisfy the above conditions.

d. Where a recognized integrated circuit enterprise introduces integrated circuit technology, sets of production equipment or imports special equipment and apparatus for integrated circuit, no tariff or VAT at imported stage shall be imposed; however, this exemption shall not be applicable to those technology and equipment listed in "Imported Commodities for Foreign Invested Projects without Tax Exemption" or "Imported Commodities for Domestic Invested Projects without Tax Exemption" (GUO FA NO. 37 [1997]) promulgated by the State Council.

#### Article 3. Tax administration for software and integrated circuit industries

a. The standard for the determination of software makers shall be set jointly by the Ministry of Information Industry, the Ministry of Science & Technology, the State Administration of Taxation. Relevant tax incentives shall be available for those software makers whose names are officially publicized in the list after the said software makers' having been nominated by the Association of Software Industry at city's level and jointly approved by the Departments of Information Industry and the Competent Tax Authorities at the same level.

The list of key software makers within the scope of National Strategic Layout Projects shall be jointly drawn up by the National Committee of Economic Planning & Programming, the Ministry of Information Industry, the Ministry of Foreign Trade & Economic Cooperation as well as the State Administration of Taxation.

b. The integrated circuit enterprise, upon its status having been recognized by the competent government departments and approved by the tax authorities at the same level, shall be treated with corresponding tax incentives.

The list of integrated circuit products free of tax, as specified in Section 3, Article 2 of this Regulation shall firstly and jointly be drawn up by the Ministry of Information Industry, the National Committee of Economic Planning & Programming, the Ministry of Foreign Trade & Economic Cooperation as well as the General Custom, then submitted to the State Council for final approval.

c. The recognition and administration of integrated circuit enterprises shall follow the same procedure as that of software makers.

d. All the software makers and integrated circuit enterprises shall undergo an annual test, those who fail the test shall forfeit the status of software makers or integrated circuit enterprises, thus deprived of the relevant tax incentives.

The competent Custom House should be immediately informed as soon as a software maker or integrated circuit is stripped of its tax incentive status.

Other detailed rules for the administration of software makers and integrated circuit enterprises shall be regulated in the future.

July 1st, 2000 shall be the effective date for Articles of this Regulation where no effective date is specified. And this Regulation shall also override any previous relevant regulations

in which there are different provisions.

(CAI SHUI ZI NO. 25 [2000])

#### V. Concessions and exemptions on local income tax

For EFIs engaged in industries or projects which are encouraged by the State, governments at the provincial level are authorized to decide whether or not, as the case may be, to give those EFIs concessions or exemptions on local income tax.

(Article 9, the Tax Law)

#### Regulation of Jiangsu Province

##### Concerning Concessions and Exemptions on

##### Local Income Tax for Enterprises with Foreign Investment

Article 1. This regulation is formulated in accordance with the specific conditions of Jiangsu Province and provisions in Article 6 & 9 of the Tax Law.

Article 2. Any EFI established in Jiangsu shall abide by this regulation in order to enjoy tax reductions and exemptions on its local income.

Article 3. EFIs of production nature shall be free of local income tax during the period of 'two year exemption adjoining three year 50% reduction'

Article 4. Any EFI of production nature which is also recognized as an export-oriented enterprise shall, upon the expiration of exemption on local income tax specified in Article 3 of this regulation, be further exempted from local income tax, provided that the said EFI exports products exceeding 50% of its annual output.

Article 5. Any EFI of production nature which is also a technologically advanced enterprise shall, upon the expiration of exemption on local income tax specified in Article 3 of this regulation, be further exempted from local income tax for another three years.

Article 6. EFIs levied at a reduced rate of 15%, as stipulated in the Tax Law, shall be free of local income tax, provided that those EFIs are of the following types:

1. EFIs of production nature established in the Economic Technological Development Zones.
2. EFIs of production nature which have establishments in the old urban districts of the cities where the Coastal Economic Open Zones, the Economic Technological Development Zones are located, and which are engaged in the following projects:
  - a. Technology-concentrated or knowledge-concentrated projects;
  - b. Projects with foreign investment of \$30 million or more, and with a long period of recovery of investment;
  - c. Projects engaged in energy, transportation and communication, port constructions
3. Chinese-foreign equity joint ventures engaged in the construction of ports or docks.
4. The recognized high technological EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council.
5. Any EFI established in other places specified by the State Council and engaged in such projects as encouraged by the State.

Article 7. No local income tax shall be levied on EFIs situated in Development Zones, New Industry Zones or Industry Villages established under the approval of governments at the provincial level.

Article 8. The final say or interpretation of this regulation goes to the competent tax authorities at the provincial level.



Article 9. This regulation, which enters into force from the date it gets promulgated, shall override any previous regulation containing different provisions on the exemptions of local income tax.

VI. The gamut of EFIs of production nature

'EFIs of production nature' in Section 1 and 2 of Article 7 and Section 1 of Article 8, the Tax Law, refers to the EFIs engaged in the following industries:

- a. Machine building and electronic industries;
- b. Energy industries (not including oil and natural gas exploitation);
- c. Metallurgical, chemical and building material industries;
- d. Light, textile and packaging industries;
- e. Medical apparatus and pharmaceutical industries;
- f. Agriculture, forestry, animal husbandry, fishery and water conservancy;
- g. Construction industry;
- h. Communication and transportation industries (not including passenger transportation);
- i. Development of science and technology, geological survey and industrial information consultancy that directly serve production and maintenance and repair service for production equipment and precision instruments;
- j. Other industries that are recognized by the responsible department for taxation affairs under the State council.

(Article 72, the Detailed Rules)

According to Section 10 of Article 72, the Detailed Rules, 'other industries' recognized as EFIs of production nature can be further expounded as the following:

EFIs professionally engaged in the following businesses may be recognized as production enterprises with foreign investment:

- a. Those engaged in engineering design and in providing labor services (including consultation for such projects as construction, installation and assembling);  
Consultation includes technological assistance and guidance for the improvement of existing productive technology used for projects or used in enterprises, for the improvement of business administration, for selection of technologies and for improvement of the function, efficiency and quality etc. of the existing manufacturing equipment or products of the enterprise;
  - b. Those engaged in feeding, aquaculture (including aquatic farming), farming (including flowers raising), raising poultry, livestock, dogs and cats etc.;
  - c. Those engaged in scientific research and development of manufacturing technology;
  - d. Those engaged in directly providing users with warehousing and transport services with their own transport vehicles and storage facilities.
1. EFIs professionally engaged in the following business shall not be regarded as production enterprises with foreign investment:
- a. Those engaged in indoor or outdoor preparation and decoration, or installation and set up of indoor appliance;
  - b. Those engaged in advertisements, card and picture making as well as book and magazine issuing;
  - c. Those engaged in food processing, mainly for sale at their own canteen or at their store front;

d. Those engaged in the maintenance and repair of domestic appliances and repair of articles for daily use.

2. 'Maintenance and repair of production equipment and precision instruments' mentioned in Item 9 of Section 1 in Article 72, the Detailed Rules, does not include the maintenance and repair of vehicles, electrical appliances, computer monitoring systems, ordinary instruments and ordinary meters.

(GUO SHUI FA NO.109 [1992])

EFIs particularly engaged in the development and management of real estate, and in the sale of residence buildings, do not belong to production enterprise with foreign investment, thus no tax incentives are applicable.

(GUO SHUI HAN FA NO.505 [1990])

Regulations on Determining Production Enterprises with Foreign Investment

1. The development of science and technology, geological surveys and industrial consultations directly serving production refer to: such development whose result may directly constitute technology for manufacturing products, or directly constitute technology for management of the flow of production; such survey whose data may be directly used for development and utilization of all kinds of natural resources; and consultations and software development which are carried out specifically for the utilization of technology or for the development and utilization of natural resources. However, the development, surveys and consultations mentioned above do not include such services provided to various enterprises as accounting, auditing, legal services, assets appraisals, market information collecting and brokerage etc. as well as computer software development not serving technology or development and utilization of resources as mentioned above.

2. All EFIs, particularly engaged in sales of goods made from purchased goods in a simple way, e.g. the purchased goods are assembled, packaged, cleaned, selected or organized, etc, belong to those engaged in sales, if the goods on sale remain the same in shape, function and composition as and when they are purchased. Therefore enterprises such as the following shall not be recognized as production enterprises with foreign investment: enterprises which sell goods simply repaired with imported or purchased sets of appliances or equipment and parts; enterprises engaged in the sales of various purchased beverage and foods, which are simply bottled and packed; and the trade providing such specific services as bottling and packaging.

If enterprises with foreign investment, previously recognized as EFIs, do not conform to the principle of this Notice or if the taxation authorities find it difficult to make decisions in the future, they shall report the case to the State Administration of Taxation, who shall give an official written reply after examination and verification of the case.

(CAI SHUI ZI NO.051 [1994])

An investment company engaged in the investment business and other businesses related to investment (including services such as management, training, agency, etc. for the enterprise receiving the investment), according to the relevant laws and regulations, is not a production enterprise as stipulated in Article 7 and Article 8, the Tax Law, and in Article 72, the Detailed Rules, hence in this case no tax incentives regarding production enterprises with foreign investment shall be applicable.

(CAI SHUI ZI NO. 083 [1995])

The EFIs engaged in transport activities, as mentioned in Item 8 of Section 1 in Article 72 of the Detailed Rules, include those engaged in the house moving transport business, but does not include those engaged in the letter delivery business.

(GUO SHUI HAN FA NO. 383 [1994])

On the matter of how EFIs concurrently engaged in production and non-production types business, shall enjoy tax incentives

1. EFIs whose business scope as defined in its business license does not cover production, shall not be taken as production enterprises to enjoy relevant tax incentives, whatever proportion the enterprise's production business may take in its actual operation.

2. The following tax incentives shall be granted to EFIs whose business scope as defined in the business license covers both production business and non-production business, or whose business scope as defined in the business license only covers the production business, but, who actually also conducts non-production business:

a. In the tax exemption and reduction period counted from the first profit making year of the enterprise according to the provisions in Article 8 of the Tax Law, the EFIs engaged in both production and non-production business may apply to the competent tax authorities in the year when the EFI's income from production business is over 50% of its total business income, to enjoy the corresponding tax exemption and reduction for the year, after the examination and verification by the competent tax authorities; the EFI shall not enjoy the corresponding tax exemption and reduction if its income from production business is less than 50% of the total business income for that year.

b. The EFIs engaged both in production and non-production businesses and established in the areas where tax is levied at the reduced rate according to Article 7, the Tax Law, and the relevant regulations by the State Council, shall enjoy the tax reductions starting with the first year when income from production exceeds 50% of the total income.

(GUO SHUI FA NO. 209 [1994])

The EFIs engaged in specifically in land leveling business for land development and house construction may be regarded as building enterprises defined in Item 7 of Section 2 in Article 72, the Detailed Rules, thus enjoying tax incentives applying to EFIs of production nature.

(GUO SHUI HAN FA NO. 388 [1994])

The so called 'EFIs particularly engaged in indoor and outdoor preparation and decoration, or installation and setting up of indoor appliances who shall not be regarded as production EFIs include:

a. Enterprises engaged in installation of lifts and escalators;

b. Enterprises engaged in preparation and installation of doors and windows etc. for buildings and structures.

(GUO SHUI HAN FA NO. 389 [1994])

EFIs particularly engaged in the development and management of real estate, do not belong to production enterprises with foreign investment as defined in Article 7 and Article 8 of the Tax Law, and they shall not enjoy the tax incentives for production enterprises with foreign investment.

(GUO SHUI FA NO. 153 [1995])

#### IV. Withholding Income Tax

##### 1. Profit (Dividend)

'Profit' mentioned in Article 19 of the Tax Law refers to income allocated according to the ratio of investment and shares and other non-debt profit sharing rights.

(Article 60, the Detailed Rules)

Profits derived by a foreign investor from an enterprise with foreign investment shall be exempt from Income Tax.

(Article 19, the Tax Law)

'Profit derived by a foreign investor from an enterprise with foreign investment' as referenced in Paragraph 3 Item 1, Article 19 of Tax Law refers to the profit made by an enterprise with foreign investment after deduction of the payment of Income Tax or reduced Income Tax, or the profit which is exempted from Income Tax, in accordance with the stipulations of the Tax Law.

(Article 63, the Detailed Rules)

Income Tax shall not be collected on the dividends and extra dividends allocated to foreign investors from the profits made by enterprises with foreign investment or those allocated to foreign individuals by Chinese-foreign equity joint ventures according to the provisions of Article 19 of the Tax Law and Section 2 of Article 5 of the Detailed Rules.

Enterprise Income Tax and Individual Income Tax shall not be levied, provisionally, on income from dividends (extra dividends) allocated to foreign enterprises and foreign individuals who have B shares and China's offshore shares by enterprises in China issuing those shares.

(GUO SHUI FA No.045 [1993])

##### 2. Interest

###### (1) Scope of Interest

Interest refers to the following income received by foreign enterprises which have no establishments or sites in China: interest derived within China such as on deposits or loans, interest on bonds, interest on other provisional payments and deferred payments.

(Item 2 of Article 6, the Detailed Rules)

'Arrangement fee', 'assumption fee' and 'proxy fee' in loan agreements, which occurred with the loan business, should be treated as interest and taxable income.

(CAI SHUI WAI ZI No.264 [1985])

According to the concerning items of international tax agreements and Article 19 of the Tax Law, interest paid by branches of foreign banks when getting loans from head banks or other financial institutions belongs to the interest derived from China by foreign banks and other financial institutions. Therefore, Income Tax on the interest shall be withheld by the branches of foreign banks from each interest payment.

(GUO SHUI FA No.123 [1997])

Clarification is given as follows regarding the guarantee income tax:

A. Where a foreign enterprise has no established organization or site in China but derives guarantee income from sources within China, or where it has such established organizations or sites within China but its guarantee income is not really connected with those organizations or sites, such an enterprise shall pay Income Tax on that income

according to the Article 19 of the Tax Law.

Guarantee income derived from China mentioned above refers to the guarantee fees paid by enterprises, institutions or individuals in China who received guarantee from enterprises outside China in economic activities such as credit, transaction, goods transportation, process, leasing, project undertaking, etc..

B. The tax rate of guarantee income should be executed according to the Tax Law, concerning regulations, set or restricted tax rate of interest income stipulated in tax agreements.

C. The notification shall enter into force from March 1, 1998. As for those agreements signed before the notification, tax of the guarantee fees occurred and paid afterwards shall be exempted.

(CAI SHUI ZI No.1 [1998])

#### (2). Tax Deduction & Exemption of Income from Interest

Income from interest on loans made to the Chinese Government or Chinese State banks by international financial organizations shall be exempt from Income Tax. The interest income derived by a foreign bank from loans made to Chinese State Banks at preferential interest rates shall be exempt from Income Tax.

(Item 2&3 of Article 19, the Tax Law)

'International financial organizations' mentioned in Paragraph 3, Item 2, Article 19 of the Tax Law refers to international financial institutions like the International Monetary Fund, the World Bank, the Asian Development Bank, the International Development Association, the International Fund for Agricultural Development, etc..

'Chinese State banks' mentioned in Item 2&3, Paragraph 3, Article 19 of the Tax Law refers to the People's Bank of China, the Industrial and Commercial Bank of China, the Agricultural Bank of China, the Bank of China, the People's Construction Bank of China, and other financial institutions authorized by State Council to engage in the business of foreign exchange deposits and loans, etc. for foreign clients. (Article 64, 65 of the Detailed Rules)

The European Investment Bank belongs to the 'International financial organizations' mentioned in Article 19 of the Tax Law, so it may enjoy the tax incentives stipulated in that article.

(GUO SHUI HAN FA No.328 [1995])

According to Article 65 of the Detailed Rules, financial institutions with foreign investment in China, such as branches of foreign banks, banks and financial affair companies with foreign investment, etc., do not belong to the 'Chinese State Banks' described in Item 3, Paragraph 3, Article 19 of the Tax Law. Therefore, Income Tax shall be levied on the interest of loans made to foreign financial institutions by foreign banks.

(GUO SHUI HAN No.372 [1997])

### 3. Royalty

#### (1). Scope of Royalty

Royalty refers to the income received from the provision of patents, technical know-how, trademarks and copyright for use in China, which is derived by foreign enterprises in China who have not established organizations or sites.

(Item 2 of Article 6, the Detailed Rules)

Clarification is given as follows regarding the Income Tax collection on income from copyright (derived inside China) of movies, audio products and audio-video products collected by foreign companies, enterprises and other organizations (hereinafter referred to as "foreign enterprises") who do not have establishments in China.

i. Income Tax shall be levied at the rate of 20% as stipulated in the Tax Law on income obtained by foreign enterprises from use of the copyright of movies, audio-video products and audio products provided by foreign enterprises to Chinese companies, enterprises and institutions (including TV stations, broadcasting stations, film distribution and projection companies and audio-video publishing houses) except those in the special economic zones, economic and technological development zones and coastal economic open zones where such Income Tax may be collected at the reduced rate of 10% according to the relevant provisions. Income Tax shall be withheld from each payment given by the payers of royalty fees.

ii. As for the copyrights of movies, audio-video products and audio products provided by foreign enterprises to be used in education, scientific research, environmental protection and medical care etc., if they are really helpful to the scientific and cultural communication between China and other countries and the royalties are relatively low, thus needing tax incentives such as tax exemption and reduction, the foreign enterprises may present application to the local tax authorities via the copyright purchasers and then the application shall be reported to the State Administration of Taxation for approval after examination and verification by the local taxation authorities.

iii. If the foreign enterprise who provides copyrights of movies, audio-video products and audio products comes from a country with whom China has signed an agreement for prevention of double taxation, the foreign enterprise may ask for and enjoy the tax incentives on royalties at a limited rate according to the agreement.

iv. The purchasers (companies, enterprises and institutions) of the copyrights of movies, audio-video products and audio products provided by the foreign enterprise shall withhold tax at each royalty payment according to the provisions of the Tax Law. The taxation authorities shall collect fines or surcharges for overdue tax payments according to the provisions of Article 14 and 15 of the "Income Tax Law of the People's Republic of China on Foreign Enterprises", if the tax is not withheld in time or the tax that should be withheld is not withheld.

v. This notification shall enter into force from September 1, 1990. At the same time, the notification of CAI SHUI WAI ZI No. 46 shall stop executing.

As for those copyright transfer agreements signed before the notification enter into force, articles clearly put in agreements about tax incentives such as tax exemption and reduction can still be executed until the deadline of agreements (not including prolonged agreements henceforth).

(GUO SHUI HAN FA No.960 [1990])

(2).Calculation of payable royalty tax

The gross royalties obtained from the provision of patents and technical know-how include the drawing and information fees, technical service fees, personnel training fees and other relevant fees.

(Article 59, the Detailed Rules)

Where a foreign enterprise has no established organization or site in China but derives royalties from sources within China, or where it has such established organizations or sites within China but the royalties it earns are not really connected with those organizations or sites, such an enterprise shall deduct the business tax payment handed in according to "Provisional Regulations of the People's Republic of China on Business Tax" when the enterprise income tax is calculated.

(CAI SHUI ZI No.59 [1998])

(3). Tax Exemption and Deduction of royalties

Income Tax on royalties received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communication industries, agricultural, forestry and animal husbandry production, and the development of important technology may, upon approval by the responsible department for tax affairs under State Council, be levied at the reduced rate of 10%. Where the technology supplied is advanced or the terms are preferential, exemption from Income Tax may be allowed.

(Article 19, the Tax Law)

Reduction or exemption of Income Tax on royalties as provided for in Item 4, Paragraph 3, Article 19 of the Tax Law is applicable to the following:

I. Royalties obtained from the provision of the following technical know-how in farming, forestry, animal husbandry and fishery:

i. Technology provided to improve soil and grassland, to reclaim and develop barren hills, and to fully utilize natural conditions;

Biotechnology to nurture new species and varieties of fauna and flora and to produce high efficient but low toxic agricultural chemicals;

iii. Technology to provide farming, forestry, animal husbandry and fishery with scientific production and management, to preserve the ecological balance, and to increase the capability of fighting natural disasters;

II. Royalties obtained from the provision of technical know-how to academies of science, colleges and universities, and other scientific research institutions to conduct scientific research or scientific experimentation independently or cooperatively;

III. Royalties obtained from the provision of technical know-how for the development of energy resources and transportation;

IV. Royalties obtained from the provision of technical know-how for energy conservation and the prevention and control of environmental pollution;

V. Royalties obtained from the provision of technical know-how for the development of the following important fields of technology:

i. production of mechanical and electronic equipment;

ii. nuclear power;

iii. production of large scale integrated circuits;

iv. production of photo-integrated microwave semi-conductors and microwave integrated circuits and microwave electron tubes;

v. manufacturing of high-speed electronic computers and micro-processors;

vi. optical telecommunications;

vii. remote ultra-high voltage direct current electricity transmission;

viii. liquification, gasification and integrated utilization of coal.

(Article 66, the Detailed Rules)

If the foreign investors of the joint venture enterprises use the evaluated price of special technology to invest as capital stock and do not collect royalties separately, the withholding income tax can be exempted.

(CAI SHUI WAI ZI No.12 [1984])

#### 4. Rentals

Income Tax shall be exempted, provisionally, on ship rentals obtained by foreign companies or enterprises to Chinese companies or enterprises for international transportation. However, Income Tax shall be collected according to the provision in Article 11 of the Tax Law for ship rentals obtained by foreign enterprises to Chinese companies or enterprises for coastal or inland water transportation.

(CAI SHUI ZI No.32 [1984])

Through the approval of the State Council, clarifications concerning the withholding income tax of the rentals are given as follows:

- i. Withholding Income Tax shall be exempted on airplane rentals obtained by foreign enterprises to Chinese airline companies in accordance with rental contracts signed before September 1, 1999.
- ii. Withholding Income Tax shall be collected, according to the concerning regulations of the Tax Law and the Detailed Rules, on airplane rentals obtained by foreign enterprises to Chinese airline companies in accordance with rental contracts signed after September 1, 1999. Chinese airline companies shall withhold the Income Tax of the rentals from each payment.

(CAI SHUI ZI No.251 [1999])

#### 5. Benefits Received from Transfer of Property

'Other income' referred to in Article 19 of the Tax Law includes gains from transfer of property including houses, buildings, structures and their attached facilities located in China or from the assignment of right to use of land.

'Gains from transfer of property' referred to in the preceding paragraph means the net gain or profit received from the balance of the transfer after deduction of the original value of the property. The local tax authorities shall assess the original value of the property according to specific conditions if proper evidence on the original value cannot be provided by a foreign enterprise.

(Article 61, the Detailed Rules)

Income Tax shall be exempted, provisionally, on the net income obtained by foreign enterprises from transfer of their own B shares or Chinese offshore shares issued by enterprises in China if those shares do not belong to the foreign enterprise's establishments or sites in China. Tax exemption also applies to the income of foreign individuals from transfer of their own B shares or Chinese offshore issued by enterprises in China.

If foreign enterprises and foreign individuals transfer the stock of the enterprises with foreign investment in China, the Withholding Income Tax or the Individual Income Tax shall be levied at 20% on the excess part of the transfer gains over the investment according to the provisions in Document CAI SHUI WAI ZI No. 033 issued by the Ministry of Finance (87) and in Document CAI SHUI ZI No.114 issued by the Ministry of Finance



(84).

(GUO SHUI FA No.045 [1993])

During the period in which a company may want to reorganize towards establishing stronger management, if foreign enterprises want to transfer their own stock of enterprises in China or enterprises with foreign investment want to transfer stock of enterprises in or outside China to companies with the relation of directly owned, indirectly owned or owned 100% stock by the same person, including the investment companies with that relation inside China, they are allowed to transfer with the cost price. Income Tax shall not be collected because no benefit or loss from transfer of stock occurs.

(GUO SHUI HAN No.207 [1997])

"CCCCP" is the abbreviation of "the Central Committee of Chinese Communist Party"

"SAN LAI YI BU" stands for 4 modes of transnational trade, which are respectively mode of processing with materials supplied by clients outside China, mode of assembling equipment supplied by clients outside China, mode of processing according to the samples provided by oversea clients, and mode of compensation transactions

This English document is not an official translation and is for reference ONLY. In case of discrepancy, the original version in Chinese shall prevail.\*\*\*)

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## Suzhou

### SZ02 National encouraged industry list for foreign investment.

This document just announces a Format of confirmation report, not the list of industries. Maybe some mistake on the prior translation. But the SZ03 is the encourage list and we digested from internet.

SZ02 国家鼓励发展的内外资项目确认书

(2007-10-18 15:51)

编号:

根据国务院的有关规定,经确认:本项目已于 年 月 日 号批复,批准可行性研究报告,请按规定到项目主管地直属海关办理进口设备免税手续。

项目统一编号:

项目产业政策审批条目:

项目单位:

项目性质:

项目内容:

项目执行年限(起始年—结束年):

项目投资总额: 万元人民币

项目用汇额: 万美元

备注:

海关审批部门: 海关

一九九八年四月一日

抄送: 海关(项目主管直属海关)

### SZ03 Provisions on Guiding the Orientation of Foreign Investment

Decree [2002] No.346 of the State Council

The Provisions on Guiding the Orientation of Foreign Investment are hereby promulgated and shall enter into force on April 1, 2002.

Premier of the State Council: Zhu Rongji February 11, 2002

Enclosure: The Provisions on Guiding the Orientation of Foreign Investment

Article 1 In order to guide the orientation of foreign investment, to keep the orientation of foreign investment in line with the national economy and social development planning of China, and to protect of the lawful rights and interests of investors, these Provisions have been formulated according to the laws and provision on foreign investment and the requirements of industrial policies of the State.

Article 2 These Provisions shall be applicable to the projects of investment and establishment of Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises (hereinafter referred to all as enterprises with foreign investment), and projects with foreign investment in other forms (hereinafter referred to as projects with foreign investment) within the territory of China.

Article 3 The Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region shall be formulated by the State Development Planning Commission, the State Economic and Trade Commission, the Ministry of Foreign Trade and Economic Cooperation jointly with other relevant departments under the State Council, and shall be promulgated upon the approval of the State Council; when it is needed to partly adjust the Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region in light of the actual situation, the State Economic and Trade Commission, the State Development Planning Commission, the Ministry of Foreign Trade and Economic Cooperation jointly with the relevant departments under the State Council shall make the revision and promulgation timely.

The Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region shall be the basis of the application of relevant policies in directing and examining and approving projects with foreign investment and enterprises with foreign investment.

Article 4 Projects with foreign investment fall into 4 categories, namely encouraged, permitted, restricted and prohibited ones.

The Projects with foreign investment that are encouraged, restricted and prohibited shall be listed in the Guidance Catalog of Industry with Foreign Investment. And the projects with foreign investment that don't fall into the categories of encouraged, restricted or prohibited projects shall be the permitted projects with foreign investment. The permitted projects with foreign investment shall not be listed in the Guidance Catalog of Industry with Foreign Investment.

Article 5 A project in any of the following situations shall be listed as the encouraged

projects with foreign investment:

1) being of new agriculture technologies, agriculture comprehensive development, or energy, transportation and important raw material industries;

2) being of high and new technologies or advanced application technologies that can improve the product performance and increase the technology economic efficiency of the enterprises or those that can produce the new equipments and new materials which the domestic production capacity fails to produce;

3) meeting the market needs and being able to improve the product level, develop new markets or increase the international competitive capacity of the products;

4) being of new technologies and new equipments that can save energy and raw material, comprehensively utilize resources and regenerate resources, and prevent environment pollutions;

5) being capable of bring into the advantages of human power and resources of the mid-west region into full play and being in conformity to the industrial policies of the State;

6) other situations as provided for by laws and administrative regulations.

Article 6 A project in any of the following situations shall be a restricted project with foreign investment:

1) being of technology lagged behind;

2) being adverse to saving resources and improving environment;

3) engaged in the prospecting and exploitation of the specific type of mineral resources to which the State applies protective exploitation;

4) falling into the industries that the State opens step by step;

5) other situations as provided by laws and administrative regulations.

Article 7 A project in any of the following situations shall be a prohibited project with foreign investment:

1) harming the State safety or impairing the public interests;

2) polluting the environment, damaging natural resources or harming human health;

- 3) occupying too much farmland and being adverse to the protection and development of land resources;
- 4) harming the safety and usage of military facilities;
- 5) using the particular techniques or technologies of China to produce products;
- 6) other situations as provided for by laws and administrative regulations.

Article 8 The Guidance Catalog of Industry with Foreign Investment may provide that a enterprise with foreign investment is "limited to joint venture, contractual venture", "with Chinese party at the holding position" or "with Chinese party at the relatively holding position".

"Limited to joint venture and operative venture" shall refer to that only Chinese-foreign joint ventures and Chinese-foreign contractual joint ventures are allowed; "with the Chinese parties at the holding position" shall refer to that the total investment proportion of the Chinese parties in the project with foreign investment shall be 51% or more; "with Chinese parties at the relatively holding position" shall refer to that the total investment proportion of the Chinese parties in the project with foreign investment shall be higher than the investment proportion of any foreign party.

Article 9 Apart from enjoying the preferential treatments according to the provisions of the relevant laws and administrative regulations, the encouraged projects with foreign investment that engage in the construction and operation of energy, transportation, municipal infrastructure (coal, oil, natural gas, electric power, railways, highways, ports, airports, city roads, sewage disposition, and garbage disposition, etc.) that needs large amount of investment and long term for recovery may expand their relevant business scope upon approval.

Article 10 The permitted projects with foreign investment of which the products are all directly exported shall be regarded as the encouraged project with foreign investment; the restricted projects with foreign investment of which the export sales accounts for more than 70% of their total amount of sales may be regarded as the permitted projects with foreign investment upon the approval of the people's governments of provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan or the competent department under the State Council.

Article 11 The conditions may be eased for the permitted and restricted projects with foreign investment that really can bring the advantages of the mid-west region into full play; among which, those listed in the Guidance Catalog of Industry with Foreign

Investment may enjoy the preferential policies for the encouraged projects with foreign investment.

Article 12 Projects with foreign investment shall be examined and approved, and put on record respectively by the departments of development planning and the economic and trade departments according to the limit of authority for examination and approval; the contracts and articles of association of enterprises with foreign investment shall be examined and approved, and put on record by the departments of foreign trade and economic cooperation. Among which, the projects with foreign investment under the limit for restricted projects with foreign investment shall be subject to the examination and approval of the corresponding competent departments of the people's governments of the provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan, and shall be reported to the competent departments at the next higher level and the competent industrial departments, the power for examination and approval of this kind of projects may not be granted to the authorities at lower levels. The projects with foreign investment in the service area that are opened to the outside world step by step shall be subject to the examination and approval according to the relevant provisions of the State.

The projects with foreign investment involving quotas and licenses must apply to the departments for quotas and licenses first.

Where there are otherwise provisions of laws and administrative regulations on the procedures and measures for the examination and approval of projects with foreign investment, those provisions shall be observed.

Article 13 With respect to the projects with foreign investment examined and approved in violation of the present provisions, the organ of examination and approval at the next higher level shall cancel it within 30 workdays from the day of receiving the documents for record of that project, its contract and articles of association shall be void, the department of enterprise registration shall not register it and the customs shall not handle the procedures for import and export for it.

Article 14 Where the applicant of a project with foreign investment manages to obtain the approval for the project by deceiving or other illicit means, his legal liabilities shall be investigated for according to law regarding the seriousness of the circumstances; the organ of examination and approval shall cancel the approval for that project and the relevant competent organs shall deal with it correspondingly according to law.

Article 15 Where any of the personnel of the organ of examination and approval abuses his power or neglects his duties, criminal responsibilities shall be investigated for according to the provisions of the criminal law on the crime of abusing powers or the crime of neglecting duties; where the circumstances are not serious enough for criminal punishment, administrative punishment of recording a special demerit or more severe

punishment shall be given.

Article 16 With respect to the investment projects established by overseas Chinese and the investors from the Hong Kong Special Administration Region, Macao Special Administrative Region or Taiwan Area, these Provisions shall be applicable by reference in implementation.

Article 17 These Provisions shall enter into force on April 1, 2002. The Interim Provisions on the Guidance of Foreign Investment Directions approved by the State Council on June 7, 1995 and promulgated by the State Planning Commission, the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation on June 20, 1995 shall be nullified simultaneously.

## **SZ05 The Preferential Policies for Foreign Investment in Suzhou Industrial Park.**

**Suzhou Industrial Park (SIP) is a cooperative project of priority between Chinese and Singaporean governments**

### **Start-up Procedure**

Investors who wish to set up their operations in Suzhou Industrial Park may select from the following options:

- 1) Buy land to build their own factories;
- 2) Rent ready-built factories of different types, such as: Terrace Factory, Workshops, Freestanding Factory and Multi-storey Factory.

If the enterprise is export oriented, we recommend you consider to locate in Export Processing Zone (EPZ), where the above options are also available.

### **Tax Incentives**

The preferential tax incentives available to foreign manufacturing enterprises and infrastructure developers in the park are shown in the table below.

| Corporate Income Tax                                 | Tax Rate | Reduction/Exemption Policy |
|------------------------------------------------------|----------|----------------------------|
| Foreign Invested Enterprises of manufacturing Nature |          |                            |

|                                                                         |             |                                                                                                                                                              |
|-------------------------------------------------------------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| General                                                                 | 15%         | Exempted from 3% Local Corporate Income Tax.                                                                                                                 |
| Period of operation exceeds 10 years                                    | 15%         | As above. In addition, 2 years exemption plus 3 years half tax at the rate of 7.5% from the first profit-making year.                                        |
| Exporting enterprises                                                   | 15%         | As above. After first 5 years of enjoying the additional tax incentive, if export value in any year exceeds 70% of output value, tax rate is reduced to 10%. |
| Technologically advanced enterprises                                    | 15%         | As above. After first 5 years of enjoying the additional tax incentive, further 3 years of Corporate Income Tax rate at 10%.                                 |
| <b>Others</b>                                                           |             |                                                                                                                                                              |
| Enterprises developing harbors, wharves & other infrastructure          | 15%         | If intended period of operation exceeds 15 years, exemption for 5 years from the first profit-making year and reduced tax rate of 7.5% for another 5 years.  |
| Financial Institutions with more than US\$10 million capital investment | 15%         | Must exceed 10 years period of operation Exemption for 1st profit-making year and reduced tax rate of 7.5% for another 2 years.                              |
| <b>Tax Rebates for re-investments</b>                                   |             |                                                                                                                                                              |
| Re-investments in the same enterprise, or a new FIE                     | 40% Rebate  | New FIE must have an operation period of more than 5 years; Rebate amount is 40% of corporate income tax that has been paid on sum re-invested.              |
| Re-investment in export-oriented or advanced technology enterprises     | 100% Rebate | New FIE must have an operation period of more than 5 years; 100% rebate on corporate income tax that has been paid on sum re-invested.                       |
| <b>Withholding Tax</b>                                                  |             |                                                                                                                                                              |
| Dividends remitted to foreign shareholders                              | 0%          | Complete Exemption                                                                                                                                           |
| Interests, rental, leasing                                              | 10%         | May be further reduced depending                                                                                                                             |



|                                           |  |                                                                                                         |
|-------------------------------------------|--|---------------------------------------------------------------------------------------------------------|
| payment, capital gains, or franchise fees |  | on Double Taxation Agreements signed between China and other countries after payment of 5% business tax |
|-------------------------------------------|--|---------------------------------------------------------------------------------------------------------|

### Legal Services

There are tens of partnership law firms in Suzhou, which are recognized by China's Ministry of Law. They are specialized in corporate law, finance (bank, securities) law, foreign investment law, property law, and intellectual property law, etc.

**Above policies in English was collected from the government website of <http://www.cssd.com.cn/qdms.htm#1>.**

#### SZ05 苏州工业园区投资优惠政策

(2007-10-18 15:46)

园区被授予许多具有唯一性的特殊政策，形成了“不特有特、特中有特”政策优势

拥有上不封顶的自行审批特权。凡符合国家产业政策的外资项目，园区均可自行审批。拥有灵活高效的外事管理权。享有公务出境任务审批、颁发公务护照、向外国驻华使领馆申办签证及签发境外人员入境签证通知函电等管理权限。

拥有中国唯一的区域性公积金制度。具有“企业提得少、个人留得多、保障待遇稳定、有利于吸引人才和留住人才”等优点。

拥有快速的物流通关优势。苏州工业园区作为中国率先进行通关作业制度改革和现代物流试点的区域，不仅拥有独立的海关、高效的绿色通道、具有内陆口岸功能的进出口货物分拨中心，而且经国务院批准还可在区内设立现代物流园、允许成立外商独资或中外合作经营的国际物流公司，上海机场监管仓库可直接延伸至园区，使区内企业通关效率大幅度提高。

#### 税收优惠政策

进区的生产性外商投资企业及经认定的高新技术企业按照国家政策可享受 15% 的所得税税率，并免征 3% 的地方所得税；经营期在 10 年以上的，从开始获利年度起，可享受“两免三减半”的优惠。

外商投资举办产品出口企业或先进技术企业，在依照税法规定免征、减征企业所得税期满后，凡当年出口产品产值 70% 以上的，可享受 10% 的优惠税率；仍为先进技术企业的，可按规定延长 3 年享受 10% 的优惠税率。

从事农业、林业、畜牧业的外商投资企业在享受“两免三减半”期满后，经批准 10 年内可按应纳税额减征 15% 至 30% 的所得税。

进区外商投资企业的外国投资者，将企业利润直接再投资以增加注册资本或开办其他外资企业，经营期不少于 5 年的，经批准可退回其再投资部分已缴所得税的 40% 税款。其中，再投资举办出口企业或先进技术企业，可退回其再投资部分已缴所得税全部税款。外商投资企业和外国企业在中国境内设立机构、场所，按照国家有关规定，在投资总额内购买国产设备的可按该设备投资的 40% 从当年新增所得税中抵免；技术开发费比上年增长 10% 以上，经批准可按技术开发费实际发生额的 50% 抵扣当年度应纳税所得额。

外国企业从园区取得的股息、利息、租金、特许权使用费和其他所得，除依法免征所得

税的以外，都可以或按 10%的税率征收预提所得税

集成电路和软件产业享受国发[2001]18 号文件规定的优惠政策

## **SZ06 The encourage and important List for foreign investment in Suzhou.**

**This document shows that the encourage projects includes the items of your client's, it is the Article 15 All of the production will be exporting or no environment pollution**

SZ06 苏州工业园区投资重点产业目录

(2007-10-18 15:45)

(十五) 产品全部直接出口及环境无污染的允许类项目

# Changshu

## CS01 Preferential Policies

### Tax Policy

1. Income tax is 24%
2. Technology centralization, knowledge centralization enterprise; over USD30million investment; Power, communication and port building investment. All of above will get 15% income tax.
3. It's about port building enterprise
4. It's for farming, forestry, animal husbandry etc.
5. After the term of preferential time, the enterprises whose 70% products will be exported to the abroad will acquire the half tax of income, but the lowest tax is not less than 10%.
6. If foreign investment use the profit to re-invest in China and operate not less than 5 years, will be draw back 40% income tax from the re-invest. And if re-invest on product export enterprise or high-tech enterprise, will be draw back all income tax.
7. Foreign investment purchase China made machinery, can get the tax draw back from the government.
8. If the tech-development fee increase 10% than last year, the half of real happens can deduction the same amount of income tax.

### Ground Policy,

Just announce that investment can rent four kind of ground, national owned, collective owned, etc.

### Talent Policy

Do not collect the municipal charge for the enterprises who employ the graduate students, middle- technical students etc.

### CS01 优惠政策

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修改次数:

1. 99年以前外商投资企业, 所得税率为24%, 其中经营期在10年(含10年)以上的, 从投后年度起, 前2年免征, 后3年减半征收(或免期)免征地方所得税

2. 从事下列投资项目的生产性外商投资企业, 报经国家税务总局批准, 可按15%税率征收企业所得税, 并免地方所得税

1. 技术密集, 知识密集的项目;

2. 外商投资在3000万美元以上, 回收投资时间长的项目;

3. 港口、交通、港口建设的项目

3.从事港口码头建设的中外合资企业，经营期在15年以上的，报经省级税务机关批准，从获利年度起，前5年免征，后5年减半征收。

4.从事农、林、牧业投资的外商投资企业，在减免税期满后，报经税务部门批准，在以后的10年内可继续按应纳税率减征15%-30%的企业所得税。

5.产品出口型企业在规定的减免所得税期满后，当年产品出口比例超过70%，可按现行税率减半征收；先进技术企业在规定减免所得税期满后，可延长3年减半期，减半后税率低于10%的，按10%征收。

6.外资企业利用分得的利润在中国境内再投资且经营不少于5年的，退还再投资部分所得税款的40%，若再投资建办产品出口型企业或技术先进型企业，则退还再投资部分全额所得税。

7.外资企业采购国产设备可根据国家规定享受退税优惠。外资企业采购国产设备，符合国家规定的，投资的40%可从购置设备当年比前一年新增的企业所得税中抵免。

8.外资企业技术开发费比上年增长10%（含10%）以上，技术开发费实际发生的50%可抵当年度应纳税所得额。

#### 土地政策

对外商投资企业实行有偿用地政策，主要有两种方式：国有土地使用权出让；国有土地使用权租赁；集体土地使用权转让；集体土地使用权租赁。

#### 人才政策

对外商投资企业引进的大学本科毕业生、紧缺专业的大学专科毕业生和中级技术职称以上各类人才给予迁入，不收取城市建设费。

# Zhejiang

## ZJ02 Provisions of the State Council concerning the encouragement of investments by compatriots from Taiwan

### Important Notice:

This English document is coming from the "LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA GOVERNING FOREIGN-RELATED MATTERS" (1991.7) which is compiled by the Bureau of Legislative Affairs of the State Council of the People's Republic of China, and is published by the China Legal System Publishing House. In case of discrepancy, the original version in Chinese shall prevail.

### Whole Document (法规)

#### PROVISIONS OF THE STATE COUNCIL CONCERNING THE ENCOURAGEMENT OF

#### INVESTMENTS BY COMPATRIOTS FROM TAIWAN

(Adopted by the Tenth Executive Meeting of the State Council on June 25, 1988, promulgated by Decree No. 7 of the State Council of the People's Republic of China on July 3, 1988, and effective as of the date of promulgation)

#### Article 1

These Provisions are formulated in order to promote economic and technological exchanges between China's mainland and the region of Taiwan, thereby boosting common prosperity of the two parts of the motherland on both sides of the Straits, and to encourage companies, enterprises and individuals on Taiwan (hereinafter referred to as "investors from Taiwan") to make investments on China's mainland.

#### Article 2

Investors from Taiwan may make investments in all provinces, autonomous regions, municipalities directly under the Central Government, and special economic zones on China's mainland.

Investors from Taiwan are encouraged to engage themselves in land development operations in Hainan Province and on the designated islands and in areas along the coastal regions of the Provinces of Fujian, Guangdong and Zhejiang.

#### Article 3

The investments made by investors from Taiwan on China's mainland may take the following forms:

- (1) to establish enterprises with the capital wholly owned by investors from Taiwan;
- (2) to establish equity or contractual joint ventures;
- (3) to carry out compensation trade, to process supplied materials, to assemble supplied parts, and to carry out contractual production;
- (4) to purchase shares and various kinds of bonds and debentures of existing enterprises;
- (5) to purchase real estate;
- (6) to obtain land use right according to law and to engage in land development operations; and
- (7) to adopt other forms of investment permitted under the laws and regulations.

#### Article 4

Investors from Taiwan may make investments in various trades in China's mainland: industries, agriculture, service trades, and other trades that are in conformity with the orientation of social and economic development. Investors from Taiwan may select investment projects from the lists of projects published by the departments concerned under various local people's governments; they may also put forward, of their own accord, proposals as to their investment intent and file their applications to the departments of foreign economic relations and trade or to the examining and approving organs designated by various local people's governments in areas where they intend to make investments.

The State encourages investors from Taiwan to make investments in the establishment of export oriented enterprises and of technological advanced enterprises and gives corresponding preferential treatment to such enterprises.

#### Article 5

With respect to the various types of enterprises established with investments by investors from Taiwan - enterprises with the capital wholly owned by investors from Taiwan, equity and contractual joint ventures (hereinafter referred to as "enterprises with investments by compatriots from Taiwan"), they shall all be operated in accordance with these Provisions; in addition to this, they may also enjoy the corresponding preferential treatment as enjoyed by enterprises with foreign investments

with reference to the relevant provisions in foreign-related economic laws, decrees and regulations of the state.

With respect to the other forms of investment made by investors from Taiwan on China's mainland, and with respect to those investors from Taiwan who have not set up business offices on the mainland, but have dividends, interest, rental, royalties and other incomes that come from China's mainland, in addition to the application of these Provisions, reference shall be made to the relevant foreign-related economic law, decrees and regulations.

#### Article 6

Investors from Taiwan may make investments by using freely convertible currencies, machinery and equipment or other physical goods, industrial property right, and proprietary technology.

#### Article 7

The investments made on China's mainland by investors from Taiwan, the assets they have purchased, their industrial property rights, their profits from investments, and other lawful rights and interests shall be protected by state laws, and may be transferred or inherited according to law.

Investors from Taiwan shall, in their activities on China's mainland, abide by state laws, decrees and regulations.

#### Article 8

The state shall not nationalize the investments made by investors from Taiwan or other assets belonging to them.

#### Article 9

Where the state, in light of the needs of social and public interest, has to requisition the enterprises with investments by compatriots from Taiwan, the State shall handle the requisitioning according to the legal procedures and the investors concerned shall be duly compensated.

#### Article 10

The lawful profits gained by the investors from Taiwan from their investments, their other lawful income and the funds after liquidation may be remitted out of China's mainland according to law.

#### Article 11

Machinery and equipment imported to meet the needs of the enterprises with investments by compatriots from Taiwan and included in the total amount of investment, the motor vehicles for use in production, the office equipment, as well as the articles and means of communications for personal use and within reasonable quantities, imported by individual compatriots from Taiwan during the period when they work in the aforesaid enterprises shall be exempted from Customs duties and consolidated industrial and commercial tax, and also from application of import licences.

The raw and processed materials, fuels, bulk parts, spare and component parts, primary parts, and fittings, which are imported by the enterprises with investments by compatriots from Taiwan for the production of export commodities, shall all be exempted from Customs duties and consolidated industrial and commercial tax and also from obtaining import licences, and placed under the supervision of the Customs. In case that the aforesaid imported raw materials and parts are used for the production of commodities to be sold on the market of China's mainland, it is imperative to make up the procedures for importation and to pay taxes and duties according to the regulations. The export commodities produced by the enterprises with investments by compatriots from Taiwan shall, with the exception of those commodities the export of which is under restriction by the state, be exempted from Customs duties on export goods and consolidated industrial and commercial tax.

#### Article 12

Enterprises with investments by compatriots from Taiwan may obtain loans from financial institutions of China's mainland; they may also obtain loans from financial institutions outside China's mainland, and may use their assets as well as their rights and interests as mortgage or security.

#### Article 13

With respect to the enterprises with the capital wholly owned by investors from Taiwan, their period of operation shall be determined by the investors themselves; as to equity and contractual joint ventures their period of operation shall be determined, through consultation, by the various parties to the ventures, they may also choose not to stipulate a period of operation.

#### Article 14

The composition of the board of directors of equity joint ventures and the appointment of the chairman of the board of directors, the composition of the board of directors or of the joint managerial organs of contractual joint ventures and the appointment of the chairman or the appointment of the director of the joint managerial organs, shall be determined, through consultation, by the various parties to the equity or contractual joint ventures in light of the proportion of investments or the terms of contract.

#### Article 15

Enterprises with investments by compatriots from Taiwan shall conduct their operational and managerial activities in accordance with the approved contract or articles of association. The enterprises' decision-making power for business operations and management shall not be interfered with.

#### Article 16



The technical and managerial personnel, engaged by individuals and enterprises investing on China's mainland may apply and obtain multiple-journey travel documents.

Article 17

The investors from Taiwan, who make investments on China's mainland, may appoint their relatives or friends residing on the mainland as their agents. The agents should hold legally effective letters of authority.

Article 18

In areas where enterprises with investments by compatriots from Taiwan are concentrated, the investors from Taiwan may apply to the local people's government for the establishment of the association of investors from Taiwan.

Article 19

With respect to equity and contractual joint ventures to be established, on China's mainland, with investments by investors from Taiwan, the application for the establishment of the aforesaid enterprises shall be filed by the mainland party; as to the enterprises to be established with capital wholly owned by investors from Taiwan, the application shall be filed directly by the investors from Taiwan themselves, or they may entrust their relatives or friends residing on the mainland, or entrust the institution providing advisory services, with the application. The applications for the establishment of enterprises with investments by investors from Taiwan shall be accepted and handled, in a unified manner, by the local department for foreign economic relations and trade, or by the examining and approving organs designated by the local people's government. Cases concerning the examination and approval of the application for the establishment of enterprises with investments by compatriots from Taiwan shall be handled in accordance with the authority prescribed by the State Council. Departments for foreign economic relations and trade at various levels or the examining and approving organs designated by the local people's government shall, within forty-five days of receipt of complete application documents, make the decision on whether the said application is approved or disapproved.

The applicants shall, within thirty days receipt of the written approval, file an application to the department for the administration of industry and commerce, and, in accordance with the relevant procedures for registration and administration, go through the procedures for registration and obtain business licences.

Article 20

With respect to the investors from Taiwan who have made investments in China's mainland, in case that a dispute arises during the execution of, or in connection with, a contract, the parties concerned shall try their best to settle the dispute through consultation or mediation.

Where the parties concerned are unwilling to settle the dispute through consultation or mediation, or the consultation or mediation has failed, the parties concerned may, in accordance with the stipulation of the arbitration articles in the contract, or in accordance with the written arbitration agreement reached by the parties concerned after the dispute has arisen, submit their dispute to the arbitration authorities on China's mainland or in Hong Kong for settlement.

In the event that the parties concerned did not include an arbitration article in their contract, and no written arbitration agreement has been reached after the dispute has arisen, then the dispute may be brought before the people's court.

Article 21

The right to interpret these Provisions resides in the Ministry of Foreign Economic Relations and Trade.

Article 22

These Provisions shall go into effect as of the date of promulgation.

## **ZJ04 Provisions of the State Council concerning the encouragement of Investments by overseas Chinese and Compatriots from HongKong and Macao**

### Important Notice:

This English document is coming from the "LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA GOVERNING FOREIGN-RELATED MATTERS" (1991.7)

which is compiled by the Bureau of Legislative Affairs of the State Council of the People's Republic of China, and is published by the China Legal System Publishing House.

In case of discrepancy, the original version in Chinese shall prevail.

### Whole Document

PROVISIONS OF THE STATE COUNCIL CONCERNING THE ENCOURAGEMENT OF INVESTMENTS BY OVERSEAS CHINESE AND COMPATRIOTS FROM HONG KONG AND MACAO

(Promulgated by Decree No. 64 of the State Council of the People's Republic of China on August 19, 1990, and effective as of the date of promulgation)

#### Article 1

These Provisions are formulated with a view to promoting the economic development of our country and to encouraging overseas Chinese and compatriots from Hong Kong and Macao (hereinafter referred to as "overseas Chinese investors and those from Hong Kong and Macao") to make investments in China's inland areas.

#### Article 2

Overseas Chinese investors and those from Hong Kong and Macao can make investments in the various provinces, autonomous regions, municipalities directly under the Central Government, and special economic zones in China's inland areas.

Overseas Chinese investors and those from Hong Kong and Macao are encouraged to engage themselves in business operations of land development in accordance with the pertinent regulations of the state.

#### Article 3

The investments made by the overseas Chinese investors and those from Hong Kong and Macao may take the following forms:

- (1) to establish enterprises with the capital wholly owned by the overseas Chinese investors and those from Hong Kong and Macao;
- (2) to establish equity joint ventures and contractual joint ventures;
- (3) to carry out compensation trade, to process supplied materials, to assemble supplied parts, and to carry out contractual production;
- (4) to purchase shares and various bonds and debentures of existing enterprises;
- (5) to purchase real estate;
- (6) to obtain land use right according to law and to engage in land development operation;
- (7) to use other forms of investment permitted under the laws and regulations.

#### Article 4

Overseas Chinese investors and those from Hong Kong and Macao can make investments in various trades in China's inland areas: in industries, in agriculture, in service trades, and in other trades that are in conformity with the orientation of social and economic development. Overseas Chinese investors and compatriots from Hong Kong and Macao may select their investment projects from the lists of projects made public by the departments concerned under various local people's governments; they may also put forward, of their own accord, proposals as to their investment intent and file their applications to the departments of foreign economic relations and trade or to the examining and approving organs designated by various local people's governments located in areas where they intend to make their investments.

The State encourages overseas Chinese investors and those from Hong Kong and Macao to make investments in the establishment of export-oriented enterprises and of technologically advanced enterprises, and gives corresponding preferential treatment to such enterprises.

#### Article 5

With respect to the various types of enterprises established with investments by overseas Chinese investors and those from Hong Kong and Macao - enterprises with the capital wholly owned by such investors equity, joint ventures, and contractual joint ventures (hereinafter referred to as "enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao"), they shall all be operated in accordance with these Provisions; in addition, they may also enjoy the corresponding preferential treatment as enjoyed by enterprises with foreign investments, in the light of the relevant provisions in the state laws, decrees and regulations on external economic relations. Cases concerning other forms of investment made by such investors in China's inland areas, and concerning their dividends, interest, rental, royalties

and other incomes that come from China's inland areas without establishing business offices here, shall be handled in accordance with these Provisions, and, if need be, with reference to foreign-related economic laws, decrees and regulations of the State.

Article 6

Overseas Chinese investors and those from Hong Kong and Macao may make their investments by using convertible currencies, machinery and equipment or other physical goods industrial property rights, and proprietary technology.

Article 7

The investment made in China's inland areas by overseas Chinese investors and those from Hong Kong and Macao, the assets they have purchased, their industrial property rights, the profits from their investments, and other lawful rights and interests shall be protected by State laws, and may be transferred or inherited according to law. Overseas Chinese investors and those from Hong Kong and Macao shall abide by State laws and regulations in their activities in inland areas.

Article 8

The State shall not nationalize the investment made by overseas Chinese investors and compatriots from Hong Kong and Macao or other assets belonging to them.

Article 9

Where the state, in accordance with the needs of social and public interest, has to requisition the enterprises with investments by overseas Chinese investors and those from Hong Kong and Macao, the state shall handle the case according to the legal procedures and the investors concerned shall be duly compensated.

Article 10

The lawful profits gained by overseas Chinese investors and those from Hong Kong and Macao from their investments, their other lawful incomes and the funds after liquidation may be remitted out of China's inland areas according to law.

Article 11

Machinery and equipment imported to meet the needs of enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao and, included in the total amount of investment, motor vehicles for use in production, office equipment, as well as articles and means of communications for personal use and within reasonable quantities, imported by overseas Chinese and compatriots from Hong Kong and Macao during the period when they work in the aforesaid enterprises shall be exempted from Customs duties and consolidated industrial and commercial tax, and also from the application for import licences.

The raw and processed materials, fuels, bulk parts, spare and component

parts, primary parts, and fittings, which are imported by enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao for the production of export commodities, shall all be exempt from Customs duties and consolidated industrial and commercial tax and also from the application of import licences and placed under the supervision of the Customs. In case that the aforesaid imported materials and parts are used for the production of commodities to be sold on China's inland markets, it is imperative to make up the procedures for importation and to pay taxes and duties according to the regulations.

The export commodities produced by the enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall, with the exception of those commodities the exportation of which is under restriction by the State, be exempt from Customs duties on export goods and consolidated industrial and commercial tax.

#### Article 12

Enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao may obtain loans from financial institutions in China's inland areas; they may also obtain loans from financial institutions outside China's inland areas, and may use their assets as well as their rights and interests as mortgage or security.

#### Article 13

With respect to enterprises with the capital wholly owned by overseas Chinese investors and compatriots from Hong Kong and Macao, their period of operation shall be determined by the investors themselves; as to equity joint ventures and contractual joint ventures, their period of operation shall be determined, through consultation, by the various parties to the above-said joint ventures; they may also set no limit to the period of operation.

#### Article 14

The composition of the board of directors of joint ventures and the appointment of the chairman of the board of directors, the composition of the board of directors or of the joint management organs of contractual joint ventures and the appointment of the chairman or the appointment of the director of the joint management organs, shall be determined, through consultation, by the various parties to the equity joint ventures or to the contractual joint ventures in the light of the proportion of investments or the terms of contract.

#### Article 15

Enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall conduct their operational and management activities in accordance with the approved contract or articles of association. The enterprises' decision-making power for business operations and management shall not be interfered with.

## Article 16

Overseas Chinese and compatriots from Hong Kong and Macao who have made investments in China's inland areas, and the technical and managerial personnel engaged from outside the boundaries of China's inland areas by enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao, may apply for multi-journey travel documents.

## Article 17

Overseas Chinese investors and those from Hong Kong and Macao who make investments in China's inland areas may appoint their relatives or friends residing in the inland areas as their agents. The agents should hold legally effective letters of authority.

## Article 18

In areas where enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao are concentrated, overseas Chinese investors and those from Hong Kong and Macao may apply to the local people's government for the establishment of the association of overseas Chinese investors and investors from Hong Kong and Macao.

## Article 19

With respect to equity joint ventures and contractual joint ventures to be established in China's inland areas, with the investments by overseas Chinese investors and those from Hong Kong and Macao, the application for the establishment of the aforesaid enterprises shall be filed by the inland party; as to the enterprises to be established with capital wholly owned by overseas Chinese investors and those from Hong Kong and Macao, the application shall be filed directly by such investors themselves, or they may entrust their relatives or friends residing in China's inland areas, or entrust the institution providing consultancy services, with the application. Applications for the establishment of enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall be accepted and handled exclusively by the local department for foreign economic relations and trade, or by the examining and approving organs designated by the local people's government.

The examination and approval of the applications for the establishment of enterprises with investments from overseas Chinese and compatriots from Hong Kong and Macao shall be handled in accordance with the authorization by the State Council. Departments for foreign economic relations and trade at the various levels or the examining and approving organs designated by the local people's government shall, within forty-five days of receipt of complete application documents, make the decision on whether the said application is approved or disapproved.

The applicant shall, within thirty days of receipt of the written approval, file an application to the department for the administration of industry and commerce, and, in accordance with the relevant procedures for

registration and administration, go through the procedures for registration and obtain the business licence.

#### Article 20

With respect to overseas Chinese investors and those from Hong Kong and Macao who have made investments in China's inland areas, in case that a dispute arises during the execution of or in relation to a contract, the parties concerned shall try their best to settle the dispute through consultation or mediation.

In case that the parties concerned are unwilling to settle the dispute through consultation or mediation, or the dispute cannot be settled through consultation or mediation, the parties concerned may, in accordance with the stipulations of the arbitration articles in the contract, or in accordance with the written arbitration agreement reached by the parties concerned after the dispute has arisen, submit their dispute to the arbitration authorities in China's inland areas or elsewhere for settlement.

In the event that the parties concerned did not specify an arbitration article in their contract, and no written arbitration agreement has been reached after the dispute occurs, then the dispute may be brought before the people's court.

#### Article 21

The right to interpret these Provisions rests with the Ministry of Foreign Economic Relations and Trade.

#### Article 22

These Provisions shall go into effect as of the date of promulgation.

## **ZJ05 Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions**



Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions  
(Promulgated by the State Economic and Trade Commission, the Ministry of Finance,  
the State Administration for Industry and Commerce and the State Administration of  
Foreign Exchange on 8 November 2002 and effective as of 1 January 2003.)

Article 1 These Provisions have been formulated pursuant to the PRC, Company Law, the PRC, Contract Law and State laws and regulations concerning foreign investment and administration of State-owned assets, in order to attract and regulate the use of foreign investment to reorganize State-owned enterprises, promote the strategic restructuring of the State-owned economy, accelerate the pace at which State-owned enterprises establish modern corporate systems and safeguard social stability.

Article 2 These Provisions shall govern the use of foreign investment to reorganize State-owned enterprises and company system enterprises with State-owned equity (with the exception of financial enterprises and listed companies) or to establish them as company system foreign-invested enterprises (hereafter, Use of Foreign Investment to Reorganize State-owned Enterprises).

Article 3 For the purpose of these Provisions, the Use of Foreign Investment to Reorganize State-owned Enterprises shall include the following:

1. the owner of State-owned property rights in a State-owned enterprise assigns all or part of the property rights to a foreign company, enterprise or other economic organization or individual (Foreign Investor) and the enterprise is reorganized as a foreign-invested enterprise:

2. the owner of State-owned equity in a company system enterprise assigns all or part of the State-owned equity to a Foreign Investor and the enterprise is reorganized as a foreign-invested enterprise:

3. the domestic creditor of a State-owned enterprise assigns its claim to a Foreign Investor and the enterprise is reorganized as a foreign-invested enterprise:

4. a State-owned enterprise or a company system enterprise with State-owned equity sells all or its main assets to a Foreign Investor and the Foreign Investor uses the assets that it purchased, alone or together with the enterprise that sold the assets, to establish a foreign-invested enterprise: or

5. a State-owned enterprise or a company system enterprise with State-owned equity attracts investment from a Foreign Investor to increase its capital and its shares and the enterprise is reorganized as a foreign-invested enterprise.

Article 4 The State-owned enterprises and company system enterprises described

in Items (1), (2), (3) and (5) of Article 3 hereof shall be termed "Enterprises to be Reorganized".

The State-owned property rights of State-owned enterprises and the State-owned equity of company system enterprises shall collectively be termed "State-owned Property Rights". The owners of State-owned property rights and State-owned equity shall collectively be termed "Owners of State-owned Property Rights".

The term "Owner of State-owned Property Rights" means a department authorized by the State or an organization, an enterprise owning State-owned capital or other economic organization authorized to invest by the State. The Owners of State-owned Property Rights, creditors of State-owned enterprises that assign their claims and enterprises that sell their assets shall collectively be termed the "Reorganizing Party".

Article 5 The Reorganizing Party shall select a Foreign Investor that satisfies the following conditions:

1. having the business qualifications and technical level required by the Enterprise to be Reorganized;
2. having a fine business reputation and management capabilities; and
3. having a solid financial position and economic strengths.

The Reorganizing Party shall require the Foreign Investor to submit a restructuring programme to improve the enterprise's corporate governance structure and promote the sustained growth of the enterprise. The restructuring programme shall include the development of new products, technical transformation and a related investment plan, measures to strengthen corporate management, etc.

Article 6 The following principles shall be complied with when Using Foreign Investment to Reorganize State-owned Enterprises:

1. abiding by State laws and regulations and ensuring the economic security of the State;
2. satisfying the requirements of State industrial policy: if the business scope of the enterprise (including those enterprises in which it has a direct or indirect interest) is in an industry in which foreign investment is prohibited by the Foreign Investment Industrial Guidance Catalogue, Foreign Investors may not participate in the reorganization; if the enterprise is one in which the Chinese party must have a controlling interest or a relative controlling interest, the Chinese party shall maintain its controlling interest or relative controlling interest after the reorganization;

3. being beneficial in the economic restructuring effort and promoting the optimal deployment of State-owned capital:

4. emphasizing the introduction of advanced technology and management experience, establishing a compliant corporate governance structure and promoting corporate technical advance and industrial upgrading:

5. adhering to the principles of openness, fairness, impartiality and good faith, preventing the loss of State-owned assets, not evading, repudiating or suspending the claims of banks and other creditors, not prejudicing the lawful rights and interests of staff and workers and safeguarding the lawful rights and interests of Foreign Investors: and

6. promoting fair competition and not leading to monopolization of the market.

Article 7 Prior to the assignment of the property rights of a State-owned enterprise or a wholly State-owned company or the State-owned equity of a limited liability company invested in and established by two or more State-owned enterprises or two or more State-owned investment entities other than State-owned enterprises, the Reorganizing Party shall seek the opinions of the staff and worker congress of the Enterprise to be Reorganized. The assignment of the State-owned equity of a company system enterprise shall require the consent of the shareholders' meeting of the Enterprise to be Reorganized. If claims against a State-owned enterprise are to be assigned, the consent of the Owner of the State-owned Property Rights of the Enterprise to be Reorganized shall be required. Prior to selling all of or its main assets, the enterprise shall obtain the consent of the Owner of the State-owned Property Rights of the enterprise or the shareholders' meeting of the enterprise and notify its creditors thereof.

Article 8 The Use of Foreign Investment to Reorganize a State-owned Enterprise shall satisfy the following requirements:

1. Prior to the reorganization of the enterprise, the Owner of the State-owned Property Rights shall arrange for an inventory of the assets, a determination of the property rights and a screening of the claims and debts of the Enterprise to be Reorganized, engage qualified intermediary organizations to conduct a financial audit and to conduct an asset appraisal in accordance with such relevant regulations as the Administration of State Asset Valuation Procedures (State Council Order No.91), the Several Issues Concerning the Administration of State Asset Valuation Provisions (Ministry of Finance Order No.14), etc. After the appraisal results have been approved or placed on the record in accordance with regulations, they shall serve as the basis for determining the price of the State-owned Property Rights or assets.

2. If the controlling interest in the enterprise is to pass to, or if all or the main business assets of the enterprise are to be sold to, the Foreign Investor after the reorganization, the Reorganizing Party and the Enterprise to be Reorganized shall

formulate an appropriate plan to settle the staff and workers that shall be subject to the approval of the staff and worker congress. The Enterprise to be Reorganized shall use its existing assets to pay in full all such expenses as the wages of its staff and workers, non-refunded pooled wages, unpaid social insurance premiums, etc. The Enterprise to be Reorganized shall offer its staff and workers two options. It shall, in accordance with the law, execute new labour contracts with, or amend the labour contracts of, its staff and workers who are kept on. It shall, in accordance with the law, pay severance pay to those staff members and workers whose labour contracts are terminated and for those staff and workers, the responsibility for whom is transferred to the social insurance authority, it shall pay in full in one lump sum the social insurance premiums. The funds required shall be deducted from the net assets of the Enterprise to be Reorganized before the reorganization or on a priority basis from the proceeds derived by the Owner of the State-owned Property Rights from the assignment of the State-owned Property Rights.

3. If the reorganization is to be effected through the sale of assets, the original enterprise shall succeed to the enterprise's claims and debts, otherwise the reorganized enterprise shall succeed to the enterprise's claims and debts. The assignment of mortgaged or pledged State-owned Property Rights or assets shall comply with the relevant provisions of the PRC Security Law. The successor to the debts shall execute relevant

agreements for the disposal of claims and debts with the creditors.

4. The Reorganizing Party shall publish information on the reorganization, recruit Foreign Investors extensively and investigate the Foreign Investors' qualifications, reputation, financial position, management capabilities, payment guarantees, business ethics, etc. It shall give priority consideration to medium and long-term Foreign Investors that can offer advanced technology, management experience and a high degree of industrial compatibility.

The Reorganizing Party and the Foreign Investor shall respond to the reasonable demands of the opposite party by providing relevant truthful and detailed information and data, may not mislead or deceive the opposite party and shall bear the appropriate confidentiality obligations.

5. If the enterprise reorganization is to be effected through the assignment of State-owned Property Rights or the sale of assets, the Reorganizing Party shall preferentially opt for an open competitive pricing method to determine the Foreign Investor and assignment price. When selecting an open competitive pricing method of assignment, the relevant procedures shall be carried out in accordance with the law and the relevant details on the State-owned Property Rights to be assigned or the assets to be sold shall be announced publicly. If assignment by agreement is opted for, such assignment shall be conducted in an open manner.

Regardless of the assignment method opted for, the Reorganizing Party and the Foreign Investor shall execute an assignment agreement in accordance with the relevant State regulations and these Provisions. The terms of the assignment agreement shall mainly include the basic information on the State-owned Property Rights to be assigned, the settlement arrangements for the staff and workers, the disposal of claims and debts, the assignment ratio, the assignment price, the method of payment and payment conditions, matters relating to the delivery of the property rights, corporate restructuring, etc.

Article 9 The Use of Foreign Investment to Reorganize State-owned Enterprises shall be effected in accordance with the following procedure:

1. The Reorganizing Party (if there are two or more Reorganizing Parties, one shall be selected as the Reorganizing Party) shall submit a reorganization application to the competent department in charge of foreign trade and economic cooperation at the same level. Such documents as a feasibility study, details of the Reorganizing Party and the Enterprise to be Reorganized, details of the Foreign Investor (including its financial statements for the most recent three years audited by a certified accountant and the market share accounted for by the products or services of the enterprises in the same industry in China actually controlled by the Foreign Investor), the reorganization program (including the arrangements for the settlement of staff and worker and for the disposal of claims and debts and the corporate restructuring program), the business scope and equity structure of the reorganized enterprise (including the enterprises in which it has a direct or indirect interest) shall be included with the reorganization application materials.

The department in charge of foreign trade and economic cooperation that received the application shall examine the same in accordance with the authority bestowed by the Guiding the Direction of Foreign Investment Provisions and the relevant laws and regulations. If an enterprise operated by the central government or Party authorities and its wholly-owned enterprises or the enterprises in which it has controlling interest is to be reorganized, or if the Enterprise to be Reorganized directly or indirectly holds equity in a listed company or if the reorganized enterprise is to have total assets of not less than US\$30 million, the examination shall be conducted by the State Council department in charge of foreign trade and economic cooperation. If the reorganization of such an enterprise might lead to monopolization of the market or impede fair competition, hearings shall be organized before the examination. The department in charge of foreign trade and economic cooperation shall issue its official reply on whether or not it consents to the reorganization within 45 working days after receipt of the reorganization application materials. If hearings are held, the official reply shall be issued within three months.

If the State has other regulations on the use of foreign investment in the industry of which the Enterprise to be Reorganized and the enterprises in which it has a direct or indirect interest are a part or on the change in the nature of the State-owned shares of the Owners of the State-owned Property Rights in a listed company arising due to the change

in the property rights, such regulations shall prevail.

2. The assignment agreement executed by the Reorganizing Party and the Foreign Investor shall be submitted for approval in accordance with the relevant provisions of the Ministry of Finance, Issue of the Circular (ref. Cai Qi [2001] No.325). The assignment agreement shall enter into effect upon approval.

Such documents as the State-owned Property Rights Registration Certificate, information on the approval or record filing of the audit report and asset appraisal report of the Enterprise to be Reorganized, the staff and worker settlement program, the claim and debt agreement, the corporate restructuring program, the relevant resolutions of the Reorganizing Party and the Enterprise to be Reorganized, the opinions or resolution of the staff and worker congress of the Enterprise to be Reorganized, etc. shall accompany the assignment agreement.

3. The Reorganizing Party or the Enterprise to be Reorganized shall, on the strength of the approval documents for the reorganization application and assignment agreement, carry out examination and approval procedures for foreign-invested enterprises in accordance with the law. If the reorganized enter

prise is to be a company limited by shares, matters shall be handled in accordance with the relevant provisions of the PRC Company Law.

4. The reorganized enterprise or the investors shall, on the strength of the approval documents specified in Items (1) and (3) of this Article and in accordance with laws and regulations on the administration of registration, carry out registration procedures with the original registration authority, if it has the authority to register foreign-invested enterprises, or the registration authority with the authority to register foreign-invested enterprises of the place where the enterprise is located. If the reorganized enterprise is to be a company limited by shares, matters shall be handled in accordance with the relevant provisions of the PRC Company Law.

5. The Reorganizing Party shall, on the strength of the approval documents for the reorganization application and assignment agreement, the foreign investment exchange registration certificate and the relevant documents, carry out the procedures for the delivery of State-owned Property Rights and the procedures for registration of the change of ownership in accordance with relevant provisions and engage a certified accountant to issue a capital verification report in accordance with the law. If the land to be used by the reorganized enterprise is State-owned allocated land, the procedures for the examination and approval and granting of leaseholds shall be carried out in accordance with the law.

6. The foreign exchange proceeds derived by the Reorganizing Party from the assignment of State-owned Property Rights or claims or the sale of assets shall be settled

after reporting to the foreign exchange department for its approval on the strength of the approval documents for the reorganization application and assignment agreement and the relevant documents.

If the Enterprise to be Reorganized is to be reorganized through a capital and share increase effected through the attraction of investment from Foreign Investors, it may, subject to the approval of the foreign exchange department, open a foreign exchange capital account to retain the foreign exchange funds injected by the Foreign Investors.

7. The reorganization applications, assignment agreements and the approval certificates thereof of key State enterprises, enterprises whose debt to equity swaps have been approved by the State and enterprises in the restricted category of industries in the Foreign Investment Industrial Guidance Catalogue that are under the investment limit and that are subject to the examination and approval of local departments in charge of foreign trade and economic cooperation and finance shall be submitted to the State Council departments in charge of foreign trade and economic cooperation and finance respectively for the record.

Article 10 Foreign Investors shall pay the assignment price or make their capital contributions in the form of a freely convertible currency or other lawful property rights remitted from overseas. Subject to the approval of the foreign exchange department, they may also pay the assignment price or make their capital contributions in the form of net Renminbi profits or other lawful property rights obtained in China. The afore-mentioned other lawful property rights shall include the following:

1. property obtained by Foreign Investors originating from the liquidation of, the assignment of the equity of, the advance recovery of investment from or the reduction in the capital of other foreign-invested enterprises established by them in China:

2. the State-owned Property Rights or assets of State-owned enterprises or company system enterprises with State-owned equity acquired by Foreign Investors:

3. the claims acquired by Foreign Investors of creditors of State-owned enterprises:  
and

4. other capital contribution methods specified in laws and regulations.

When a certified accountant conducts a capital verification for a Foreign Investor, he shall carry out the capital verification procedure and issue a capital verification report in accordance with the Ministry of Finance and State Administration of Foreign Exchange, Further Strengthening the Work of Capital Verification for Foreign Investment Enterprises and Improving the System of Registration of Foreign Capital and Foreign Exchange Circular (ref. Cai Kuai [2002] No.1017).

Article 11 If the reorganization is effected through an assignment, generally, the Foreign Investor shall pay the entire price within three months after the date on which the foreign-invested enterprise is issued its business licence. In the event that the Foreign Investor truly experiences difficulty in doing so, 60% or more of the total price shall be paid within six months after the date of issuance of the business licence. Security shall be provided for the remaining amount and such remaining amount shall be paid in full within one year.

Article 12 If the controlling interest in the enterprise is to pass to, or if all or the main business assets of the enterprise are to be sold to, the Foreign Investor after the assignment of the State-owned Property Rights, the Reorganizing Party has the right, prior to the Foreign Investor paying the price in full, to be kept informed of and supervise the production, operational and financial situation of the reorganized enterprise and the Foreign Investor and the reorganized enterprise shall appropriately facilitate the Reorganizing Party's staying informed and supervising.

Prior to using the acquired assets to invest in and establish a foreign-invested enterprise, the Foreign Investor may not use the aforementioned assets to engage in business activities.

Article 13 The proceeds derived from the assignment of State-owned Property Rights or assets shall be received by the Reorganizing Party and managed and used in accordance with the relevant provisions of the State Council department in charge of finance.

Article 14 The share of the net profits of the reorganized enterprise obtained by the Foreign Investor, proceeds it derives from an equity assignment, the share of the funds that it obtains after the expiration of the business term or termination of the enterprise and other lawful revenues may be remitted abroad in accordance with the law or, subject to the approval of the foreign exchange department, may be reinvested in China.

Article 15 In the course of Using Foreign Investment to Reorganize State-owned Enterprises, tax policies in respect thereof shall be handled in accordance with relevant State laws and administrative regulations on taxation and fee policies in respect thereof shall be handled in accordance with the State Development Planning Commission, State Economic and Trade Commission, Ministry of Supervision, Ministry of Finance, Auditing Administration and the Office for Checking Unhealthy Tendencies in Business Activities of the State Council. Reduction or Exemption of Charges for Enterprises Undergoing Reform, Reorganization or Restructuring Circular (ref. Ji Jia Fei [1998] No.1077).

Article 16 If a member of the personnel of the Reorganizing Party or the Enterprise to be Reorganized acts ultra vires, is derelict in his duties, secretly colludes with the Foreign Investor, practises graft or accepts bribes thus prejudicing the lawful rights and



interests of the State. creditors, staff members and workers, he shall be subjected to administrative penalties and sanctions by the relevant department in accordance with the law: if a criminal offence is constituted, his criminal liability shall be pursued in accordance with the law.

Article 17 If a member of the working personnel of a government authority responsible for examination and approval violates these Provisions by granting approvals without authorization or uses his authority in the examination and approval process for private gain thus prejudicing the lawful rights and interests of the State, creditors, staff members and workers, the administrative liability of the person directly in charge and the personnel in authority shall be pursued by the relevant authority in accordance with the administrative authority of cadres: if a criminal offence is constituted, criminal liability shall be pursued in accordance with the law.

Article 18 The participation of investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan and of established foreign-invested enterprises in the reorganization of State-owned enterprises shall be handled with reference to these Provisions.

Article 19 The State Economic and Trade Commission, the Ministry of Finance, the State Administration for Industry and Commerce and the State Administration of Foreign Exchange are in charge of interpreting these Provisions.

Article 20 These Provisions shall be implemented as of 1 January 2003

## **ZJ06 Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors**

August 8, 2006

Contents

Chapter I General Provisions

Chapter II Basic Systems

Chapter III Examination, Approval and Register

Chapter IV Equity-payment-based Takeover of Domestic Companies by Foreign Investors

Section 1 Conditions for Equity-payment-based Takeover

Section 2 Application Documents and Procedures

Section 3 Special Provisions on Special-purpose Companies

Chapter V Antitrust Review

Chapter VI Supplementary Provisions

Chapter I General Provisions

Article 1 For the purposes of promoting and regulating foreign investors' investments in China, absorbing advanced technologies and management experiences from abroad, improving the level of utilizing foreign investments, realizing the reasonable allocation of resources, ensuring employment, as well as maintaining fair competition and state economic security, these provisions are formulated in accordance with the laws and administrative regulations on foreign-funded enterprises, the Company Law and other relevant laws and administrative regulations.

Article 2 The phrase "takeover of a domestic enterprise by a foreign investor" as mentioned in the present provisions means that the foreign investor purchases by agreement the equities of the shareholders of a domestic non-foreign-funded enterprise (hereinafter referred to as "domestic company") or subscribes to the increased capital of a domestic company, and thus changes the domestic company into a foreign-funded enterprise (hereinafter referred to as "share right takeover"); or, a foreign investor establishes a foreign-funded enterprise, and through which it purchases by agreement the assets of a domestic enterprise and operates its assets, or, a foreign investor purchases by agreement the assets of a domestic enterprise, and then invest such assets to establish a foreign-funded enterprise and operate the assets (hereinafter referred to as "asset takeover").

Article 3 To take over a domestic enterprise, a foreign investor shall abide by the laws, administrative regulations, and rules of China, comply with the principles of fairness, reasonableness, making compensation for equal value, as well as good faith, and shall

not cause excessive centralization, exclude or limit competition, or disturb the social economic order, or damage the public benefits, or result in any loss to the state-owned assets.

Article 4 To take over a domestic enterprise, a foreign investor shall satisfy the requirements of the laws, administrative regulations, and rules of China concerning the qualifications of investors, and shall comply with the policies on the industry, land, environmental protection, etc.

For the industries where solely foreign-owned operation is not permitted by the "Catalog of Industries for the Guidance of Foreign Investment", the takeover shall not lead to the consequence of a foreign investor's holding all the equity rights of the enterprise; for the industries where it is required for a Chinese party to control or relatively control the shares, the Chinese party shall, after an enterprise in such industries is taken over, still control or relatively control the shares of the enterprise; for the industries where foreign investors are prohibited from operation, no foreign investor shall take over any enterprise in such industries.

The business scope of any enterprise invested by the domestic enterprise prior to the takeover shall meet the requirements in the industrial policies on foreign investments. If it does not, adjustment shall be made.

Article 5 If the takeover of a domestic enterprise by a foreign investor involves the transfer of state-owned property rights of the enterprise and management of state-owned property rights of listed companies, the relevant provisions on the management of state-owned assets shall be followed.

Article 6 Where a foreign investor intends to establish a foreign-funded enterprise by merging a domestic enterprise, it shall, in accordance with these Provisions, be subject to the approval of the examination and approval organ and modify the registration or go through the establishment registration in the registration administrative organ.

If the enterprise to be taken over is a domestic listed company, it shall, pursuant to the Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors, go through the relevant formalities in the securities regulatory institution of the State Council.

Article 7 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall pay taxes under Chinese tax laws and accept the supervision of the tax organs.

Article 8 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall abide by the laws and administrative regulations of China on the administration of foreign exchange. They shall timely go through the approval, register,

archival filing and modification formalities in the foreign exchange control organs.

## Chapter II Basic System

Article 9 For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments exceeds 25% of the registered capital of this enterprise, this enterprise shall be entitled to enjoy the treatments to foreign-funded enterprises.

For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments is less than 25% of the registered capital of this enterprise, this enterprise shall not enjoy the treatments to foreign-funded enterprises unless it is otherwise provided for by any law or administrative regulation. It shall follow the relevant provisions on borrowing foreign loans by non-foreign-funded enterprises when it borrows foreign loans. The examination and approval organ shall issue to it a Foreign-funded Enterprise Approval Certificate (hereinafter referred to as the Approval Certificate") with the remark "The proportion of foreign investments is less than 25%". The registration administrative organ and the foreign exchange control organ shall respectively issue to it a Foreign-funded Enterprise Business License and a Foreign Exchange Register Certificate with the remark "The proportion of foreign investments is less than 25%".

Where a domestic company, enterprise or natural person takes over a domestic affiliated company in the name of an overseas company it lawfully established or controls, the foreign-funded enterprise so established shall not enjoy the treatments to foreign-funded enterprises, except that this overseas company subscribes to the increased capital of the domestic company or that it increases the capital of the enterprise established after takeover and the proportion of the capital increase exceeds 25% of the registered capital of the enterprise so established. For a foreign-funded enterprise established in either of the forms as mentioned in this paragraph, if the proportion of investments made by a foreign investor, who is not its actual controller, exceeds the 25% of its registered capital, it shall be entitled to enjoy the treatments to foreign-funded enterprises.

The treatments to a foreign-funded enterprise which is established after a foreign investor takes over a domestic listed company shall be governed by the relevant provisions of the state.

Article 10 The term "examination and approval organ" as mentioned in these Provisions refers to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as the MOFCOM) or the provincial commerce administrative departments (hereinafter referred to as the provincial examination and approval organs"). The term "registration administrative organ" refers to the State Administration for Industry and Commerce (hereinafter referred to as the SAIC) or its authorized local administrations for industry and commerce. The term "foreign exchange control organ" refers to the State Administration of

Foreign Exchange (hereinafter referred to as the SAFE) or its branches.

Under the provisions of laws, administrative regulations, and rules, if a foreign-funded enterprise established after takeover falls within any special category or sector of foreign-funded enterprises which are subject to the examination and approval of the Ministry of Commerce (hereinafter referred to as the MOFCOM), the provincial examination and approval organ shall forward the application materials to the MOFCOM for examination and approval. The MOFCOM shall make a decision of approval or disapproval in pursuance of law.

Article 11 Where a domestic company, enterprise or natural person intends to take over its domestic affiliated company in the name of a company which it lawfully established or controls, it shall be subject to the examination and approval of the MOFCOM.

The parties concerned shall not dodge the aforesaid requirements by making investments within China through the foreign-funded enterprise, or by other ways.

Article 12 Where a foreign investor intends to obtain the actual controlling power of a domestic enterprise it plans to take over, and if any important industry is concerned, or if it has an impact on or may have an impact on the national economic security, or it will lead to the transfer of the actual controlling power of a domestic enterprise which holds a famous trademark or China Time-honored Brand, the parties concerned shall file an application with the MOFCOM.

If the parties concerned fail to do so, but its takeover has had or may have a serious impact on the national economic security, the MOFCOM may, jointly with the relevant departments, demand the parties concerned to terminate the transaction or transfer the relevant equities / assets or take other effective measures to eliminate the takeover's impact on the national economic security.

Article 13 For an equity-based takeover by a foreign investor, the foreign-funded enterprise established after takeover shall succeed to the credits and debts of the domestic company it takes over.

For an asset-based takeover by a foreign investor, the domestic enterprise which sells its assets shall undertake its former credits and debts.

The foreign investor, the domestic enterprise to be taken over, the creditors and other parties concerned may enter into a separate agreement on the disposal of the credits and debts of the domestic enterprise to be taken over, provided that this agreement shall not impair the interests of any third party or public interests. An agreement on the disposal of credits and debts shall be submitted to the examination and approval organ.

A domestic enterprise to sell assets shall, not later than 15 days before the investor

submits the application documents to the examination and approval organ, send a notice to the creditors and shall publish an announcement on a provincial newspaper or above, which is circulated nationwide.

Article 14 The parties to a takeover shall determine the transaction price on the basis of the assessment result of the equities to be transferred or of the assets to be sold, which is given by an asset assessment institution. The parties to a takeover may agree on an asset assessment institution lawfully established within China. A common international assessment method shall be adopted for the asset assessment. It is prohibited to divert any capital abroad in any disguised form by transferring any equities or selling assets at a price which is obviously lower than the assessment result.

The takeover of a domestic enterprise by a foreign investor, which may cause the modification of any equity formed by investments to state-owned assets or transfer of the property right of state-owned assets, shall satisfy the relevant provisions on the management of state-owned assets.

Article 15 The parties to a takeover shall state whether there is a connected relationship between the parties to the takeover. If both parties belong to a same actual controller, the parties shall disclose their actual controller to the examination and approval organ and make an explanation about whether the purpose of takeover and the assessment result conform to the fair value of the market. The parties shall not dodge the aforesaid requirements by trust, holding shares on behalf of others, or by other means.

Article 16 To establish a foreign-funded enterprise by taking over a domestic enterprise, a foreign investor shall, within 3 months from the date of issuance of business license to the foreign-funded enterprise, pay all the considerations to the shareholders who transfer the equities or to the domestic enterprise which sells the assets. In the case of any particular circumstance under which it is necessary to extend the time limit, the foreign investor shall, upon the approval of the examination and approval organ, pay 60% or more of the consideration within 6 months as of the date of issuance of the business license to the foreign-funded enterprise, and pay off the balance of consideration within one year, and distribute the proceeds according to the proportion of investments it has actually contributed.

Where a domestic company subscribes to the increased capital of a domestic company, the shareholders of the limited liability company or of the domestic joint stock limited company established by way of promotion shall pay at least 20% of the newly increased registered capital when the company applies for a business license for foreign-funded enterprise. The time to pay the other newly increased registered capital shall be in line with the Company Law, the laws on foreign investments and the Regulation on the Administration of Company Registration. If it is provided for in any other law or administrative regulation, such law or administrative regulation shall prevail. Where a joint stock limited company increase the registered capital by issuing new stocks, the

shareholders shall subscribe to the new stocks in accordance with the relevant provisions on the payment for shares in the establishment of a joint stock limited company.

Where a foreign investor carries out an asset takeover, it shall stipulate the time limit for contribution of investments in the contract and articles of association of the foreign-funded enterprise to be established. Where the foreign investor establishes a foreign-funded enterprise, and through which purchases the assets of a domestic enterprise and operates such assets, it shall contribute the investments equivalent to the consideration of the assets within the time limit for payment of consideration as provided for in Paragraph 1 of the present Article. As for the remaining investments, the time limit for contribution shall satisfy the relevant provisions on the capital contribution for the establishment of foreign-funded enterprise.

Where a foreign investor establishes a foreign-funded enterprise by merging a domestic enterprise, if its investment proportion is less than 25 % of the registered capital of the enterprise and if it plans to make investments in cash, it shall make full contribution within 3 months from the day when a business license is issued to the foreign-funded enterprise; if it plans to make investments in kind or industrial property, it shall make full contribution within 6 months from the day when a business license is issued to the foreign-funded enterprise.

Article 17 The means of payment for the consideration shall conform to the relevant laws and administrative regulations of the state. If the foreign investor uses the Renminbi assets it lawfully owns as a means of payment, it shall obtain the approval of the department of foreign exchange control. If the foreign investor uses the shares over which it has the right of disposition, it shall comply with Article 4 of these Provisions.

Article 18 After a foreign investor purchases the equities of a domestic company by agreement, and the domestic company has been modified into a foreign-funded enterprise, the foreign-funded enterprise's registered capital shall be the registered capital of the original domestic company, and the proportion of investments contributed by the foreign investor shall be the proportion of the purchased equities in the original registered capital.

Where a foreign investor subscribes to the capital increase of a domestic limited liability company, the registered capital of a foreign-funded enterprise established after the takeover shall be the summation of the registered capital of the former domestic company and the amount of capital increase. As to the foreign investor and other shareholders of the former domestic company it takes over, their respective proportion of capital contributions to the foreign-funded enterprise shall be determined on the basis of the assessment of the assets of the domestic company.

Where a foreign investor subscribes the capital increase of a domestic joint stock limited company, the registered capital shall be determined under the Company Law.

Article 19 For an equity-based takeover by a foreign investor, the upper limits on the total investments to the foreign-funded enterprise after takeover shall be determined according to the following rates, unless the state provides otherwise:

- (1) If the registered capital is less than US\$ 2.1 million, the total investments shall not exceed 10/7 of the registered capital;
- (2) If the registered capital is not less than US\$ 2.1 million but not more than US\$ 5 million, the total investments shall not exceed two times the registered capital;
- (3) If the registered capital is not less than US\$ 5 million but not more than US\$ 12 million, the total investments shall not exceed 2.5 times the registered capital; and
- (4) If the registered capital is more than US\$ 12 million, the total investments shall not exceed 3 times the registered capital.

Article 20 For an asset-based takeover, the foreign investor shall, according to the transaction price for the purchased assets and the actual production and operation scale, determine the total investments to the foreign-funded enterprise to be established. The proportion between the registered capital and total investments of the foreign-funded enterprise to be established shall conform to the relevant provisions.

#### Chapter III Examination, Approval and Registration

Article 21 For an equity-based takeover, a foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded enterprises:

- (1) A resolution of the shareholders of the domestic limited liability company or of the domestic joint stock limited company on the full consent to the equity-based takeover or asset-based takeover by the foreign investor;
- (2) An application for the establishment of the foreign-funded enterprise;
- (3) A contract and the articles of association of the foreign-funded enterprise to be established after takeover;
- (4) An agreement on the foreign investor's acquisition of equities of shareholders of the domestic company or on the foreign investor's subscription of the capital increase of domestic companies;
- (5) The previous-year financial audit report of the domestic company taken over;
- (6) The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;
- (7) The descriptions about the enterprises invested by the domestic enterprise taken over;
- (8) The (duplicates) of the business licenses of the domestic company taken over and enterprises it invests in;
- (9) The proposal on the settlement of employees domestic enterprise taken over;
- (10) The documents to be submitted as required by Articles 13 through 15 of the present provisions.



If the business scope, scale, obtainment of land use right of a foreign-funded enterprise established after takeover are subject to the license of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Article 22 An equity purchase agreement, or domestic company capital increase agreement shall be governed by Chinese law and shall contain the following contents:

- (1) The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;
- (2) The proportion of price of the equities purchased or capital increase subscribed;
- (3) The time period of the agreement, and the method of execution thereof;
- (4) The rights and obligations of each party to the agreement;
- (5) The liabilities for breach of contract, and settlement of disputes; and
- (6) The time and place for the conclusion of agreement.

Article 23 For an asset-based takeover, the foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded enterprises:

- (1) A resolution of the property right holders or power authority of the domestic enterprise on the consent to the sale of assets;
- (2) An application for the establishment of a foreign-funded enterprise;
- (3) A contract and the articles of association of the foreign-funded enterprise to be established;
- (4) An asset purchase agreement signed by the foreign-funded enterprise to be established and the domestic enterprise, or by the foreign investor and the domestic enterprise;
- (5) The articles of association and the business license (duplicate) of the domestic enterprise it has taken over;
- (6) The notice of the domestic enterprise taken over, certifications of the creditors announced, and statement about whether the creditors have raised any objections;
- (7) The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;
- (8) The proposal on the settlement of employees of the domestic enterprise that is taken over; and
- (9) The documents as required by Articles 13 through 15 if these Provisions.

If the business scope, scale, obtainment of land use right of a foreign-funded enterprise establishment after takeover involve licensing of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Where a foreign investor purchases the assets of a domestic enterprise by agreement and invests such assets in establishing a foreign-funded enterprise, it shall not, prior to the establishment of the foreign-funded enterprise, carry out any business activities with such assets.

Article 24 The agreement on the purchase of assets shall be governed by Chinese law and shall contain the following main contents:

- (1) The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;
- (2) A list of the assets to be purchased and the price thereof;
- (3) The time period and method for the execution of the agreement;
- (4) The rights and obligations of each party to the agreement;
- (5) The liabilities for breach of contract, and settlement of disputes;
- (6) The time and place for the conclusion of the agreement.

Article 25 Where a foreign investor intends to establish a foreign-funded enterprise by taking over a domestic enterprise, unless it is otherwise provided for in these Provisions, the examination and approval organ shall, within 30 days after the examination and approval organ receives the complete set of documents as required, it shall make a decision of approval or disapproval. If it decides to make a decision of approval, the examination and approval organ shall issue to the foreign investor an approval certificate.

For a foreign investor which intends to purchase the equities of a domestic company by agreement, if the examination and approval organ makes a decision of approval, it shall simultaneously send a copy of the relevant approval documents to the foreign exchange control departments of the places where the equity transferor and the domestic company are located, respectively. The foreign exchange control department of the place where the equity transferor is located shall handle the foreign exchange registration for equity-transfer-based foreign investments, which indicates that the consideration to the foreign investor's equity takeover has been fully paid.

Article 26 For an asset-based takeover, the foreign investor shall, within 30 days after it receives the approval document, apply to the registration administrative organ for establishment registration so as to fetch a foreign-funded enterprise business license.

For an equity-based takeover by a foreign investor, the domestic company taken over shall apply to the original registration administrative organ for modifying its registration in accordance with these Provisions. If the original registration administrative organ has registration jurisdiction, it shall, within 10 days after it receives the application documents, transfer these application documents to the competent registration administrative organ and simultaneously accompany them by the registration files of the domestic company. When the domestic company taken over applies for modifying the registration, it shall submit the following documents and shall be responsible for their genuineness and

validity:

- (1) An application for modifying registration;
- (2) An agreement on the purchase of equities of the domestic company or on the subscription of increased capital of a domestic company by a foreign investor;
- (3) The post-revision articles of association or revisions to the original articles of association, and the foreign-funded enterprise contract which shall be submitted in pursuance of law;
- (4) The foreign-funded enterprise approval document;
- (5) The certification for the qualifications of the foreign investor as the subject, or the identity certification of the foreign investor as a natural person;
- (6) The post-revision name list of the members of the board of directors, the documents which state the name and domicile of the newly increased directors, and the documents on the appointment of the newly increased directors;
- (7) Other relevant documents and certificates as required by the State Administration for Industry and Commerce.

The investor shall, within 30 days after it receives a foreign-funded enterprise business license, go through the registration formalities in the tax, customs, land administration and foreign exchange administration departments.

#### Chapter IV Equity-payment-based Takeover of Domestic Companies by Foreign Investors

##### Section 1 Conditions for Equity-payment-based Takeover

Article 27 The term "equity-payment-based takeover of a domestic enterprise by a foreign investor" means that the shareholders of an overseas company purchase the equities of a domestic company by paying the equities of the overseas company it holds, or that an overseas company purchases the increased capital of a domestic company by paying its increased shares.

Article 28 The term "overseas company" as mentioned in this Chapter shall be a lawfully established company, there is a sound system of company law in its registration place, and the company and its management level have no record of punishment by the regulatory institution within recent 3 years. Except for special-purpose companies as mentioned in Section 3 of this Chapter, an overseas company shall be a listed company and there shall be a sound securities dealing system in the place where it gets listed.

Article 29 The equities of the domestic and overseas companies involved in the equity-based takeover of a domestic company by a foreign investor shall meet the following conditions:

- (1) They are lawfully held by the shareholders and may be transferred in accordance with the law;
- (2) There is no dispute over their ownership, they are not held in pledge and they are not subject to any other limit of right;

- (3)The equities of an overseas company shall be listed publicly in an overseas lawful securities exchange market (excluding the over-counter exchange market); and
- (4)The transaction price of the equities of the overseas company in the recent 1 year remains stable.

The Items (3) and (4) of the preceding Paragraph is inapplicable to the special-purpose companies as mentioned in Section 3 of this Chapter.

Article 30 For an equity-based takeover of a domestic company by a foreign investor, the overseas company or its shareholders shall hire an intermediary institution registered within China to serve as a consultant (hereinafter referred to as the "takeover consultant"). The takeover consultant shall make dueous investigations to the genuineness of the takeover application documents, the financial status of the overseas company as well as whether the takeover meets the requirements of Articles 14, 28 and 29 of these Provisions, shall make a takeover consultant report and shall put forward express professional opinions on each of the aforesaid items.

Article 31 A takeover consultant shall satisfy the following conditions:

- (1)Having a good reputation and having relevant practicing experiences;
- (2)Having no record of serious violation of any law or regulation; and
- (3)Being capable of investigating and analyzing the legal systems of the registration place of the overseas company and the place where the overseas company is get listed, as well as the financial status of the overseas company.

#### Section 2 Application Documents and Procedures

Article 32 An equity-based takeover of a domestic company by a foreign investor shall be subject to the examination and approval of the MOFCOM. The domestic company shall not only submit the documents as required in Chapter III of these Provisions, but also the following documents:

- (1)A statement of the changes of equities and important changes of assets of the domestic company within the recent 1 year;
- (2)A takeover consultant's report;
- (3)The business opening certifications or identity certification documents of the relevant domestic and overseas companies and their shareholders;
- (4)Descriptions about the equities held by the shareholders of the overseas company, and the name list of the shareholders who hold 5 % or more of the equities of the overseas company;
- (5)The articles of association of the overseas company and a description about the guaranties it provides to outsiders; and
- (6)The recent annual financial statements upon audit and a report on the stock dealings of the overseas company in the recent half year.

Article 33 The MOFCOM shall, within 30 days after it receives a complete set of

documents, examine a takeover application. If the relevant requirements are satisfied, it shall issue to the applicant an approval document, which is given the remark that "For the equity-based takeover of a domestic company by a foreign investor, it will be valid for 6 months as of the date of issuance of a business license."

Article 34 The overseas company shall, within 30 days after it receives an aforesaid approval document, it shall modify the registration in the registration administrative organ and the foreign exchange control organ. The registration administrative organ and the foreign exchange control organ shall respectively issue to it a foreign-funded enterprise business license and a foreign exchange register certificate which are given the remark that "To be valid for 8 months as of the date of issuance".

When a domestic company goes through the registration modification formalities in the registration administrative organ, it shall, in advance, submit an equity change application, the revised articles of association, the equity transfer agreement and other documents signed by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 35 Within 6 months as of the date of issuance of a business license, the domestic company and its shareholders shall, in regard to the matters relating to the overseas company's equities it plans to hold, apply to the MOFCOM and the foreign exchange control organ for going through the formalities for the examination, approval and registration of investments to run an enterprise abroad .

The parties concerned shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also a foreign-funded enterprise approval certificate with the said remark and a foreign-funded enterprise business license with the said remark. After the MOFCOM examines and approves the overseas company's equities to be held by the domestic company or its shareholders, it shall issue to the applicant a Chinese enterprise overseas investment approval certificate and replace the foreign-funded enterprise approval certificate with a remark by one with no remark.

After a domestic company obtains a foreign-funded enterprise approval certificate without a remark, it shall, within 30 days, apply to the registration administrative organ and the foreign exchange control organ, for replacing the foreign-funded enterprise business license and the foreign exchange register certificate with a remark by new ones with no remark.

Article 36 With 6 months as of the date of issuance of a business license, if the domestic and overseas companies fail to finish the equity modification formalities, the approval certificate with a remark and the Chinese enterprise overseas investment approval certificate shall be invalidated automatically. The registration administrative organ shall, according to the equity modification registration application documents submitted by the

domestic company in advance, examine and approve the modification registration and shall make the equity structure of the domestic company resume to the state prior to the takeover of equities.

In the case of failure to acquire the shares increased by a domestic company, before the registration administrative organ examines and approves the modification registration under the preceding Paragraph, the domestic company shall, pursuant to the Company Law, reduce the registered capital correspondingly and publish an announcement on a newspaper.

If the domestic company fails to go through the relevant registration formalities according to the preceding Paragraph, the registration administrative organ shall punish it in accordance with the Regulation on the Administration of Company Registration.

Article 37 After a domestic company obtains a foreign-funded enterprise approval certificate with a remark and a foreign exchange register certificate with a remark, it shall not distribute its profits to its shareholders, nor provide a guaranty to any connected company, nor make any payment to any outsider for the capital items such as the equity transfer, capital decrease or liquidation.

Article 38 A domestic company or its shareholders may, upon the strength of approval document with no remark and the business license with no remark issued by the MOFCOM and the registration administrative organ, go through the tax modification registration in the tax organ.

### Section 3 Special Provisions on Special-purpose Companies

Article 39 The term "special-purpose company" refers to an overseas company which a domestic company or natural person directly or indirectly controls for the purpose of making its actual domestic company equities get listed abroad.

The provisions of this Section shall apply to a special-purpose company, which, for the purpose of getting listed abroad, its shareholders or the special-purpose company purchase (purchases) the equities of the shareholders of a domestic company or the share increase of a domestic company by paying with the equities of the special-purpose company it holds or by paying with the share-increase of the special-purpose company.

If the parties concerned makes an overseas company, which holds any equities of a special-purpose company, serve as a subject to get listed abroad, this overseas company shall satisfy the relevant requirements for the special-purpose company as described in this Section.

Article 40 The transaction for the overseas listing of a special-purpose company shall be subject to approval of the securities regulatory institution of the State Council.

The country or region where the special-purpose company gets listed shall have sound legal and regulatory systems, and securities regulatory institution of this country or region shall have signed a memorandum of cooperation and understanding with the securities regulatory institution of the State Council of China and keep an effective cooperation in the regulatory work.

Article 41 A domestic company with its equities listed abroad as mentioned in this Section shall satisfy the following conditions:

- (1) Its property right is clear. There is no dispute or potential dispute over its property right;
- (2) It has a complete business system and a good sustainable operation capacity;
- (3) It has a sound corporate governance structure and internal management system; and
- (4) The company and its main shareholders have no record of serious violation of any law or regulation.

Article 42 To set up a special-purpose company abroad, an overseas company shall apply to the MOFCOM for going through the examination and approval formalities. When doing so, the domestic company shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also the following documents:

- (1) The identity certification documents on the final controller of the special-purpose company;
- (2) The business plan on the overseas listing of the special-purpose company; and
- (3) The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

After the party who establishes or controls a special-purpose company obtains approval document for Chinese enterprise to make overseas investment, it shall apply to the foreign exchange control organ of the place where it is located for going through the formalities for the register of overseas investments.

Article 43 The total value of the stocks of a special-purpose company listed abroad shall not be lower than the value of the equities of the domestic company upon the assessment of the relevant asset assessment institution.

Article 44 Where a special-purpose company intends to take over a domestic company by equities, the domestic company shall not only submit to the MOFCOM the documents as required in Article 32 of these Provisions, but also the following documents:

- (1) The approval documents and certificate for the investor to run an enterprise abroad at the time of establishment of the special-purpose company;
- (2) The foreign exchange register form for the overseas investments of the special-purpose company;
- (3) The identity certification documents on the final controller of the special-purpose company, or the business opening certification or articles of association of the

special-purpose company;

- (4)The business plan on the overseas listing of the special-purpose company, and
- (5)The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

If the parties concerned makes an overseas company, which holds the equities of a special-purpose company, serve as a subject to get listed abroad, the domestic company shall, apart from the aforesaid documents, submit the following documents:

- (1)The business opening certification and the articles of association of the overseas company; and
- (2)The arrangement of the special-purpose company and the overseas company for the transaction of the equities of the domestic company taken over, as well as the detailed descriptions of the method to convert the equities to money.

Article 45 If the MOFCOM approves the documents as required in Article 44 of these Provisions upon preliminary examination, it shall issue a letter of in-principle approval. The domestic company shall, upon the strength of the letter of in-principle approval, submit to the securities regulatory institution of the State Council the application documents for getting listed. The securities regulatory institution of the State Council shall make a decision of approval or disapproval within 20 working days.

After the domestic company obtains an approval, it shall apply to the MOFCOM for an approval certificate. The MOFCOM shall issue to it an approval certificate with the remark "For holding equities of overseas special-purpose company, it shall be valid for 1 year as of the issuance of a business license".

If the takeover causes the change of equities of the special-purpose company, the domestic company or natural person holding the equities of the special-purpose company shall, upon the strength of the foreign-funded enterprise approval certificate with a remark, apply to the MOFCOM for going through the formalities for the examination and approval of the change of the overseas investment to run an enterprise abroad and shall apply to the local foreign exchange control organ for modifying the foreign exchange register of overseas investments.

Article 46 The domestic company shall, within 30 days after it receives an approval document with a remark, apply to the registration administrative organ and the foreign exchange control organ for modifying the registration. The registration administrative organ and the foreign exchange control organ shall respectively issue to a foreign-funded enterprise business license and a foreign exchange register certificate with a remark "To be valid for 14 months as of the date of issuance".

When the domestic company handles the modification registration in the registration administrative organ, it shall, in advance, submit the equity change application, the revised articles of association, the equity transfer agreement and other documents signed



by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 47 The domestic company shall, within 30 days after the special-purpose company or its connected overseas company realizes the overseas listing, report to the MOF/COM about the information about the overseas listing and its plan on the transfer-back of the raised funds and apply for a unremarked foreign-funded enterprise approval certificate. At the same time, it shall, within 30 days after the realization of overseas listing, report to the securities regulatory institution of the State Council the information about the overseas listing and provide it with the relevant documents for archival purposes. It shall also submit to the foreign exchange control organ its plan on the transfer-back of the raised funds and execute this plan under the supervision of the foreign exchange control organ. It shall, within 30 days after it receives an unremarked approval certificate, apply to the registration administrative organ and foreign exchange control organ for replaying its foreign-funded enterprise business license and foreign exchange register certificate with a remark by a new unremarked one.

If the domestic company fails to report to the MOF/COM within the aforesaid time limit, its approval certificate with a remark shall be invalidated automatically, its equities structure will resume to the state prior to the equity-based takeover and it shall go through the formalities for modifying the registration in accordance with Article 36 of these Provisions.

Article 48 The funds of a special-purpose company raised from overseas listing shall, according to the transfer-back plan submitted to the foreign exchange control organ for archival purposes, be transferred back into China according to the existing foreign exchange control provisions. The raised funds may be transferred back into China by:

- (1) providing commercial loans to the domestic company;
- (2) setting up a new foreign-funded enterprise within China; and
- (3) taking over a domestic enterprise.

To transfer back the funds of a special-purpose company raised overseas under the aforesaid circumstances, the relevant parties shall abide by the laws and administrative regulations on the administration of foreign investments and on foreign debts. If, as a consequence of the transfer-back of the funds a special-purpose company raised overseas, the domestic company or natural person who holds more equities of the special-purpose company or the net assets of the special-purpose company increase, the parties concerned shall faithfully disclose the relevant information and apply for examination and approval. After it finishes the examination and approval formalities, it shall go through the formalities for modifying the foreign exchange register of foreign investments and the register of overseas investments.

The profit, bonus and capital change income in a foreign currency obtained by the domestic company or natural person from the special-purpose company shall be transferred back to China within 6 months after the date of obtainment. The profit or

dividends may enter into the foreign exchange account for current items or may be converted into RMB. The capital change income in a foreign currency may, upon the examination and approval of the foreign exchange control organ, be deposited in a special capital account opened for it or be converted into RMB.

Article 49 Within 1 year after the date of issuance of a business license, if the domestic company fails to obtain an unremarked approval certificate, the approval certificate with a remark shall be invalidated automatically. The domestic company shall go through the formalities for modifying the registration.

Article 50 After the special-purpose company has realized the overseas listing and the domestic company has obtained an approval certificate and a business license with no remark, if the relevant party concerned continues to take over this domestic company by paying its equities, the provisions of Sections 1 and 2 of this Chapter shall apply to this case.

#### Chapter V Antitrust Review

Article 51 If the takeover of a domestic company by a foreign investor is under any of the following circumstances, the investor shall report the relevant information to the MOFCOM and the State Administration for Industry and Commerce (hereinafter referred to as the SAIC):

- (1)The current-year business volume of any party to the takeover in the Chinese market exceeds RMB 1.5 billion yuan;
- (2)The foreign investor has accumulatively taken over more than 10 enterprises in the domestic relevant industries;
- (3)The market share of any party to the takeover has reached 20% in China; and
- (4)The takeover leads to the fact that the market share of the party to the takeover has reached 25% in China.

When the foreign investor fails to meet the conditions as mentioned in the preceding Paragraph, but upon request of a domestic enterprise of competitive relationship, a relevant functional department or industrial association, the MOFCOM or the SAIC believes that the takeover by the foreign investor involves a huge market share, or that there are other major factors which seriously impact market competition, it may also demand the foreign investor to prepare a report.

The aforesaid merging party includes the connected enterprises of the foreign investor.

Article 52 If the takeover of a domestic company by a foreign investor is under any of the circumstances as mentioned in Article 51 and if the MOFCOM and the SAIC believe that it may lead to excessive concentration, hamper fair competition or impair the interests of the consumer, they shall, within 90 days as of the receipt of all the documents as required, either solely convene through negotiation or jointly convene the relevant departments,

institutions, enterprises and other interested parties and hold a hearing, and shall make a decision of approval or disapproval in accordance with the law.

Article 53 Where an overseas takeover is under any of the following circumstances, the parties to the takeover shall, before announcing the takeover proposal or when submitting the said proposal to the competent authority in the country of its locality, submit the takeover proposal to the MOFCOM and the SAIC. The MOFCOM and the SAIC shall examine whether it will lead to excessive centralization in the domestic market, hinder domestic fair competition, or damage the domestic consumers' benefits, and shall make a decision on whether approve the proposal or not:

- (1) The overseas party to the takeover owns more than RMB 3 billion Yuan of assets inside the territory of China;
- (2) The business volume of the overseas party to the takeover in the Chinese market is more than RMB 1.5 billion yuan in the current year;
- (3) The market share of the overseas party to the takeover and its connected enterprises in China has reached 20%;
- (4) The market share of the overseas party to the takeover and its connected enterprises in China has reached 25% due to the overseas takeover; or
- (5) Due to the overseas takeover, there will be more than 15 foreign-funded enterprises in the relevant domestic industries with direct or indirect shares of the foreign-funded enterprises.

Article 54 Where a takeover is under any of the following circumstances, the parties to the takeover may apply to the MOFCOM and the SAIC for exemption of examination:

- (1) The takeover may improve the conditions for fair competition in the market;
- (2) A loss-making enterprise is taken over and the employment is ensured;
- (3) The takeover helps the absorption of advanced technologies and management personnel and is able to improve the enterprise's international competitiveness; or
- (4) The takeover may improve the environment.

#### Chapter VI Supplementary Provisions

Article 55 Where an investment company established by a foreign investor within China intends to take over a domestic enterprise, it shall be governed by these Provisions.

Where a foreign investor intends to purchase the equities of a foreign-funded enterprise within China or to subscribe to the increased capital of a foreign-funded enterprise within China, it shall be governed by the existing laws and administrative regulations on foreign-funded enterprises as well as the relevant provisions on changes of equities of investors of foreign-funded enterprise; if any matter is not covered by the aforesaid laws, administrative regulations or provisions, it shall be governed by these Provisions.

Where a foreign investor intends to combine with or take over a domestic enterprise through a foreign-funded enterprise established by it within China, it shall be governed by

the relevant provisions on the combination and split-up of foreign-funded enterprises and the relevant provisions on domestic investments of foreign-funded enterprise; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Where a foreign investor takes over a domestic limited liability company, if it transforms it into a joint stock limited company, or if the domestic company is a joint stock limited company, it shall be governed by the relevant provisions on the establishment of a joint stock limited company; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Article 56 For the submission of documents, an applicant or declarer shall classify the documents into different categories under these Provisions and accompany them with a list of documents. All documents required to be submitted shall be written in Chinese.

Article 57 A Chinese natural-person shareholder of a domestic company taken over by equities may, upon approval, continue to be a Chinese investor of the foreign-funded enterprise established after modification.

Article 58 If a natural-person shareholder of a domestic company changes his nationality, the enterprise nature of the company will remain unchanged.

Article 59 The functionaries of the government organs shall be dutiful, shall perform their duties in pursuance of the law, shall not seek any improper benefit by taking the advantage of their positions, and shall keep confidential the commercial secrets they have access to.

Article 60 Where an investor from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan Region intends to take over a domestic enterprise of any other region, it shall be governed by these Provisions.

Article 61 These Provisions shall come into force as of September 8, 2006.

# Ningbo

## **NB04 Preferential Policy on foreign investment in Ningbo Science & Technology Zone.**

**This document includes the preferential policy on Ningbo Science & Technology Zone, Ningbo Economic and Technical Development Zone , Ningbo High-tech Industry Park, so this document is adapt the SZ04, SZ08 and SZ09.**

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### *Income Tax for Enterprises with Foreign Investment and Foreign Enterprises:*

It is prescribed by the State that the income tax on enterprises with foreign investment shall be computed on taxable income at the rate of 30%.

The income tax on the productive enterprise with foreign investment of a productive nature established in Ningbo proper and the areas within its jurisdiction shall be levied at the reduced rate of 24%. (The income tax on enterprises with foreign investment in Ningbo Economic and Technical Development Zone, Daxie Island Development Zone, Ningbo Free Trade Zone, Ningbo High-tech Industry Park, the projects within the scope of energy, communications, harbour, wharf, or other projects encouraged by the State, the projects with foreign investment exceeding USD 30 million and with long period of investment recovery, may be levied at the reduced rate of 15%), among which those with an operational period of more than 10 years shall be exempted from income tax within the first two profit-making years, and allowed a half reduction of income tax from the third to the fifth year.

Foreign invested enterprises which is engaged in Agriculture, forestry, animal husbandry may, upon approval by the competent department for tax affairs under the State Council of an application filed by the enterprises, be allowed a fifteen to thirty percent reduction of the amount of tax-payable income for a period of another ten years on the expiry for tax exemption and reduction as provided in the preceding paragraphs.

In the years following the expiration of the period for tax exemption or reduction, the

export enterprises with annual value of export products covering 70% or more of the annual value of the total products shall be levied at the reduced rate of 12%. (The enterprises in Ningbo Economic and Technical Development Zone, Daxie Island Development Zone, Ningbo Free Trade Zone and Ningbo High-tech Industry Park will be levied at the reduced rate of 10%).

Technologically advanced enterprises shall be levied at the reduced income rate of 12% for an extension of 3 years following the expiration of the period for tax exemption or reduction. (The enterprises in Ningbo Economic and Technical Development Zone, Daxie Island Development Zone and Ningbo Free Trade Zone and Ningbo High-tech Industry Park shall be levied at the reduced rate of 10% for an extension of 3 years).

#### *Re-investment Tax Reimbursement*

Any foreign investor of an enterprise with foreign investment who reinvests its share of profits obtained from the enterprise directly into that enterprise by increasing its registered capital, or who uses the profit as capital investment to establish other enterprises with foreign investment to operate for a period of no less than 5 years shall, upon approval by the tax authorities of an application filed by the investor, be refunded 40% of the reinvested amount of the income tax that has already been paid. Those who reinvest in the export enterprises or technologically advanced enterprises may obtain a refund of all the reinvested amount of the income tax that has been already paid.

#### *Withholding Income Tax*

Any foreign enterprise that has no establishment or place in China but derives profits, interest, rent, royalties or other income from sources in Ningbo, may be levied at the reduced rate of 10% (except for exemption of the income tax prescribed by law). And those provide advanced technology, or the terms of capital or equipments are preferential, exemption or reduction may be allowed upon approval.

#### *Income Tax Concerning Remittance*

The income tax shall be exempted for the amount of profits gained by the foreign investors from the enterprises in Ningbo when they are remitted out of China.

### Customs Duties

The customs duties and import-related value-added tax shall be exempted on the equipment for self-use (except for those stipulated in "Catalogue of Imported Commodities not Entitled for Tariff Exemption for Projects with foreign Investment") imported by foreign investment project in accordance with "the Encouraged Foreign Investment Industries and Restricted Foreign Investment Industries (B) of the Catalogue for the Guidance of Foreign Investment Industries (promulgated on 1, April, 2002)".

NB04 宁波市科技园区鼓励国内外投资者规定

2006-07-21 信息来源: 宁波市信息中心

为鼓励国内外投资者到宁波市科技园区(以下简称科技园区)投资建设,根据国家有关法律、法规和政策,结合宁波市实际,特制订如下规定:

#### 一、企业所得税优惠政策

##### (一) 外资项目或企业所得税

#### 1、外商投资企业的所得税税率按国家有关政策,其中:

(1) 生产性企业经营期在十年以上,从获利年度起享受“免二减半”政策

(2) 产品出口企业,在“免二减半”期满后,当年出口产品价值达到生产产值 70% 的,可继续享受减半征收政策。

(3) 对总投资在 1000 万美元以上的大项目、高新技术项目享受上述政策期满后,第 6 至第 10 年的企业所得税地方所得部分,根据财力可能并经批准可退还 50%

2、外商投资港口、码头、公路、电力、能源、水利、环保等基础设施项目,经税务部门批准,企业所得税减按 15% 的税率征收。经营期在 15 年以上的,经批准,从获利年度起对缴纳的企业所得税地方所得部分,头 5 年全额退还,第 6 至 10 年退还 50%

3、被认定为高新技术企业的外商投资企业,经营期在 10 年以上的,在享受本规定有关政策的同时,自认定之日起所属的纳税年度起,经批准,企业所得税超过 15% 税率的地方所得部分实行先征收后退还。

4、鼓励外商投资科研、教育、中介服务以及开发性的基础设施项目。对此类项目建设或营业后,从获利年度起,3 年内所征的所得税地方所得部分予以返还。

5、对经批准的外资银行、中外合资银行经营期在十年以上,国外投资者投入资本 1000 万美元以上的,其税率为 15%,并享受“免二减半”政策。

6、国外投资者将其从企业分得的利润汇出中华人民共和国境外时,免缴汇出额的预扣税。

7、外商投资企业的地方所得税,经科技园区管理委员会审定,在一定期限内给予免征。

##### (二) 内资企业所得税政策

1、对新办的独立核算的从事咨询业(包括科技、法律、会计、审计、税务等咨询业)、信息业、技术服务业的企业或经营单位,自开业之日起两年内免征所得税。

2、对新办的独立核算的专业从事交通运输业、邮电通讯业的企业或经营单位,自开业之日起第一年免征所得税,第二年减半征收所得税。

3、对新办的独立核算的从事公用事业、商业、物资业、对外贸易业、旅游业、仓储业、居民服务业、饮食业、教育文化事业、卫生事业的企业或经营单位,自开业之日起,

报经税务主管机关批准，可减征或免征所得税一年。

(三) 关于再投资的所得税政策。

国外投资者将从中国境内投资企业取得的利润直接再投资，其所得税按以下政策处理：

1、增加注册资本或开办其他外商企业，经营期不少于五年的，经税务主管机关批准，可退还其再投资部分已缴纳的所得税的 40%

2、再投资于扩建产品出口企业或技术先进企业，经营期不少于五年的，可全部退还其再投资部分已缴纳的所得税税款

(四) 国外投资者在中国境内没有设立机构而有从科技园区获得股息、利息、租金、特许权使用费和其他所得的，除依法免缴所得税的以外，可减按 10% 的税率缴纳所得税，其中以优惠条件提供资金、设备或转让先进技术的，报经税务主管机关批准，可享受更多的减免所得税优惠。

(五) 纳税人发生年度亏损的，可以用下一纳税年度的所得弥补；下一纳税年度的所得不足弥补的，可以在五年内连续弥补。

二、税收返回政策。

(一) 在科技园区投资新办的外资企业，其缴纳的企业所得税（包括延期可抵扣国家级开发区企业所得税的部分，经地方税务主管部门批准，可按年退还。

(二) 科技园区投资新办的内资企业，其缴纳的企业所得税，按照经国务院批准。

(三) 凡在科技园区内投资新办的内外资企业，除按政策规定享受优惠外，其缴纳的增值税和营业税的地方收入部分，按以下办法退还：

1、新办的独立核算企业，自新办之日起两所内退还 30%；

2、在新区内受让、租用土地或对新园区新建的标准厂房的新办工业内资企业，自新办之日起两年内按年全额退还。

3、对购买建筑面积在六千平方米及以上的按建为经营日用房的新办内资企业，视其购房面积在五年内给予以下比例的退还：

购房建筑面积 增值税和营业税的

地方部分退还比例

60-200 平方米（不含 200 平方米） 60%

200 平方米及以上 70%

4、园区以外的国内投资者，以资金、设备及实物投资，在园区建有企业总部，其方投资在五十万元人民币以上，投资比例在 30% 以上，经营时间在五年以上，以其后企业缴纳的增值税、营业税在抵扣企业上缴的增值税、营业税每年增长 10% 的前提下，其超额部分，属地方部分的，两年内按年全额退还。

5、在园区内从事高新技术的自办企业，自开办之日起三年内，其缴纳的营业税的地方部分，退还 50%

三、实施推进技术成果、科技成果转化管理办法。

(一) 经认定的高新技术成果转化项目，从第一次销售之日起一年内，企业所得税地方部分，由财政全额退还，之后每年按 70% 比例退还；对有自主知识产权的高新技术转化项目，自认定之日起五年内，其所得税和增值税的地方部分，由财政先征后返，之后一年按年退还。

在科技园区注册的企业，以税后利润投资经认定的高新技术成果转化项目，由财政退还相应投资额的 50%。

科研机构、高等学校等单位的科技人员，其科技成果转化股权收益，经核准，暂



不征收个人所得税。

(二) 经认定的高新技术产品,自确认之日起三年内征收的所得税和增值税留地方部分,经批准可列收列支以返还。高新技术产品出口,实行增值税零税率政策。对国内没有的先进技术和设备的进口,执行国家有关税收扶持政策。

(三) 经认定的高新技术企业,自认定之日起,前两年内缴纳的所得税留地方部分全额退还,后五年减半返还;按规定退还税收期满后,凡当年出口产品产值达到70%以上的,经核准,再返还50%留地方部分的所得税。

(四) 对开发生产软件产品的企业,其软件产品可按6%的征收率缴纳增值税,其职工工资支出可按实际发生额在企业所得税税前扣除;对生产具有自主知识产权的软件和基因工程产品的高新技术企业,前五年缴纳的所得税留地方部分全额退还,后五年减半返还。

高新技术企业的增值税,以上一年为基数,新增的留地方部分,从2000年起(新认定的高新技术企业自认定之年)起三年内按50%的比例给予退还。

全市范围内首次应用发明专利技术生产的产品,经核准,自销售之日起,三年内缴纳的所得税和增值税留地方部分全额退还。

经认定的高新技术企业和重点技术改造企业,用于开发、生产高新技术产品的仪器、设备,经核准,允许按年25%计提折旧费。

#### 四、促进企业技术进步的政策措施

(一) 企业研究开发新产品、新技术、新工艺所发生的各项费用,不受比例限制,计入管理费用。

(二) 企业技术创新的投入占销售收入的比例达到1.5%以上,技术开发费逐年增长,增长幅度在10%(含10%)以上的盈利企业,其当年实际发生的费用按规定据实列支,年终经市主管税务机关审核后批准后,可按实际发生额的50%,直接抵当当年应纳税所得额。

(三) 企业研究开发的新产品,列入国家级试产(试制)计划的,自销售之日起3年内退还新产品所得税和增值税留地方部分;列入市级试产(试制)计划的,2年内退还新产品所得税和增值税留地方部分。

(四) 企业在技术转让过程中发生的有关专利转让、技术咨询、技术培训、技术服务等所得年净收入低于30万元的,免征所得税。超过30万元的部分,依法缴纳所得税。

(五) 企业研究开发新产品、新技术、新工艺所需的关键设备、测试仪器等,单台价值在30万元以下(含30万元)的,允许一次或分期计入管理费用。

#### 二、关税政策

(一) 科技园区外商投资企业对符合《外商投资产业指导目录》鼓励类和限制乙类并转让技术的外商投资项目,在投资总额内进口自用设备,除《外商投资项目不予免税的进口商品目录》所列商品外,免征关税和进口环节增值税。

(二) 科技园区的外商投资企业为履行产品出口合同所需进口的原材料、元器件、包装材料,经有关部门批准,给予保税。

#### 三、其它有关政策

(一) 新办的外地在科技园区的大中型企业(集团),从获利年度起五年内,按实际缴纳的企业所得税地方留成部分,实行先征后返,前三年全额返还,后二年减半返还,专项用于企业生产经营;投资高新技术产业(按国家发布的高新技术领域和高新技术企业认定),从获利年度起,对其补缴税收的地方留成部分实行先征后返,五年全额返还,专项用于企业生产经营。

(二) 科技园区内高新技术项目和高新技术改造传统产业项目,市财政给予一年期银行贷款利率的100%贴息。

(三) 外商投资企业可享受优惠地价。凡总投资在 1000 万美元以上的(含 1000 万美元)外商投资项目,其投资项目的预留地可免缴定金;允许投资者分期缴付土地价款。

(四) 对以多种形式引进的科技机构,给予一定数额的经费补助,并根据一事一议的原则给予政策支持。

(五) 积极鼓励高新技术成果中试试验,考虑到中试试验的风险性,每年安排一定额度的资金以风险贷款形式,贷款给中试试验项目实施单位。当中试成功,并取得经济效益时,企业应以同期银行利率归还本息;如中试失败,政府给予予以减免。

(六) 积极鼓励中央部委、市外和海外留学生带高新技术成果来甬实施转化,并优先享受项目贴息或风险贷款的优惠。

(七) 对于企业自主研发或与大专院校、科研院所合作开发的高新技术项目,以及从市外、国外引进的高新技术成果,安排一定额度的科技三项经费,择优补助。

(八) 国内投资者的科技园区新办企业,其调用的各类专业人员、管理人员及其家属,经批准准予迁入园区落户,对高新技术企业、投资规模大的企业、经济效益好的企业从宽掌握;华侨和香港、澳门、台湾同胞在科技园区投资兴办企业或公益事业,可以适当安排其亲属在其所投资的企业、事业单位中就业,户籍关系可以按有关规定迁入科技园区。具体实施细则由有关部门制定。

四、 本规定由宁波市科技园区管理委员会负责解释。

五、 本规定自发布之日起施行。

## NB08 Preferential Policy on foreign investment in Ningbo Science & Technology Zone

This document was familiar with NB04

NB08 宁波市科技园区优惠政策

2005-07-07 信息来源: 甬海办信息中心

软件类 --for software investment

1、对一般投资者销售其自行开发生产的软件产品,自 2010 年 1 月 1 日起,17% 营业税视同收入增收增值税,以实际税负 3% 的税率征收。

2、新创办软件企业经认定后,自获利年度起,按照与部分高新技术企业“减半减半”的优惠政策。

3、对软件企业进口所需的自用设备,以及按照合同规定进口技术(含软件)及零部件、备件,除列入《外商投资项目不予免税的进口商品目录》和《国内投资项目不予免税的进口商品目录》的商品外,均予免征关税和进口环节增值税。

4、软件企业全部实行股份制,其股息、红利等收入暂不缴纳个人所得税。

其他政策:

1、对单位和个人(包括外商投资企业、外商投资设立的研究开发中心、外国企业和其他个人)从事技术转让、技术开发业务和与之相关的技术咨询、技术服务业务取得的收入,免征营业税。

2、外商投资符合新办企业的利可再投资兴办该企业,经注册资金作为再投资开办其他企业,经营期不少于五年的,经税务机关批准,退其再投资部分已缴过所得税 40% 的税款。在从利可再投资兴办产品出口企业或先进技术企业,期限不少于五年的,

全部退还再投资部分已缴纳的企业所得税。

3、园区内盈利的高新技术企业，研究开发新产品、新技术、新工艺所发生的费用，比上年实际发生额增长达到10%以上的（含10%），其当年所发生额的费用除规定据实列支之外，年终经园区有关部门审核批准后，可再按实际发生额的50%直接抵扣当年应缴纳所得税额。对技术含量高的高新技术企业给予财政奖励。

4、外商投资企业在投资总额内采购国产设备，可全额退还国产设备增值税，国产设备价值的40%可按其定抵免企业所得税。

对高新技术产业的鼓励政策

园区积极鼓励发展高新技术产业，对落户的高新技术项目将给予一定的财政补助  
进口关税

鼓励类的外商投资项目，在投资总额内进口设备，免征进口关税和增值税

出口产品用的原材料、零部件在进口时，免征进口关税和进口增值税

所得税

1、在园区设立的符合园区产业导向的外商投资企业，自企业生产、经营期在十年以上的，从获利年度起，实行“免二减半”政策；

2、外商投资的产品出口企业，在享受税收减免政策期满后，企业产品出口值达到企业当年总产值70%以上，经有关部门核准后，当年减半征收企业所得税。

3、先进技术企业延长三年减半征收所得税

集成电路类

1、鼓励海外企业在大陆独资或独资设立IC企业。对投资额超过80亿元人民币或集成电路线宽小于0.25 $\mu\text{m}$ 的集成电路生产企业，企业所得税实行“两免五减”政策。对一般纳税人销售其自产的集成电路产品（含重结晶片），2010年前按17%的法定税率征收增值税，对实际税负超过3%的部分即征即退，由企业在产品研发再集成电路和半导体生产。

2、集成电路生产企业的生产性设备的折旧年限最短可为3年。集成电路企业引进集成电路技术和成套生产设备，单项进口的集成电路专用设备与仪器，按《外商投资产业指导目录》和《当前国家重点鼓励发展的产业、产品和技术目录》的有关规定办理，免征进口关税和进口环节增值税。

3、境内集成电路设计企业设计的集成电路，如在境内确实无法生产，可在国外生产芯片，其加工环节选择具有一般贸易进口货物资格的企业进口，进口时按优惠税率征收关税。

## NB09 Preferential Policy on foreign investment in Ningbo Economic & Technology Development Zone.

This document was familiar with NB04

NB09 宁波经济技术开发区优惠政策

2005-07-07 15:03:22 信息来源：市府办信息中心

入园企业除了享受中央政府赋予国家级开发区的所有优惠政策外，对于开发区管委会认定的电子信息、生物化工、精密机械加工等高科技项目，年出口创汇3000万美元以上项目、引进外资额度巨大项目和对于我区开发建设有重大意义的项目，宁波开发区管委

会还专门设立了企业发展基金和高科技发展基金,在项目筹建、土地使用、基础设施配套、技术引进、设备改造、对外贸易、人才引进等方面给予优惠扶持

#### 土地

“八通一平”(通路、通电、通蒸汽、通讯、通有线电视、上水、下水、排污和土地自然平整)条件的工业用地,具有50年使用权,

#### 所得税

外资企业所得税率为15%,国家赋予国家级开发区“二免三减半”的政策,即:外商投资的生产型企业经营期在10年以上的,从获利年度起,第一、二年免征所得税,第三至第五年减半征收所得税

#### 税外收费

依法治区,大幅减少税外收费,实行目录管理,杜绝乱收费。

#### 基建补贴

企业在筹备建设期间,需要向供电部门缴纳的用电一次性贴费,由开发区管委会给予全额补贴

## NB11 Preferential Policy in Ningbo Export & Processing Zones

This document announce that it'll be acquire preferential policy to the investment which enter into the Ningbo Export & Processing Zones, the policies include:

- duty free on machinery import;
- VAT drawback similar with export when the goods enter into this Zone;
- duty free on import materials which used on the export products and made in China;
- duty free on export goods
- don't need reporting or register the payment to the abroad on foreign exchange
- the goods can enter or exit the Zone freely, don't need any other admit
- income tax is 15%
- no VAT
- manufacturer will be get allowance from the government depend on the investment size and term.

NB11 宁波出口加工区优惠政策

2005-07-07 信息来源: 市招商信息中心

#### 进口免税

- 生产所需的机器、设备、模具、维修用零配件;
- 基础设施建设所需的机器、设备和建设用基建物资; 自用的办公用品;
- 免征海关和进口环节税
- 入区退税

■ 在中国境内的区外企业货物出口到区内可享受国家有关增值税出口退税优惠, 从区外入区的国产机器、设备、原材料、零部件、元器件、包装物料、合理数量的建筑材料

等，按出口办理退税

进料保税

■ 加工出口产品所需进境的原材料、零部件、元器件、包装物件及消耗性材料全额保税

出口免税

■ 加工复出口的产品免税

出口加工区之间的进出货物免税

■ 加工区与加工区之间产品、原辅料、机器设备等进出货物免税。

外汇管理

■ 区内货物销往境外不需办理出口收汇核销手续；向境外支付不需办理进口付汇核销手续

配额许可证

■ 货物可以在加工区保税出口后运出，除国家另有规定外，不需申领配额许可证和进口许可证

■ 外商投资企业按企业按 15% 计征，经营期十年以上的从获利年度起享受“三免三减半”的优惠，减免期满后，如果是技术企业，产品出口企业可继续享受有关减免的优惠。

增值税

■ 区内生产型企业生产的产品出口免征增值税；区内企业的应税劳务和增值税为零

财政补贴

■ 生产型企业按投资规模、技术先进等因素，赋予专项财政补贴

宁波保税(出口加工)区管理委员会以符合国际惯例的现代管理理念，负责管理区内各项事务。秉承一切为投资者着想，一切为纳税人服务的宗旨，以诚信原则为企业提供全方位、全过程、全免费的服务。宁波保税(出口加工)区海关独立处理区内海关事务，外管、税务、银行、保险以及各种代理服务等均配套齐全，推行“一站式”、“一站式”一条龙服务的高效运作机制。

宁波保税(出口加工)区致力于成为海内外客商创造一流的投资环境为每一位投资者搭建连接世界经济合作与发展的战略平台期待着每一位有识之士登高览海共筑宁波保税(出口加工)区美好未来

## NB13 Tax Decrate on Declaring Technology Contract by Foreign Invest Company.

**This document is to the “authorized excise charge” for the import technology, the foreign investor get profit from this excise charge, the income tax will be decorate or draw back to the enterprise from government.**

NB13 外资企业申报技术进口合同可减免税费

2005-05-12 信息来源：市府办信息中心

近日，国家税务总局、商务部发出通知，对技术进口所涉及的特许权使用费企业所得减免企业所得税问题，进一步作出了明确规定。对于符合规定的技术进口合同，外资企业

可以享受减免企业所得税的优惠。

按照有关规定,对外商提供属于《中华人民共和国外商投资企业和外国企业所得税法》第十九条第二款第(四)项及其《实施细则》第六十六条所列举的专有技术所取得的特许权使用费,且技术先进或者条件优惠的,需减免所得税的均应报国家税务总局批准。

据宁波开发区国税局有关负责人介绍,外商申请办理所得税减免的,可委托技术进出口受让方办理有关手续。受让方首先应向为其登记技术进口合同的主管部门申请办理《关于建议减免企业所得税的函》。申请时应提供技术进口合同副本、技术进口合同登记证书、技术进口合同数据表、外国企业所得税减免申请书、外国企业委托受让方办理减免税手续的委托书和受让方提出的减免税申请书。

另外,对于技术进口合同中有进口限制类技术的,合同条款中存在着严重限制性条款等违背中华人民共和国技术进出口管理条例内容的,以提成费方式支付特许权使用费且提成率超过 5%这一种情形之一的,均不视为税法规定的“条件优惠”,原则上不得出具建议书。

## One Additional Policy of Ningbo

### Provisions Of Ningbo Municipality on Investment Administration Made by Investors of Enterprise With Foreign Investment

2005-04-21 10:55:41

(Promulgated by Ningbo Municipal Government on May 16th ,1994 Yong Zheng [1994]No.9 Document)

Article 1. These Provisions are formulated in accordance with the several Provisions of SAIC concerning the investment made by the various parties to Chinese - Foreign Equity Joint Venture, approved by the State Council, and other pertinent laws and regulations, meanwhile in terms of practical condition of this city, in order to protect the lawful rights and interests of investors to Enterprise with Foreign Investment and to promote sound development of Enterprise with Foreign Investment.

Article 2. Enterprise with Foreign Investment, mentioned in these Provisions, means Chinese - Foreign Equity Joint Ventures, Chinese - Foreign contractual Joint Ventures, Foreign-capital enterprises.

Article 3. In case that Enterprise with Foreign Investment is established within the district of Ningbo, the investors must comply with these Provisions.

Article 4. The total amount of investment made by Enterprise with Foreign Investment refers to the total sum of capital which required to establish a Enterprise with Foreign Investment, namely, the sum total of foundational construction capital (or fixed assets) and current funds required by the production and operation scale.

Article 5. The registered capital of a Enterprise with Foreign Investment refers to the total

sum of capital agreed to be contributed by all parties and registered by the Administrative Authorities for Industry and Commerce for establishment.

The registered capital of a Enterprise with Foreign Investment should be suit to its the production and operation scale. The proportion between registered capital and the total amount of investment should comply with the pertinent regulations.

Article 6. The investment contributed by investors to Enterprise with Foreign Investment (hereafter referred to as "investors") must be contributed in cash and owned by the investors themselves, or in form of physical goods, industrial property rights ,proprietary technology and so on, which owned by the investors themselves and have not been used to establish an security interests.

In case where physical goods, industrial property rights and proprietary technology are used as investments at the evaluated price, the investors shall present valid documents to demonstrate their proprietary and their right of disposal.

Article 7. If such physical goods as machinery equipment, are used by foreign investors as investment at the evaluated price, the examination and appraisal should be made by Ningbo Import-Export Commodity Inspection And Bureau, and the certification of price appraisal should be issued thereafter.

Article 8 . No investor to Enterprise with Foreign Investment may use loans, rented equipment or other assets that have obtained in the name of the Enterprise with Foreign Investment or assets of persons other than the investors as its own investment contribution to Enterprise with Foreign Investment; nor may it use assets or right and interests of the Enterprise with Foreign Investment, or assets or right and interests of the other parties to Enterprise with Foreign Investment as warranty for its investment contribution to Enterprise with Foreign Investment.

Article 9. The investors shall set the time limit of investment in Application And Registration Form Of Enterprise With Foreign Investment, contract and regulations. The investors should pay up their respective investment contributions to Enterprise with Foreign Investment on schedule.

Article 10. If the contract and regulations stipulates that investment contributions shall be paid up in one lump, the investors shall make the full payment of their respective investment contributions within 6 months from the date the business license is signed and issued.

If the contract and regulations stipulates that investment shall be paid by installments, the first installment paid by the investors shall not be less than 15% of the total amount of their respective investment contributions and be paid with 3 months as the date the business license is signed and issued.

Article 11. After the investors have paid the first installment, the remaining installment ,if registered capital is less than \$500,000 (including \$500,000) should be paid up within

6months ; if the registered capital is more than \$500,000 but less than \$2,000,000 (including \$2,000,000) should be paid up within 1 year ; if the registered capital is more than \$2,000,000 but less than \$10,000,000 (including \$10,000,000) should be paid up within 2 years ; if the registered capital is more than \$10,000,000 should be paid up within 3 years.

If one or two especially big Enterprise with Foreign Investment can not be performed in accordance with the said Provisions, they shall be approved by the original examining and approving authorities, in conjunction with the Administrative Department for Industry and Commerce.

Article 12. In the event that the Enterprise with Foreign Investment demands to defer investment for due reason, the director board of the Enterprise with Foreign Investment should pass a resolution and raise application, and such application should be approved by the original examining and approving authorities, in conjunction with the Administrative Department for Industry and Commerce.

Article 13. After paying every installment, Enterprise with Foreign Investment shall appoint an accountant registered in China to check and examine the accounts, and the report of assessment issued thereafter shall be submitted to the Administrative Department for Industry and Commerce as well as the original examining and approving authorities.

Failure to pass the examination of the accounts, or the examination in unconformity with the relevant State regulations, the Enterprise with Foreign Investment shall not be considered to invest.

Article 14. In the event that the investors, within the time limit prescribed in Article 10, fail to make the full payment without good cause, the Enterprise with Foreign Investment shall be considered to be dissolved of its own accord, and the approval certificate for the Enterprise with Foreign Investment shall automatically cease to be effective. Enterprise with Foreign Investment shall go through the procedures for cancellation of registration with the Administrative Department for Industry and Commerce, and submit its business license for cancellation. If the Enterprise with Foreign Investment fails to go through the procedures for cancellation of registration and submit its business license for cancellation, the Administrative Department for Industry and Commerce shall revoke its business license and make announcement to the public.

Article 15. The remaining installment, after the first installment, should be paid up by Enterprise with Foreign Investment as scheduled. Without good causes Chinese - Foreign Equity Joint Venture, Chinese - Foreign contractual Joint Venture delaying for 3 months , and Foreign-capital enterprises delaying for 1 month , fail to pay investment or fail to full investment, the Administrative Department for Industry and Commerce shall notify the investors of request of payment of investment within 1 month.

If the investors still fail to pay up the investment within the time limit stipulated in the said notice, the original examining and approving authorities has the right to revoke the approval certificate for the said enterprise, and demand it to settle claims and debts within



time limit.

The said enterprise shall go through the procedures for cancellation of registration with the Administrative Department for Industry and Commerce, and submit its business license for cancellation. If the Enterprise with Foreign Investment fails to go through the procedures and submit its business license for cancellation, the Administrative Departments For Industry And Commerce have mandatory right to revoke its business license and announce this to the public.

Article 16. The Enterprise with Foreign Investment failing to pay up investment on schedule should be limit to various license by the respective authorities concerned, not be granted with the registration on enlarging the management scope or establish new branches by the Administrative Department For Industry And Commerce, not be given preferential duties like tax reduction or tax free on its import equipment and appliance by the Customs Office, not obtain loan from banks, not be allowed the distribution of profit by fiscal authority, and not be allowed to participate in foreign exchange adjustment by foreign control department and pertinent banks pointed.

Article 17. Establishment of a Enterprise with Foreign Investment by the companies in Ningbo, the enterprises and other economic organizations or individuals from Hong Kong, Macao and Taiwan, and Chinese citizens living abroad shall be handled with reference to these provisions.

Article 18. The right to interpret these provisions resides with Ningbo Administrative Department For Industry And Commerce.

Article 19. These provisions shall go into effect on the date of promulgation.

## **Another additional explain on the Preferential Policies of Ningbo**

### **Q&A of Policies of Customs on Tax Reduction and Exemption in Ningbo**

2010-03-26 09:29:08

Q: What are the documents that foreign-funded enterprise should submit to the customs for tax reduction or exemption?

A: 1, The original copy of the Confirmation of Domestic-Funded or Foreign-Funded Projects Encouraged by the State for Development issued by the department in charge; 2, The approval document for the project's feasibility report; 3, The approval document for the project issued by the foreign economic and trade department; 4, The approval certificate issued by the foreign economic and trade department for the foreign-funded enterprise or the enterprise funded by an overseas Chinese in Hong Kong, Macao or

Taiwan; 5, The copy of business license issued by the industrial and commercial administrative department; 6, The project's feasibility report; 7, The enterprise's contract or articles of association; 8, Other documents required by the customs, for example, the capital verification report.

Q: What are the documents that foreign-funded enterprise should submit to the customs for tax reduction or exemption for imported equipment?

A: 1, The photo copy of the Confirmation of Domestic-Funded or Foreign-Funded Projects Encouraged by the State for Development issued by the department in charge; 2, The contract for the import; 3, the invoice for the import and the packing list; 4, The copy of business license issued by the industrial and commercial administrative department; 5, The approval certificate issued by the foreign economic and trade department for the foreign-funded enterprise or the enterprise funded by an overseas Chinese in Hong Kong, Macao or Taiwan; 6, Other documents' required by the customs, for example, the instructions.

Q: What is the time limit for the handling of an application for the tax reduction or exemption for imported equipment?

A: If the application materials are complete and accord with the statutory form, the customs department in charge should make the decision on the approval or denial of the application with ten work days after the acceptance of the application. For delay under special circumstances, the customs department in charge should explain it to the applicant.

Q: What is the longest period of validity the Certificate of Tax Collection or Exemption for Imported or Exported Goods?

A: The longest period of validity the Certificate of Tax Collection or Exemption for Imported or Exported Goods is six months from the time it is printed.

Q: Can the period of validity the Certificate of Tax Collection or Exemption for Imported or Exported Goods be prolonged?

A: The period of validity the Certificate of Tax Collection or Exemption for Imported or Exported Goods can be prolonged. The application should be made before the expiration of the period of validity and it should be made for only once. The validity period is extended from that day and the extension should be no more than six months.

Q: Can a change be made to the Certificate of Tax Collection or Exemption for Imported or Exported Goods?

A: For a certain reason when an applicant needs to make a change to the destination port, the number of the contract and the certificate of origin in the Certificate of Tax Collection or Exemption for Imported or Exported Goods, the authorized customs department should verify and approve the written application of the applicant. the change should not be made until with the approval of the department. When an applicant needs to change other items, the authorized customs department should verify and approve the written application of the applicant, invalidate the Certificate of Tax Collection or Exemption for Imported or Exported Goods and then re-examine and approve the application.

Q: What should one do when the Certificate of Tax Collection or Exemption for Imported or Exported Goods is lost?

A: When the Certificate of Tax Collection or Exemption for Imported or Exported Goods is

lost and an application is made. The authorized customs department should verify and approve the written application of the applicant, to make sure the Certificate of Tax Collection or Exemption for Imported or Exported Goods has not been used. After the three-level examination, the Certificate of Tax Collection or Exemption for Imported or Exported Goods should be invalidated and then the application should be re-examined and approved.

Q: What is the period of supervision of goods entitled to duty exemption or reduction?

A: The periods of supervision of goods entitled to duty exemption or reduction are: eight years for ships, airplanes; six years for automobiles; five years for other goods.

The periods are counted from the day of clearance.

Q: Can goods in the periods of supervision be transferred?

A: If for a certain reason an applicant needs to transfer goods entitled to duty exemption or reduction in the periods of supervision, the applicant should submit written application and related documents to the authorized customs department for verification and approval. When approved, procedures should be gone through for the carrying-over and tax making-up.

Q: When the periods of supervision of goods entitled to duty exemption or reduction is over, should the goods be supervised by the customs?

A: For goods entitled to duty exemption or reduction whose period of supervision is over, the applicant should submit written application the authorized customs department verification and approval. When the application is approved, the authorized customs department should grant the certificate of the termination of supervision of goods entitled to duty exemption or reduction. In case that the period is over and the application is not made, the authorized customs department should regard it as automatic termination of supervision.

Q: Can goods entitled to duty exemption or reduction be the mortgage for loans?

A: An applicant who needs to have mortgage loans for his goods should submit written application to the authorized customs department for examination and approval. Without the approval of the customs, the mortgage of goods under the supervision of the customs or the use of the goods for covering debts, the owner of the goods shall be subject to penalty according to related regulations.

Q: What documents should be presented for application for mortgage loans?

A: 1, Written application form; 2, list of goods; 3, the Certificate of Tax Collection or Exemption for Imported or Exported Goods, the import customs declaration form, the contract, the invoices (all photo copies); 4, agreement with seals of the enterprises and bank on loans on goods entitled to duty exemption or reduction specified by the customs; 5, other documents required by the customs, for example, the letter of commitment for the tax payment.

Q: What is the maximum maturity of the mortgage loans for goods enjoying duty reduction or exemption?

A: The maximum maturity of the mortgage loans for goods enjoying duty reduction or exemption is one year. In case that a person applies to extend the loans, the authorized customs department should re-calculate the taxes and the credit ceiling and go through related formalities, the maturity of the extended loans is one year.

**Q&A of Policies of Customs Clearance**

2010-03-26 09:27:32

Q: What is paperless customs clearance?

A: Paperless customs clearance is an application of the China e-customs and the modern customs information management system. Different from the traditional customs clearance procedure that is based on the written the customs declaration and affixed papers submitted by the import and export enterprise, the paperless customs clearance is a customs procedure in which the customs clearance is based on the verification of the digital data submitted on-line by the import and export enterprises about the goods it reports.

Q: What are the formalities before the procedure of the paperless customs clearance?

A: Before the procedure of the paperless customs clearance, the import and export enterprise should make an application to the customs. After the acceptance of the application, the local customs should examine the application and organize the enterprise, the customs, and China e-port data center to sign an agreement on the paperless customs clearance.

Q: How does an enterprise declare a paperless customs clearance?

A: An enterprise can make the declaration by itself or trust it to a customs agent and the entrusted agency relation should be registered on the e-port. The enterprise or the agent should fill in declaration form on China e-port system, and fill in other forms required by the customs. The enterprise should make sure that the data are up to related requirements and the accuracy and validity of the data, and it shall assume related legal responsibility.

Q: What is the post submission of the customs declaration paper?

A: As is required by the customs, an enterprise should submit the customs clearance declaration paper to the customs within seven days of the clearance. An enterprise that fails to do so or fails to do so within seven days after call notice shall be suspended by the customs the paperless customs clearance.

Q: What is the territorial declaration and release at a different port?

A: An enterprise that meets the related requirements by the customs and is listed in the A-grade enterprises can choose to make the customs declaration to the territorial customs and go through the clearance procedure at the customs where the import or export goods are released.

Q: What goods are not applicable to the territorial declaration and release at a different port?

A: The territorial declaration and release at a different port does not for the time being apply to the goods whose declaration and clearance must be made at the territorial customs as is stipulated by the customs or the import and export license administration.

Q: What are the conveniences of the territorial declaration and release at a different port for enterprises?

A: There are four conveniences of the territorial declaration and release at a different port for enterprises. Firstly, time saving. This mode of "one-time declaration, one-time examination and one-time release" has less clearance procedures and therefore saves time. Secondly, it reduces the cost on logistics for the enterprises. By means of the mode of the territorial declaration and release at a different port, an enterprise can make choices of the vehicle, route and time for the goods, with no restriction that it must choose the vehicle appointed by the customs. With less procedures, this mode accelerates the goods and capital turnover and reduces the cost on logistics for the enterprises. Thirdly, it guarantees the safety of the documents and capital of the enterprises. An inland enterprise can submit much fewer original copies of business documents and therefore there is less risk for the documents sent by post. An enterprise that does not pay taxes and fees through the internet payment is no longer required to remit the capital to the agent's account in advance and this ensures that safety of the capital. Fourthly, this reflects the principle of "convenience to the law abider". In the mode of the territorial declaration and release at a different port, the customs offers timely consulting advice to the enterprises and give them priority in the procedures of the customs clearance.

Q: What enterprises can have the services of the convenient and rapid customs release?

A: The following enterprises can apply to one of several services stipulated in the Circular of the General Administration of Customs and the Ministry of Foreign Trade and Economic Cooperation on Some Issues about the Development of the High and New Technology Industry. 1, The enterprises with good credit standing, lawful operations, strict and standardized administration, no smuggling or regulation violation in half a year, and with sufficient assets or capital for the guarantee of the liabilities for the services of the convenient and rapid customs release. 2, An enterprise with the status of an independent legal entity, engaged in hi-tech industry and its products are on the list of the Export Catalogue of China's New High-tech Products by the Ministry of Science and Technology, the Ministry of Foreign Trade and Economic Cooperation, the Ministry of Finance, the State Administration on Taxation and General Administration of Customs. 3, An enterprise with import and export operation right and registered at the customs. 4, An enterprises with its annual export turnover (including processing trade and defective return after bonded transfer for deep processing) exceeding 100 million US dollars.

Q: What is the maximum maturity of the mortgage loans for goods enjoying duty reduction or exemption?

A: The maximum maturity of the mortgage loans for goods enjoying duty reduction or exemption is one year. In case that a person applies to extend the loans before the expiration, the authorized customs department should re-calculate the taxes and the credit ceiling and go through related formalities. The maturity of the extended loans is one year.

Q: Can goods enjoying duty reduction or exemption be claimed to send out of China?

A: In case one applies to send the goods enjoying duty reduction or exemption out of China within the customs surveillance period, the authorized customs department should verify and approve the written application of the applicant. After the goods are sent out of China, the authorized customs department should dispose the procedures of the duty reduction or exemption.

# **Policies in English Version**

## Content

|                                                                                                                                                           |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| <b>SH02 Circular on Adjusting Relevant Lists of Tentative Provisions on Tax Policies for Import of Major Technical Equipment (partial)</b> .....          | 3  |
| <b>JS01 Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises</b> .....                                        | 4  |
| <b>SZ03 Provisions on Guiding the Orientation of Foreign Investment</b> .....                                                                             | 30 |
| <b>ZJ01 Catalogue of Encouraged Foreign Investment Industries in Zhejiang Province</b> .....                                                              | 36 |
| <b>ZJ02 Provisions of the State Council concerning the encouragement of investments by compatriots from Taiwan</b> .....                                  | 48 |
| <b>ZJ04 Provisions of the State Council concerning the encouragement of Investments by overseas Chinese and Compatriots from HongKong and Macao</b> ..... | 54 |
| <b>ZJ05 Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions</b> .....                                                     | 60 |
| <b>ZJ06 Interim Provisions on the Takeover of Domestic Enterprises by Foreign Inverstors</b> .....                                                        | 69 |
| <b>ZJ07 Preferential Policies of Zhejiang Province</b> .....                                                                                              | 88 |
| <b>ZJ08 Catalogue of Restricted Foreign Investment Industries</b> .....                                                                                   | 92 |
| <b>ZJ09 Catalogue of Prohibited Foreign Investment Industries</b> .....                                                                                   | 96 |
| <b>ZJ10 Industrial Policies of Zhejiang Province</b> .....                                                                                                | 99 |

## **SH02 Circular on Adjusting Relevant Lists of Tentative Provisions on Tax Policies for Import of Major Technical Equipment (partial)**

Cai Guan Shui [2010] No. 17

April 13, 2010

The financial departments (bureaus) and offices of the State Administration of Taxation of all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan, the financial bureau of Xinjiang Production and Construction Corps, the Guangdong branch of the General Administration of Customs, all customs directly under the General Administration of Customs, the financial supervision commissioner's offices of the Ministry of Finance in all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan,

In accordance with the Circular of the Ministry of Finance, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the General Administration of Customs, the State Administration of Taxation, and the National Energy Administration on Adjusting Tax Policies for Import of Major Technical Equipment (Cai Guan Shui [2009] No. 55), in light of the development of related domestic industries, based on the extensive solicitation of opinions of relevant competent departments, trade associations and enterprises, following deliberation and determination, the equipment catalogues and commodity lists attached to the Tentative Provisions on Tax Policies for Import of Major Technical Equipment (hereinafter referred to as the Tentative Provisions) are to be adjusted. The circular is hereby given as below:

Article 1 The Catalog of Major Technical Equipment and Products under State Support (amended in 2010) (see Appendix 1) and List of Key Components and Material Commodities Imported for Key Technical Equipment and Products (amended in 2010) (see Appendix 2) have come into effect as of April 15, 2010.



## **JS01 Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises**

www.jsgs.gov.cn 2004年09月21日 11:34:03

Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises

Preferential Turnover Tax Policy

Items shall be exempt from VAT

Preferential tax policies for agricultural means of production

Preferential VAT policies for part of the products made through multiple utilization of resources

Preferential consumption tax policies for scented soap and vehicle tire

Preferential Tax Policies of EFIs and FEs Income Tax

Taxation at reduced rates

Taxation on enterprise income at 15%

Taxation on enterprise income at 24%

Fixed term tax reductions and exemptions

Two year's exemptions adjoining three year's 50% reduction

Other fixed term tax reductions and exemptions

Tax refund on reinvestment

Comprehensive regional tax incentives

Other tax incentives

Withholding tax

Profit (Dividend)

Interest

Royalty

Rentals

Benefits Received from Transfer of Property

Preferential Turnover Tax Policy

1. Items shall be exempt from VAT:

1. Self-produced agricultural products sold by agricultural producers;
2. Contraceptive medicines and devices;
3. Antique books;
4. Instruments and equipment imported which is directly used in scientific research, experiment and education,
5. Materials and equipment imported from foreign government and international organizations as assistance free of charge;
6. Equipment and machinery required to be imported under contract processing, contract assembly and compensation trade,

7. Articles imported directly by organizations for the disabled for special use by the disabled;
  8. Sale of goods which have been used by the sellers.
- II. Preferential tax policies for agricultural means of production:
1. Following goods are exempted from VAT:
- i. Forage, including large amount unitary forage, mixed forage, compound feed, concentrated forage,
  - ii. Agricultural films;
  - iii. Certain kind of chemical fertilizer;
  - iv. Agricultural pesticides within designated scope produced and sold by pesticide factories,
  - v. Seeds, seedling, chemical fertilizer, pesticide and agriculture machinery marketed by whole sales and retail.
- III. Preferential VAT policies for part of the products made through multiple utilization of resources:
1. The construction building materials, which combined with content of 30% coal gangue, stone coal, powdered coal and furnace slag (not including blast furnace wet slag), should be exempted from VAT.
  2. The gold extracted from liquid waste and offscum should be exempted from VAT.
- IV. Preferential consumption tax policies for low pollution emission vehicles:  
Beginning from Jan. 1st 2000, cars, cross-country vehicles and mini-buses with low pollution emission will be granted with 30% reduction of the consumption tax.
- V. Preferential consumption tax policies for scented soap and vehicle tire:
1. Beginning from Jan. 1st, 2001, scented soap listed in the taxation item of "Skin & Hair Care Product" would be exempted from consumption tax.
  2. Beginning from Jan. 1st, 2001, "radial tire" listed in the vehicle tire taxation item will be exempted from consumption tax. The renovated tire will be free from consumption tax. The consumption tax on the rest of the tires will be levied at 10%.

## Part II Preferential Tax Policies of EFIs and FE Income Tax

### I. Taxation at reduced rates

#### 1. Taxation on enterprise income at 15%

A 15% Enterprise Income Tax rate shall apply to those EFIs located in Special Economic Zones, Foreign Enterprises (hereinafter referred to as FE) with establishments or fixed places in Special Economic Zones engaged in production and business operation, as well as those EFI of production nature which have establishments in Economic and Technological Development Zones.

The Enterprise Income Tax on EFI in Coastal Economic Open Zones, in old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, or other places specified by the State Council, may be imposed at the reduced rate of 15%, provided that the operation activities of those enterprises are centered on power and energy, transportation and communication, harbor

and port, dock and wharf, and other projects inspired by the State Council. The specific rules shall be stipulated by the State Council.

(Section 1, 3 of Article 7, the Tax Law)

The application of 15% reduced Enterprise Income Tax rate mentioned in paragraph 1 of article 7, Tax Law, is limited to incomes procured by enterprises from production and business operation in the respective areas specified in paragraph 1, article 7.

(Section 1 of Article 71, the Detailed Rules)

The Special Economic Zones mentioned in paragraph 1, article 7, refers to those special areas sanctioned by the State Council including Shenzhen, Zhuhai, Shantou, Xiamen, Hainan Island; the Economic Technological Development Zones refers to areas set up in coastal port cities which are under the approval of the State Council.

(Article 69, the Detailed Rules)

The enterprises that may enjoy 15% of the reduced income tax rate, as stipulated in paragraph 3, article 7 of the Income Tax Law, are mainly listed below:

1. EFIs of production nature which have establishments in the old urban districts of the cities where the Coastal Economic Open Zones, Special Economic Zones, the Economic Technological Development Zones are located, and which are engaged in the following projects:

a. Technology intensive or knowledge intensive projects;

b. Projects with foreign investment of \$30 million or more, and with a long period of recovery of investment;

c. Projects engaged in energy, transportation and communication, port constructions

2. Foreign-Chinese Equity Joint Ventures engaged in the construction of ports and docks;

3. Foreign banks, Foreign-Chinese Joint Invested Banks and other financial institutions located in Special Economic Zones or other places approved by the State Council, with the capital provided by foreign investors or operation funds acquired from the headquarters of foreign banks totaling no less than \$10 million; and at the same time with an operation period of ten years or more;

4. EFIs of production nature set up in Pudong New Area, Shanghai; and any EFI engaged in energy exploitation and transportation construction projects such as airports, ports, railways, highways, and electricity power stations;

5. The accredited high technological EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council; or the accredited new technological EFI situated in Beijing New Technology Development and Experiment Zones;

6. Any EFI established in other places specified by the State council and engaged in such projects as encouraged by the State.

Any EFI which meet the criteria set in item 1 of this Article shall, upon the application's having been endorsed by the State Administration of Taxation, be eligible for a reduced income tax rate of 15%.

(Article 73, the Detailed Rules)

2. Taxation on enterprise income at 24%

Any EFI of a production nature situated in the urban district of the cities which boast a Coastal Economic Open Zone, a Special Economic Zone or an Economic and Technology Development Zone shall be eligible for a reduced income tax rate of 24%.

(Section 2 of Article 7, the Tax Law)

The tax objectives enjoying a 24% rate, as stated in paragraph 2, Article 7 of the Income Law, shall only be limited to income derived from production or business operation within the areas specified in paragraph 2, Article 7 of the Income Law.

(Section 2 of Article 71, the Detailed Rules)

The 'Coastal Economic Open Zones' stated in paragraph 2, Article 7 of the Income Law, refers to any coastal city, county, or district sanctioned by the State Council.

(Article 70, the Detailed Rules)

II. Fixed term tax reductions and exemptions

1. Two year's exemptions adjoining three year's 50% reduction

Any EFI of a production nature intended to conduct business in China for at least 10 years shall, from its first profits-making year, be entitled to two year's income tax exemption adjoining three year's 50% reduction. However, such exemptions and reductions shall not apply to those EFI engaged in the exploitation of such natural resources as oil, natural gas, rare and precious metals, since tax policies of these lines shall be formulated separately by the State Council. In addition, it is compulsory for those EFIs which have already enjoyed tax exemptions and reductions to spit out the exact amount if their actual operation period is no more than 10 years.

(Section 1 of Article 8, the Tax Law)

The tax incentives specified in paragraph 1, Article 8 of the Tax Law shall not be put on those EFIs engaged in the exploitation of such natural resources as petroleum, natural gas, rare and precious metals, unless and until other related regulations are made by the State Council.

(Article 78, the Detailed Rules)

Any EFI which meet the qualifications of paragraph 1, Article 8 of the Tax Law, which may enjoy tax exemptions or concessions, shall report its line, main products, operation period, etc to the local competent tax authorities for approval, otherwise its tax incentives shall be denied.

(Section 2 of Article 74, the Detailed Rules)

2. Other fixed term tax reductions and exemptions

Any relevant regulation issued by the State Council prior to the effectiveness of this Law will still hold to the extent that the relevant regulation has provided more attractive tax treatment as of a longer period of exemption or reduction for those EFIs which undertake production and construction projects like energy, communications, harbor, docks etc, or has provided such preferential tax treatment as exemptions and reductions for those EFIs engaged in non-production nature projects.

(Section 2 of Article 8, the Tax Law)

'Any relevant regulation issued by the State Council prior to the effectiveness of this Law' in paragraph 2, Article 8 of the Tax Law covers the following regulations of tax exemptions and reductions decreed by the State Council:

a. Any Chinese-foreign equity joint ventures undertaking port or dock construction with an operation period exceeding 15 years shall, upon its application having been endorsed by the competent tax authorities at the provincial level, from the first year of its making profits, be exempted from enterprise income tax for five consecutive years adjoining another five

years of 50% reduction.

b. Any EFI established in Hainan Special Economic Zone with its operation period no less than 15 years shall, upon its application having been endorsed by Hainan provincial tax authorities, be granted income tax exemption starting from the first profit-making year, for 5 consecutive years adjoining another 5 years of 50% tax reduction, provided that that EFI should fall into the category of undertaking the construction of such infrastructure projects as airports, ports, docks, railways, highways, power stations, coal mines, water conservancy, or in the development and operation of agriculture.

c. Any EFI established in Pudong New District, Shanghai, with its operation period no less than 15 years shall, upon its application having been endorsed by the Shanghai tax authorities, be granted income tax exemption starting from the first profit-making year, for 5 consecutive years adjoining another 5 years of 50% tax reduction, provided that that EFI should fall into the category of undertaking the construction of such energy and communication projects as airports, ports, railways, highways, and power stations.

d. Any EFI of the service sector situated in Special Economic Zones, with its total foreign investment amounting to \$5 million or more, and with its operation period exceeding 10 years shall, upon its application having been endorsed by the competent tax authorities, be granted income tax exemption for the first profit-making year, tagged along with 50% tax reduction for the second and third year.

e. Foreign banks, Foreign-Chinese Joint Invested Banks and other financial institutions located in Special Economic Zones or other places approved by the State Council shall, upon the application having been endorsed by the competent tax authorities, be exempted from income tax for the first profit-making year adjoining another two years of 50% tax reduction, provided that the capital granted by foreign investors or operation funds acquired from the headquarters of foreign banks is no less than \$10 million, and that those financial institutions shall conduct business in China for no less than ten years.

f. Any Chinese-foreign equity joint venture recognized as new and high-technology enterprise and established in new and high-technology industrial development zones approved by the State Council, with its operation period exceeding 10 years shall, upon its application having been endorsed by the competent tax authorities, be eligible for exemption from Enterprise Income Tax for the first and second profit-making years. To those EFIs located in the Special Economic Zones and in the Economic Technology Development Zones, the appropriate tax incentives of those zones shall remain applicable.

g. Any export-oriented EFI shall, after its expiration of exemption or reduction stated in the Tax Law, be entitled to a further 50% reduction on Enterprise Income Tax at a rate specified in the Tax Law, provided that at least 70% of its annual products have been exported. In addition, for those export-oriented EFIs which are situated in the Special Economic Zones, the Economic Technological Development Zones or which have already enjoyed 15% rate and exported 70% of its annual products or more, the Enterprise Income Tax rate shall be further reduced from 15% to 10%.

h. Technological advanced enterprises with foreign investment may, upon the expiration of the Enterprise Income Tax exemption and reduction period as stipulated by the Tax Law, enjoy a further 50% reduction in Enterprise Income Tax for three years based on the rate

stipulated by the Tax Law, provided that they remain technologically advanced enterprises.

i. Other regulations relating to the exemption and reduction of enterprise income tax having been promulgated, or having been approved for promulgation by the State Council. In applying for Enterprise Income Tax exemption or reduction pursuant to the provisions of Item 6, and Item 7, and Item 8 of this Article, any EFI shall submit the relevant certifying documents issued by the competent departments to the local tax authorities for examination and confirmation.

(Article 75, the Detailed Rules)

### III. Tax refund on reinvestment

Foreign investors of any EFI who reinvest directly in the same EFI with his (her) share of profits so as to increase registered capital, or use his share of profits as capital investment to set up other EFIs whose operation period is no less than 5 years shall, upon the investors' application having been approved by the relevant competent tax authorities, be refunded 40% of Income Tax already paid on the reinvestment amount. However, other preferential tax regulations shall be applicable if there exist such regulations issued by the State Council. Furthermore, a foreign investor is bound to repay his (her) refunded tax if he (she) withdraws investment before the expiration of a period of 5 years.

(Article 10, the Tax Law)

#### 1. Prerequisite and qualification for rebate on reinvestment

The expression of 'reinvest directly' mentioned in Article 10, the Tax Law, means that foreign investors of any EFI increase their proportion of registered capital with their share of profits derived from the same EFI or use those profits as capital to set up new EFIs.

In assessing the refundable tax amount in accordance with the provisions of Article 10 of the Tax Law, the said foreign investor shall provide supporting documents certifying the attributable year in which the profits were reinvested; where no supporting documents can be provided, the local tax authorities shall determine the year using appropriate methods.

Foreign investors shall, within one year from the date the funds are actually invested, apply to the original tax collecting authorities for tax refund and submit a document certifying the amount and duration of the added or new capital investment.

(Article 80, the Detailed Rules)

The 'period of operation' in Article 10 of the Tax Law shall be counted according to the following principals: the period of operation shall be counted from the date when the reinvestment funds are actually invested, if foreign investors in any EFI directly reinvest the profits allocated from that EFI into the same enterprise or other EFIs who have already started production or operations (including trial production, trial operation); however, the period of operation shall be counted from the date when the new enterprise starts production or operation (including trial production or operation), if the foreign investors reinvest in establishing new EFIs.

(GUO SHUI FA NO. 009 [1993])

Regarding reinvesting in China with the profits obtained from his EFI, a foreign investor must first use the said profits to make up his insufficient legal capital, if such is the case; therefore, only the rest of that profit in the form of reinvestment shall be eligible for tax refund according to relevant regulations.

(GUO SHUI HAN FA NO. 304 [1990])

Any foreign investor in EFIs shall not enjoy such incentives as tax refund if the profits with which he reinvests are derived from liquidation.

(GUO SHUI FA NO. 009 [1993])

Where a foreign partner of any Chinese-foreign equity joint venture first remits his share of profits outside China, saves it in foreign banks or uses it as working capital for trade, and then reinvests it in Chinese-foreign equity joint venture, the provisions for the tax refund on reinvestment shall not apply.

(CAI SHUI WAI ZI NO. 82)

#### 2. Repayment of 60% of tax refund

Any foreign investor making reinvestment so as to establish and expand export-oriented or technologically advanced enterprises shall repay 60% of tax refund if he fails to meet the standards of export-oriented enterprises in three years after starting production or operation; or if he fails to be recognized as technologically advanced enterprises within the said three years.

(Section 3 of Article 81, the Detailed Rules)

#### 3. Other regulations concerning tax refund

EFIs whose total shares are held by foreign investors, and who are totally engaged in investment business shall be treated as foreign investors, thus enjoying the incentives of tax refund specified in the Detailed Rules and other relevant regulations.

(CAI SHUI ZI NO. 083)

The preferential regulations regarding a tax refund on reinvestment stipulated in the Tax Law and in the Detailed Rules only apply to foreign investors. EFIs in China who invest in other places as investors are not foreign investors. The preferential regulations regarding a tax refund on the reinvestment stipulated in the Tax Law and the Detailed Rules for foreign investors only apply to EFIs whose total share are held by foreign investors and who are totally engaged in investment business, since such EFIs may be regarded as foreign investors according to the provisions of Section 2 in Article 1 of CAI SHUI ZI [083] 1994 "Notice on Several Taxation Problems Regarding the Enterprises with Foreign Investment Engaged in Investment Business" issued by the Ministry of Finance and the State Administration of Taxation. Apart from that, no other EFIs shall be granted tax refund on reinvestment specified in the Tax Law and its Detailed Rules.

(GUO SHUI HAN FA NO. 154 [1995])

#### IV. Comprehensive regional tax incentives

##### 1. Special Economic Zones, Economic Technological Development Zones and Coastal Open-up Cities

###### a. Special Economic Zones (SEC)

Income Tax shall be collected at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in SEC obtained by foreign investors who have no establishments in China except where tax exemption are carried out according to tax laws. The SEZ People's Governments shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or who transfer advanced know-how.

###### b. Economic Technological Development Zones (ETDZ)

Income Tax shall be collected at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in ETDZ obtained by foreign investors who have no establishments in China except where tax exemption are carried out according to tax laws. The People's Government of the city where ETDZ is located shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or who transfer advanced know-how.

c. Coastal Open-up Cities (COC)

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in OLD URBAN DISTRICTS obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of the city shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(GUO FA NO. 161[1984])

2. Coastal Open Areas

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in Economic Open Areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of the provinces, autonomous regions and municipalities shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(CAI SHUI ZI NO. 091 [1988])

3. New and High technology Industrial Development Zones

According to provisions specified in Section 2 of Article 7, Section 1 of Article 8, the Tax Law, and Item 5 & 6 in Section 1 of Article 75, the Detailed Rules, those tax incentives applied to New-and-High Technology EFIs (NHTEFI) can be further expounded as the following:

a. Those new-and-high technology EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council, or the new technological EFIs situated in Beijing New Technology Development and Experiment Zones, shall, from the date when their status as NHTEFI have been recognized, be levied on income tax at a reduced rate of 15%.

b. Aside from New-and-High Technology set up in Beijing New Technology Development and Experiment Zones (BNTDEZ), any other New-and-High Technology EFI of production nature intended to conduct business in China for at least 10 years shall, from its first profit-making year, be entitled to two year's income tax exemption adjoining three year's 50% reduction.

c. Where the tax year in which an EFI is recognized as New-and-High Technology EFI comes after its profit-making year, or where the tax year in which an EFI located in BNTDEZ is recognized as New-and-High Technology EFI comes after its starting operation year, the remaining tax exemption period (if any) shall still take hold. However, if the time when an EFI is recognized as New-and-High Technology EFI comes after the



expiration of tax exemption period, no relevant tax incentives shall be available.

(GUO SHUI FA NO. 151 [1994])

#### 4. Tourist and Holiday Resort Areas

Enterprise Income Tax shall be levied at the reduced rate of 24% for EFIs established in these areas; of which the production EFIs scheduled for an operating period no less than 10 years shall, from the year it begins to make profit, be exempted from Income Tax for the first and second years and allowed a 50% reduction of Income Tax for the third to the fifth years.

Tax incentives already implemented in the region where the national tourist holiday resort area is located shall be continued in the national tourist holiday resort area.

(GUO SHUI FA NO. 248 [1992])

#### 5. Provincial Capital and Coastal Open-up Cities

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in the said city areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Municipal Government shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(GUO SHUI FA NO. 218 [1992])

#### 6. Suzhou Industrial Park

a. According to the provisions in 'Reply to the Relevant Questions About Development and Construction of Suzhou Industrial Park' (Document No. 9 [1994]) made by the State Council (hereinafter referred to as 'Reply'), EFIs engaged in construction projects for infrastructure facilities regarding communication and energy resources such as the construction of ports, docks, railways, highways and power stations shall enjoy a reduced income tax rate of 15% according to Section 1 of Article 7, the Tax Law. The enterprise income tax shall be levied at the reduced rate of 15% on EFIs who are engaged in the above projects and who operate outside the Suzhou Industrial Park but still in Suzhou city, provided the said EFIs conform to the provisions in Item 1 of Section 1 in Article 73, the Detailed Rules and at the same time get the approval from the State Administration of Taxation.

b. On the basis of the existing tax incentives policies of the State, Chinese-foreign equity joint ventures engaged in construction of ports and docks in Suzhou city shall enjoy exemption from Enterprise Income Tax for 5 years from the first profit making year and a 50% reduction of the Enterprise Income Tax for the following 5 years according to Item 1 of Section 1 in Article 75, the Detailed Rules. The EFIs engaged in construction projects regarding communication, energy resources and infrastructure such as railways, highways, power stations and the accessory facilities in Suzhou Industrial Park shall enjoy a fixed term tax exemption and reduction of Income Tax according to Section 1 of Article 8, the Tax Law. However, for the very large scale and special projects which need more tax incentives, the relevant enterprise may file a report to the competent taxation authorities for approval according to the provisions in Article 3 of the Reply.

c. Chinese-Singapore Equity Development Company responsible for the development

and construction of Suzhou Industrial Park and mainly engaged in the construction of infrastructure and public facilities in the Park may enjoy tax incentives applying to the production EFIs established in Economic and Technological Development Zones.

(GUO SHUI HAN FA NO. 128 [1995])

#### 7. Bonded Areas

The Enterprise Income Tax shall be levied at the reduced rate of 15% for production EFIs engaged in processing products for export in the bonded areas.

(GUO SHUI HAN FA NO. 1123 [1991])

To those production EFIs in Zhangjiagang Bonded Area (ZBA) who process products for export purposes, the reduced rate of 15% shall be applicable.

No local income tax shall be levied on EFIs located in ZBA.

Any production EFIs in ZBA scheduled for an operating period no less than 10 years shall, from the year it begins to make profit, be exempted from Income Tax for the first and second years and allowed a 50% reduction of Income Tax for the third to the fifth years. In addition, the export-oriented EFI shall, after its expiration of exemption and reduction period, be entitled to a more preferential income tax rate of 10%, provided that at least 70% of its annual products have been exported. And those technological advanced enterprises with foreign investment may, upon the expiration of the Enterprise Income Tax exemption and reduction period as stipulated by the Tax Law, enjoy a further reduced rate of 10% on Enterprise Income Tax for three years, provided that they remain technologically advanced enterprises.

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in the said city areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of Jiangsu Province shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

Foreign investors of any EFI who reinvest directly in the same EFI with his (her) share of profits so as to increase registered capital, or use his share of profits as capital investment to set up other EFIs whose operation period is no less than 5 years shall, upon the investors' application having been approved by the relevant competent tax authorities, be rebated 40% of Income Tax already paid on the reinvestment amount. Furthermore, if the said profits are reinvested in order to establish or expand export-oriented enterprises and high-tech enterprises, all the paid tax for the said profits shall be refunded.

(SU SHUI WAI FA NO. 020 [1993])

#### 8. Kunshan Economic and Technology Development Zone (KETDZ)

Any EFI established in Kunshan Economic and Technology Development Zone shall be levied at the reduced rate of 15% on its Enterprise Income Tax.

Aside from the above tax incentive, no other preferential tax policies applying to Economic and Technology Development Zones in Coastal Open Cities are available for EFIs established in Kunshan Economic and Technology Development Zone.

(HUO SHUI HAN FA NO. 424 [1992])

#### IV. Other tax incentives

1. Tax incentives concerning agriculture, forestry, animal husbandry, and tax incentives in remote undeveloped areas

EFIs engaged in agriculture, forestry and animal husbandry, or established in remote undeveloped areas may, upon the enterprises' applications having been approved by the competent tax authorities under the State Council, be allowed a 15% to 30% reduction of the amount of Income Tax payable for a period of 10 years following the expiration of the period for tax exemption or reduction provided for in the previous provisions.

(Section 3 of Article 8, the Tax Law)

2. Tax exemption on long-term investment

Where an EFI invests in another enterprise within China, the profits (dividends) obtained from the enterprise receiving the investment may be excluded from the taxable income of that EFI; however, expenses and losses incurred in such above-mentioned investments shall not be deducted from the taxable income of that EFI.

(Article 18, the Detailed Rules)

3. Tax incentives for two kinds of enterprises

As stipulated in Section 8 of Article 1, the Detailed Rules, any technologically advanced EFI may, upon the expiration of tax exemption & reduction on Enterprise Income, be granted a further 50% reduction on Enterprise Income Tax for another three consecutive years, provided that the EFI remains to be technologically advanced enterprise after the said expiration; however, if the half reduced rate falls under 10%, the effective tax rate shall still be 10%, according to the provisions in Section 3, Article 3 of "Implementation of the Tax Incentives Regarding 'Regulations on Encouraging Investment of Foreign Enterprise' by the State Council".

(GUO SHUI FA NO. 165 [1991])

As stipulated in Section 7 of Article 75, the Detailed Rules, any export-oriented EFI may, upon the expiration of tax exemption & reduction as provided in the Tax Law, be granted a further 50% reduction in Enterprise Income Tax based on the rate listed in the Tax Law, provided that the said EFI export no less than 70% of its annual products. As regards the determination of what makes up the total value of exported goods, some specific rules have been laid down in "Implementation Regulation of the Ministry of Foreign Trade and Economic Cooperation on Recognition and Confirmation of Export-oriented EFIs and Technologically Advanced EFIs" promulgated on January, 26, 1995, by the Ministry of Foreign Trade and Economic Cooperation. Furthermore, the SAT (State Administration of Taxation) shares the same view in this respect, which indicates that the total value of goods exported by export-oriented EFIs shall be composed of the following parts:

1. Value of goods exported by the EFI itself;
2. Value of goods exported by Imp. & Exp. Corporations as agency of the EFI;
3. Value of the goods exported by Imp. & Exp. Corporations buying those goods from the EFI.
4. Expenses of processing materials supplied by clients outside China;
5. Value of goods exported in such approaches as recognized by the Ministry of Foreign Trade and Economic Cooperation.

In computation of the proportion of exported goods to total output of any EFI, some reference can be drawn upon figures in the Performance Statements which are inspected

and confirmed by the Ministry of Foreign Trade and Economic Cooperation.  
(GUO SHUI HAN FA NO. 645 [1995])

1. Any EFI undertaking port-and-docks-related projects shall, upon the approval of its application, be granted relevant tax incentives for revenues derived from such special activities as loading or unloading of cargo, transshipment, deposit, storage, container assembling or dismantling, transportation within port areas, fixing or maintenance of ships within the docks etc, since such revenues can be regarded as business or operation revenues of the said EFI. However, activities like goods delivery outside ports, ships maintenance outside docks, offshore rescue, productions on the basis of utilization of waste or remnant materials shall not be considered as business or operation activities of the foregoing EFI, hence the corresponding revenues shall be given no tax incentives and shall be calculated and filed separately as required by Article 2 of this Circular.

2. According to relevant provisions in the Detailed Rules, tax incentives shall be given to a port-and-dock-related EFI conducting special activities as specified above, only after it submits its application for approval to the competent tax authorities at provincial level or the State Administration of Taxation (SAT); no tax offices in any city or county are granted the right of sanctioning such applications.

3. In pursuance of Article 2 of this Circular, field tax offices should submit to competent provincial tax authorities for approval the enterprise's methods of discriminating between revenues & costs from common activities and revenues & costs derived from special activities.

4. The gamut of documents presented to tax authorities by an EFI which requires tax incentives for revenues from special activities is as follows:

- a. Enterprise's application;
- b. Business license,
- c. Contract or business charter,
- d. Certificate for undertaking special activities,
- e. Capital assessment reports by Chinese Certified Public Accountant.

(SU GUO SHUI FA NO. 440 [1995])

#### 4. Deduction of research & development (R&D) expenses from taxable income

Recent resolution made by the State Council indicates that any EFI's actual incurred R&D expenses shall, upon the application having been endorsed by competent tax authorities, be allowed a 50% deduction from its annual taxable income, provided that the said EFI's annual R&D expenses go up by 10% or more. Some specific rules concerning implementation of the corresponding tax incentives are put as follows:

1. The filing period limit, checking or inspecting procedure and the approval rights shall be regulated, after having taken in account of the local pragmatic situation, by the provincial competent tax authorities with reference to the current tax laws & regulations as well as this Circular, and shall be further reported to the State Administration of Taxation for future reference.

The R&D expenses mentioned in the foregoing provision include: new product designing fee or art and craft process designing fee arising from developing new products, new technology, and new manufacturing process; equipment performance test fee; material or semi-products developing fee; expenses on purchasing technological books and

reference materials; periodical trial fee outside the scope of State Strategy Planning; salaries or wages of research workers; depreciation of research equipment; other expenses relevant to the research and development of new products and technology. However costs of buying technology or its utilization rights from another enterprise, as well as costs for maintenance and after-sales service of resulted technology shall fall outside the scope of R&D expenses.

2. Where an EFI's annual R&D expenses have increased by 10% or more over the previous year, and the 50% of the said R&D exceeds the amount of its annual taxable income, only the overlapped amount shall be deducted, while the excess amount is disallowed deduction in that year and the year that comes after.

In case that an EFI's annual taxable income is zero resulting from the profits being carried over to offset its previous year's losses, as permitted by Article 11, the Tax Law, the annual R&D expenses deduction shall not be applicable.

3. This Circular shall also apply for the R&D expenses arising from business activities or operations of any Foreign Enterprises with permanent establishment or fixed places in China.

4. This Circular shall be effective as of January 1st, 2000.

(GUO SHUI FA NO. 173 [1999])

5. Income tax credit for investment with purchased domestic equipment

To carry out the CCCCP\* and the State Council's guidelines of attracting foreign investment and encouraging EFIs and Foreign Enterprises to utilize domestic equipment, this regulation addressing some problems on income tax credit for investment with purchased domestic equipment has been promulgated and made public as follows:

1. For any EFI established in China, 40% of the investment with purchased domestic equipment may be credited from the annual increased parts of income tax on the said EFI when purchasing domestic equipment, provided that three requirements are satisfied:

a. The value of the purchased domestic equipment must be within the total amount of investment;

b. The purchased domestic equipment must be in the list of "encouraged category" or "restricted category (B)" of the "Industry Guidance Catalogue for Foreign Investment", as stipulated in "Circular of the State Council on Adjustment of Tax Policies for Imported Equipment"

(GUO FA NO 37 [1997])

c. The purchased domestic equipment must not be in the list of catalogue of "Imported Commodities for Foreign Invested Projects without Tax Exemption" as stipulated in the Circular NO 37 issued by the State Council.

This regulation shall also be applicable to Foreign Enterprises with permanent establishment or fixed places in China.

Any purchased domestic equipment whose value is beyond the total amount of investment, shall also enjoy 40% credit from the EFI's annual increased parts of income tax provided that the said equipment is used for the following purposes:

To increase economic profits; raise product quality; diversify products categories; promote update of products; lower costs and energy consumption; utilize comprehensively the natural resources; dispose or handle of wastes; enhance work security and safety; modify

the present facilities and production process with advanced and appropriate new technology, new process, new equipment and new materials.

2. The purchased domestic equipment eligible for tax credit refers to any equipment produced domestically for the purpose of business activities and operations, whereas equipment imported from abroad or manufactured through a vehicle of "SAN LAI YI BU" shall not be legally recognized as purchased domestic equipment.

3. Where any EFI or FI is entitled to tax credit from its annual income as a result of investment with domestic equipment, the amount of its annual increased taxable income shall be the maximum credit threshold. For those EFIs whose annual increased taxable income are insufficient for the said credit, the non-credited amount can be deferred to subsequent years for later credit, provided that there is an annual increase in taxable income. However, the credit period shall be no more than 5 years.

In addition, any EFI or FI eligible for tax reductions and exemptions, as stipulated in tax laws or regulations promulgated by the Standing Committee of People's Congress, the People's Congress, and the State Council, shall, during its tax exemption and reduction period, be granted an appropriate extension of credit period with a maximum threshold of 7 years.

4. When applying for income tax credit on investment with domestic purchased equipment, any EFI or FI shall present the competent tax authorities with invoices of domestic purchased equipment and other relevant vouchers.

5. The original value of any domestic equipment purchased by an EFI or FI shall not include the refunded amount of Value Added Tax.

6. When computing taxable income, the value of purchased domestic equipment, part of which is to be credited, can still be depreciated on the basis of its original value.

7. In case that an EFI or FI leases or sells out the domestic equipment within 5 years from the date it is purchased, the said EFI or FI shall repaid the credited amount of enterprise income tax.

8. This regulation shall be effective as of July 1st, 1999. The detailed compliance rules shall be regulated by the State Administration of Taxation.

6. Preferential tax policies for development of software industry and integrated circuit industry

#### Article 1. Tax incentives for software makers

a. Beginning from June 24th, 2000 to the end of 2010, the self-developed & self-manufactured software products sold by any general VAT taxpayer shall, upon the VAT having been levied at the legal rate of 17%, be granted VAT refund at a rate of 14%. However, the amount of VAT refunded shall only be used for the purpose of developing new software products or expanding business activities, and thus no enterprise income tax will be imposed on that amount since it is not considered as part of taxable income of the said taxpayer.

b. Enterprises newly established in China shall, upon having been recognized as software makers, be entitled to an income tax exemption, starting from its first profit-making year, for two years, and then be further granted a 50% reduction for the next 3 consecutive years.

c. In any tax year, those key software makers listed in the National Strategic Layout

Projects who in the mean time fail to be treated with income tax exemptions, shall be levied at a reduced rate of 10% on enterprise income tax.

d. Remuneration of employees in any software enterprise and the training expenses can be deducted from the enterprise's taxable income on the basis of their actual incurred amount.

e. Any purchased software whose value amounts to the standard value of fixed assets or intangible assets, shall be treated and accounted as fixed assets or intangible assets. For domestic enterprises buying this software, this accounting method shall be endorsed by the corresponding competent authorities, whereas EFIs whose total investment exceeds \$30 million, such approval shall go to the State Administration of Taxation. In addition, for those EFIs whose total investment is less than \$30 million, the depreciation period or amortization period for the purchased software may be cut short after being approved by competent tax authorities. However the minimum depreciation or amortization period shall be 2 years.

f. Enterprises engaged in design of integrated circuit shall be taxed as software makers, thus enjoying relevant tax incentives for software industry.

The 'design of integrated circuit' refers to the process during which the design requirements of system, logic, and properties are converted into concrete physical process.

#### Article 2. Tax incentives for integrated circuit industry

a. Starting from July 24th, 2000 to the end of 2010, the self-manufactured integrated circuit products (including single transistor silicon unit) sold by any general VAT taxpayer shall, upon the VAT having been levied at the legal rate of 17%, be granted VAT refund at a rate of 11%. However, the amount of VAT refunded shall only be used for the purpose of developing new integrated circuit products or expanding business activities, and thus no enterprise income tax shall be imposed on that amount since it is not considered as part of taxable income of the said taxpayer.

The 'integrated circuit products' refers to those products whose electronic components are integrated into a placard of semi-transistor or a ceramics plane, enclosed in certain bulks so as to perform specific electronic or systematic functions.

For those integrated circuit products exported or sold to other export-oriented enterprises for export purpose, the VAT refund incentives shall not be applicable.

b. For the manufacture equipment of any domestic integrated circuit enterprise, its depreciation period can be reduced after being approved by the competent tax authorities, whereas the approval of manufacture equipment of any EFI with total investment no less than \$30 million goes to the State Administration of Taxation. In addition, even for EFIs whose investment is no more than \$30 million, the depreciation period may still be cut short after being endorsed by the competent tax authorities. However, the minimum depreciation period shall be 3 years.

c. For integrated circuit manufacturers whose total investment exceeds 8 billion RMB or whose integrated circuit line width is less than 0.25  $\mu\text{m}$ , the following extra tax incentives shall be available:

i. Sharing the same tax incentives for investment in energy and transportation and communication projects;

ii. The imported raw materials for production purpose shall be exempted from custom duty and VAT at imported stage.

The Custom shall facilitate the declaration process for those integrated circuit enterprises which satisfy the above conditions.

d. Where a recognized integrated circuit enterprise introduces integrated circuit technology, sets of production equipment or imports special equipment and apparatus for integrated circuit, no tariff or VAT at imported stage shall be imposed; however, this exemption shall not be applicable to those technology and equipment listed in "Imported Commodities for Foreign Invested Projects without Tax Exemption" or "Imported Commodities for Domestic Invested Projects without Tax Exemption" (GUO FA NO. 37 [1997]) promulgated by the State Council.

#### Article 3. Tax administration for software and integrated circuit industries

a. The standard for the determination of software makers shall be set jointly by the Ministry of Information Industry, the Ministry of Science & Technology, the State Administration of Taxation. Relevant tax incentives shall be available for those software makers whose names are officially publicized in the list after the said software makers' having been nominated by the Association of Software Industry at city's level and jointly approved by the Departments of Information Industry and the Competent Tax Authorities at the same level.

The list of key software makers within the scope of National Strategic Layout Projects shall be jointly drawn up by the National Committee of Economic Planning & Programming, the Ministry of Information Industry, the Ministry of Foreign Trade & Economic Cooperation as well as the State Administration of Taxation.

b. The integrated circuit enterprise, upon its status having been recognized by the competent government departments and approved by the tax authorities at the same level, shall be treated with corresponding tax incentives.

The list of integrated circuit products free of tax, as specified in Section 3, Article 2 of this Regulation shall firstly and jointly be drawn up by the Ministry of Information Industry, the National Committee of Economic Planning & Programming, the Ministry of Foreign Trade & Economic Cooperation as well as the General Custom, then submitted to the State Council for final approval.

c. The recognition and administration of integrated circuit enterprises shall follow the same procedure as that of software makers.

d. All the software makers and integrated circuit enterprises shall undergo an annual test, those who fail the test shall forfeit the status of software makers or integrated circuit enterprises, thus deprived of the relevant tax incentives.

The competent Custom House should be immediately informed as soon as a software maker or integrated circuit is stripped of its tax incentive status.

Other detailed rules for the administration of software makers and integrated circuit enterprises shall be regulated in the future.

July 1st, 2000 shall be the effective date for Articles of this Regulation where no effective date is specified. And this Regulation shall also override any previous relevant regulations in which there are different provisions.

(CAI SHUI ZI NO. 25 [2000])



#### V. Concessions and exemptions on local income tax

For EFIs engaged in industries or projects which are encouraged by the State, governments at the provincial level are authorized to decide whether or not, as the case may be, to give those EFIs concessions or exemptions on local income tax.

(Article 9, the Tax Law)

#### Regulation of Jiangsu Province

##### Concerning Concessions and Exemptions on Local Income Tax for Enterprises with Foreign Investment

Article 1. This regulation is formulated in accordance with the specific conditions of Jiangsu Province and provisions in Article 6 & 9 of the Tax Law.

Article 2. Any EFI established in Jiangsu shall abide by this regulation in order to enjoy tax reductions and exemptions on its local income.

Article 3. EFIs of production nature shall be free of local income tax during the period of 'two year exemption adjoining three year 50% reduction'

Article 4. Any EFI of production nature which is also recognized as an export-oriented enterprise shall, upon the expiration of exemption on local income tax specified in Article 3 of this regulation, be further exempted from local income tax, provided that the said EFI exports products exceeding 50% of its annual output.

Article 5. Any EFI of production nature which is also a technologically advanced enterprise shall, upon the expiration of exemption on local income tax specified in Article 3 of this regulation, be further exempted from local income tax for another three years.

Article 6. EFIs levied at a reduced rate of 15%, as stipulated in the Tax Law, shall be free of local income tax, provided that those EFIs are of the following types:

1. EFIs of production nature established in the Economic Technological Development Zones.
2. EFIs of production nature which have establishments in the old urban districts of the cities where the Coastal Economic Open Zones, the Economic Technological Development Zones are located, and which are engaged in the following projects:
  - a. Technology-concentrated or knowledge-concentrated projects;
  - b. Projects with foreign investment of \$30 million or more, and with a long period of recovery of investment;
  - c. Projects engaged in energy, transportation and communication, port constructions
3. Chinese-foreign equity joint ventures engaged in the construction of ports or docks.
4. The recognized high technological EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council.
5. Any EFI established in other places specified by the State Council and engaged in such projects as encouraged by the State.

Article 7. No local income tax shall be levied on EFIs situated in Development Zones, New Industry Zones or Industry Villages established under the approval of governments at the provincial level.

Article 8. The final say or interpretation of this regulation goes to the competent tax authorities at the provincial level.

Article 9. This regulation, which enters into force from the date it gets promulgated, shall override any previous regulation containing different provisions on the exemptions of local

income tax.

VI. The gamut of EFIs of production nature

'EFIs of production nature' in Section 1 and 2 of Article 7 and Section 1 of Article 8, the Tax Law, refers to the EFIs engaged in the following industries:

- a. Machine building and electronic industries;
- b. Energy industries (not including oil and natural gas exploitation);
- c. Metallurgical, chemical and building material industries;
- d. Light, textile and packaging industries;
- e. Medical apparatus and pharmaceutical industries;
- f. Agriculture, forestry, animal husbandry, fishery and water conservancy.
- g. Construction industry;
- h. Communication and transportation industries (not including passenger transportation);
- i. Development of science and technology, geological survey and industrial information consultancy that directly serve production and maintenance and repair service for production equipment and precision instruments;
- j. Other industries that are recognized by the responsible department for taxation affairs under the State council.

(Article 72, the Detailed Rules)

According to Section 10 of Article 72, the Detailed Rules, 'other industries' recognized as EFIs of production nature can be further expounded as the following:

EFIs professionally engaged in the following businesses may be recognized as production enterprises with foreign investment:

- a. Those engaged in engineering design and in providing labor services (including consultation for such projects as construction, installation and assembling);

Consultation includes technological assistance and guidance for the improvement of existing productive technology used for projects or used in enterprises, for the improvement of business administration, for selection of technologies and for improvement of the function, efficiency and quality etc. of the existing manufacturing equipment or products of the enterprise;

- b. Those engaged in feeding, aquaculture (including aquatic farming), farming (including flowers raising), raising poultry, livestock, dogs and cats etc.;
- c. Those engaged in scientific research and development of manufacturing technology;
- d. Those engaged in directly providing users with warehousing and transport services with their own transport vehicles and storage facilities.

1. EFIs professionally engaged in the following business shall not be regarded as production enterprises with foreign investment;

- a. Those engaged in indoor or outdoor preparation and decoration, or installation and set up of indoor appliance;
- b. Those engaged in advertisements, card and picture making as well as book and magazine issuing;
- c. Those engaged in food processing, mainly for sale at their own canteen or at their store front;
- d. Those engaged in the maintenance and repair of domestic appliances and repair of articles for daily use.

2. 'Maintenance and repair of production equipment and precision instruments' mentioned in Item 9 of Section 1 in Article 72, the Detailed Rules, does not include the maintenance and repair of vehicles, electrical appliances, computer monitoring systems, ordinary instruments and ordinary meters.

(GUO SHUI FA NO.109 [1992])

EFIs particularly engaged in the development and management of real estate, and in the sale of residence buildings, do not belong to production enterprise with foreign investment, thus no tax incentives are applicable.

(GUO SHUI HAN FA NO.505 [1990])

Regulations on Determining Production Enterprises with Foreign Investment

1. The development of science and technology, geological surveys and industrial consultations directly serving production refer to: such development whose result may directly constitute technology for manufacturing products, or directly constitute technology for management of the flow of production; such survey whose data may be directly used for development and utilization of all kinds of natural resources; and consultations and software development which are carried out specifically for the utilization of technology or for the development and utilization of natural resources. However, the development, surveys and consultations mentioned above do not include such services provided to various enterprises as accounting, auditing, legal services, assets appraisals, market information collecting and brokerage etc. as well as computer software development not serving technology or development and utilization of resources as mentioned above.

2. All EFIs, particularly engaged in sales of goods made from purchased goods in a simple way, e.g. the purchased goods are assembled, packaged, cleaned, selected or organized, etc. belong to those engaged in sales, if the goods on sale remain the same in shape, function and composition as and when they are purchased. Therefore enterprises such as the following shall not be recognized as production enterprises with foreign investment: enterprises which sell goods simply repaired with imported or purchased sets of appliances or equipment and parts; enterprises engaged in the sales of various purchased beverage and foods, which are simply bottled and packed; and the trade providing such specific services as bottling and packaging.

If enterprises with foreign investment, previously recognized as EFIs, do not conform to the principle of this Notice or if the taxation authorities find it difficult to make decisions in the future, they shall report the case to the State Administration of Taxation, who shall give an official written reply after examination and verification of the case.

(CAI SHUI ZI NO.051 [1994])

An investment company engaged in the investment business and other businesses related to investment (including services such as management, training, agency, etc. for the enterprise receiving the investment), according to the relevant laws and regulations, is not a production enterprise as stipulated in Article 7 and Article 8, the Tax Law, and in Article 72, the Detailed Rules, hence in this case no tax incentives regarding production enterprises with foreign investment shall be applicable.

(CAI SHUI ZI NO. 083 [1995])

The EFIs engaged in transport activities, as mentioned in Item 8 of Section 1 in Article 72 of the Detailed Rules, include those engaged in the house moving transport business, but

does not include those engaged in the letter delivery business.

(GUO SHUI HAN FA NO. 383 [1994])

On the matter of how EFIs concurrently engaged in production and non-production types business, shall enjoy tax incentives

1. EFIs whose business scope as defined in its business license does not cover production, shall not be taken as production enterprises to enjoy relevant tax incentives, whatever proportion the enterprise's production business may take in its actual operation.

2. The following tax incentives shall be granted to EFIs whose business scope as defined in the business license covers both production business and non-production business, or whose business scope as defined in the business license only covers the production business, but, who actually also conducts non-production business:

a. In the tax exemption and reduction period counted from the first profit making year of the enterprise according to the provisions in Article 8 of the Tax Law, the EFIs engaged in both production and non-production business may apply to the competent tax authorities in the year when the EFI's income from production business is over 50% of its total business income, to enjoy the corresponding tax exemption and reduction for the year, after the examination and verification by the competent tax authorities; the EFI shall not enjoy the corresponding tax exemption and reduction if its income from production business is less than 50% of the total business income for that year.

b. The EFIs engaged both in production and non-production businesses and established in the areas where tax is levied at the reduced rate according to Article 7, the Tax Law, and the relevant regulations by the State Council, shall enjoy the tax reductions starting with the first year when income from production exceeds 50% of the total income.

(GUO SHUI FA NO. 209 [1994])

The EFIs engaged in specifically in land leveling business for land development and house construction may be regarded as building enterprises defined in Item 7 of Section 2 in Article 72, the Detailed Rules, thus enjoying tax incentives applying to EFIs of production nature.

(GUO SHUI HAN FA NO. 388 [1994])

The so called 'EFIs particularly engaged in indoor and outdoor preparation and decoration, or installation and setting up of indoor appliances who shall not be regarded as production EFIs include:

a. Enterprises engaged in installation of lifts and escalators;

b. Enterprises engaged in preparation and installation of doors and windows etc. for buildings and structures.

(GUO SHUI HAN FA NO. 389 [1994])

EFIs particularly engaged in the development and management of real estate, do not belong to production enterprises with foreign investment as defined in Article 7 and Article 8 of the Tax Law, and they shall not enjoy the tax incentives for production enterprises with foreign investment.

(GUO SHUI FA NO. 153 [1995])

IV. Withholding Income Tax

### 1. Profit (Dividend)

'Profit' mentioned in Article 19 of the Tax Law refers to income allocated according to the ratio of investment and shares and other non-debt profit sharing rights.

(Article 60, the Detailed Rules)

Profits derived by a foreign investor from an enterprise with foreign investment shall be exempt from Income Tax.

(Article 19, the Tax Law)

'Profit derived by a foreign investor from an enterprise with foreign investment' as referenced in Paragraph 3 Item 1, Article 19 of Tax Law refers to the profit made by an enterprise with foreign investment after deduction of the payment of Income Tax or reduced Income Tax, or the profit which is exempted from Income Tax, in accordance with the stipulations of the Tax Law.

(Article 63, the Detailed Rules)

Income Tax shall not be collected on the dividends and extra dividends allocated to foreign investors from the profits made by enterprises with foreign investment or those allocated to foreign individuals by Chinese-foreign equity joint ventures according to the provisions of Article 19 of the Tax Law and Section 2 of Article 5 of the Detailed Rules.

Enterprise Income Tax and Individual Income Tax shall not be levied, provisionally, on income from dividends (extra dividends) allocated to foreign enterprises and foreign individuals who have B shares and China's offshore shares by enterprises in China issuing those shares.

(GUO SHUI FA No.045 [1993])

### 2. Interest

#### (1).Scope of Interest

Interest refers to the following income received by foreign enterprises which have no establishments or sites in China: interest derived within China such as on deposits or loans, interest on bonds, interest on other provisional payments and deferred payments.

(Item 2 of Article 6, the Detailed Rules)

'Arrangement fee', 'assumption fee' and 'proxy fee' in loan agreements, which occurred with the loan business, should be treated as interest and taxable income.

(CAI SHUI WAI ZI No.264 [1985])

According to the concerning items of international tax agreements and Article 19 of the Tax Law, interest paid by branches of foreign banks when getting loans from head banks or other financial institutions belongs to the interest derived from China by foreign banks and other financial institutions. Therefore, Income Tax on the interest shall be withheld by the branches of foreign banks from each interest payment.

(GUO SHUI FA No.123 [1997])

Clarification is given as follows regarding the guarantee income tax:

A. Where a foreign enterprise has no established organization or site in China but derives guarantee income from sources within China, or where it has such established organizations or sites within China but its guarantee income is not really connected with those organizations or sites, such an enterprise shall pay Income Tax on that income according to the Article 19 of the Tax Law.

Guarantee income derived from China mentioned above refers to the guarantee fees paid

by enterprises, institutions or individuals in China who received guarantee from enterprises outside China in economic activities such as credit, transaction, goods transportation, process, leasing, project undertaking, etc..

B. The tax rate of guarantee income should be executed according to the Tax Law, concerning regulations, set or restricted tax rate of interest income stipulated in tax agreements.

C. The notification shall enter into force from March 1, 1998. As for those agreements signed before the notification, tax of the guarantee fees occurred and paid afterwards shall be exempted.

(CAI SHUI ZI No.1 [1998])

#### (2). Tax Deduction & Exemption of Income from Interest

Income from interest on loans made to the Chinese Government or Chinese State banks by international financial organizations shall be exempt from Income Tax. The interest income derived by a foreign bank from loans made to Chinese State Banks at preferential interest rates shall be exempt from Income Tax.

(Item 2&3 of Article 19, the Tax Law)

'International financial organizations' mentioned in Paragraph 3, Item 2, Article 19 of the Tax Law refers to international financial institutions like the International Monetary Fund, the World Bank, the Asian Development Bank, the International Development Association, the International Fund for Agricultural Development, etc..

'Chinese State banks' mentioned in Item 2&3, Paragraph 3, Article 19 of the Tax Law refers to the People's Bank of China, the Industrial and Commercial Bank of China, the Agricultural Bank of China, the Bank of China, the People's Construction Bank of China, and other financial institutions authorized by State Council to engage in the business of foreign exchange deposits and loans, etc. for foreign clients. (Article 64, 65 of the Detailed Rules)

The European Investment Bank belongs to the 'International financial organizations' mentioned in Article 19 of the Tax Law, so it may enjoy the tax incentives stipulated in that article.

(GUO SHUI HAN FA No.328 [1995])

According to Article 65 of the Detailed Rules, financial institutions with foreign investment in China, such as branches of foreign banks, banks and financial affair companies with foreign investment, etc., do not belong to the 'Chinese State Banks' described in Item 3, Paragraph 3, Article 19 of the Tax Law. Therefore, Income Tax shall be levied on the interest of loans made to foreign financial institutions by foreign banks.

(GUO SHUI HAN No.372 [1997])

### 3. Royalty

#### (1). Scope of Royalty

Royalty refers to the income received from the provision of patents, technical know-how, trademarks and copyright for use in China, which is derived by foreign enterprises in China who have not established organizations or sites.

(Item 2 of Article 6, the Detailed Rules)

Clarification is given as follows regarding the Income Tax collection on income from copyright (derived inside China) of movies, audio products and audio-video products

collected by foreign companies, enterprises and other organizations (hereinafter referred to as 'foreign enterprises') who do not have establishments in China.

i. Income Tax shall be levied at the rate of 20% as stipulated in the Tax Law on income obtained by foreign enterprises from use of the copyright of movies, audio-video products and audio products provided by foreign enterprises to Chinese companies, enterprises and institutions (including TV stations, broadcasting stations, film distribution and projection companies and audio-video publishing houses) except those in the special economic zones, economic and technological development zones and coastal economic open zones where such Income Tax may be collected at the reduced rate of 10% according to the relevant provisions. Income Tax shall be withheld from each payment given by the payers of royalty fees.

ii. As for the copyrights of movies, audio-video products and audio products provided by foreign enterprises to be used in education, scientific research, environmental protection and medical care etc., if they are really helpful to the scientific and cultural communication between China and other countries and the royalties are relatively low, thus needing tax incentives such as tax exemption and reduction, the foreign enterprises may present application to the local tax authorities via the copyright purchasers and then the application shall be reported to the State Administration of Taxation for approval after examination and verification by the local taxation authorities.

iii. If the foreign enterprise who provides copyrights of movies, audio-video products and audio products comes from a country with whom China has signed an agreement for prevention of double taxation, the foreign enterprise may ask for and enjoy the tax incentives on royalties at a limited rate according to the agreement.

iv. The purchasers (companies, enterprises and institutions) of the copyrights of movies, audio-video products and audio products provided by the foreign enterprise shall withhold tax at each royalty payment according to the provisions of the Tax Law. The taxation authorities shall collect fines or surcharges for overdue tax payments according to the provisions of Article 14 and 15 of the "Income Tax Law of the People's Republic of China on Foreign Enterprises", if the tax is not withheld in time or the tax that should be withheld is not withheld.

v. This notification shall enter into force from September 1, 1990. At the same time, the notification of CAI SHUI WAI ZI No. 46 shall stop executing.

As for those copyright transfer agreements signed before the notification enter into force, articles clearly put in agreements about tax incentives such as tax exemption and reduction can still be executed until the deadline of agreements (not including prolonged agreements henceforth).

(GUO SHUI HAN FA No.960 [1990])

(2).Calculation of payable royalty tax

The gross royalties obtained from the provision of patents and technical know-how include the drawing and information fees, technical service fees, personnel training fees and other relevant fees.

(Article 59, the Detailed Rules)

Where a foreign enterprise has no established organization or site in China but derives royalties from sources within China, or where it has such established organizations or

sites within China but the royalties it earns are not really connected with those organizations or sites. such an enterprise shall deduct the business tax payment handed in according to "Provisional Regulations of the People's Republic of China on Business Tax" when the enterprise income tax is calculated.

(CAI SHUI ZI No.59 [1998])

(3).Tax Exemption and Deduction of royalties

Income Tax on royalties received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communication industries, agricultural, forestry and animal husbandry production, and the development of important technology may, upon approval by the responsible department for tax affairs under State Council, be levied at the reduced rate of 10%. Where the technology supplied is advanced or the terms are preferential, exemption from Income Tax may be allowed.

(Article 19, the Tax Law)

Reduction or exemption of Income Tax on royalties as provided for in Item 4, Paragraph 3, Article 19 of the Tax Law is applicable to the following:

I. Royalties obtained from the provision of the following technical know-how in farming, forestry, animal husbandry and fishery:

i. Technology provided to improve soil and grassland, to reclaim and develop barren hills, and to fully utilize natural conditions;

Biotechnology to nurture new species and varieties of fauna and flora and to produce high efficient but low toxic agricultural chemicals;

iii. Technology to provide farming, forestry, animal husbandry and fishery with scientific production and management, to preserve the ecological balance, and to increase the capability of fighting natural disasters;

II. Royalties obtained from the provision of technical know-how to academies of science, colleges and universities, and other scientific research institutions to conduct scientific research or scientific experimentation independently or cooperatively;

III. Royalties obtained from the provision of technical know-how for the development of energy resources and transportation;

IV. Royalties obtained from the provision of technical know-how for energy conservation and the prevention and control of environmental pollution;

V. Royalties obtained from the provision of technical know-how for the development of the following important fields of technology:

i. production of mechanical and electronic equipment;

ii. nuclear power;

iii. production of large scale integrated circuits;

iv. production of photo-integrated microwave semi-conductors and microwave integrated circuits and microwave electron tubes;

v. manufacturing of high-speed electronic computers and micro-processors;

vi. optical telecommunications;

vii. remote ultra-high voltage direct current electricity transmission;

viii. liquification, gasification and integrated utilization of coal.

(Article 66, the Detailed Rules)

If the foreign investors of the joint venture enterprises use the evaluated price of special



technology to invest as capital stock and do not collect royalties separately, the withholding income tax can be exempted.

(CAI SHUI WAI ZI No.12 [1984])

#### 4. Rentals

Income Tax shall be exempted, provisionally, on ship rentals obtained by foreign companies or enterprises to Chinese companies or enterprises for international transportation. However, Income Tax shall be collected according to the provision in Article 11 of the Tax Law for ship rentals obtained by foreign enterprises to Chinese companies or enterprises for coastal or inland water transportation.

(CAI SHUI ZI No.32 [1984])

Through the approval of the State Council, clarifications concerning the withholding income tax of the rentals are given as follows:

- i. Withholding Income Tax shall be exempted on airplane rentals obtained by foreign enterprises to Chinese airline companies in accordance with rental contracts signed before September 1, 1999.
- ii. Withholding Income Tax shall be collected, according to the concerning regulations of the Tax Law and the Detailed Rules, on airplane rentals obtained by foreign enterprises to Chinese airline companies in accordance with rental contracts signed after September 1, 1999. Chinese airline companies shall withhold the Income Tax of the rentals from each payment.

(CAI SHUI ZI No.251 [1999])

#### 5. Benefits Received from Transfer of Property

'Other income' referred to in Article 19 of the Tax Law includes gains from transfer of property including houses, buildings, structures and their attached facilities located in China or from the assignment of right to use of land.

'Gains from transfer of property' referred to in the preceding paragraph means the net gain or profit received from the balance of the transfer after deduction of the original value of the property. The local tax authorities shall assess the original value of the property according to specific conditions if proper evidence on the original value cannot be provided by a foreign enterprise.

(Article 61, the Detailed Rules)

Income Tax shall be exempted, provisionally, on the net income obtained by foreign enterprises from transfer of their own B shares or Chinese offshore shares issued by enterprises in China if those shares do not belong to the foreign enterprise's establishments or sites in China. Tax exemption also applies to the income of foreign individuals from transfer of their own B shares or Chinese offshore issued by enterprises in China.

If foreign enterprises and foreign individuals transfer the stock of the enterprises with foreign investment in China, the Withholding Income Tax or the Individual Income Tax shall be levied at 20% on the excess part of the transfer gains over the investment according to the provisions in Document CAI SHUI WAI ZI No. 033 issued by the Ministry of Finance (87) and in Document CAI SHUI ZI No.114 issued by the Ministry of Finance (84).

(GUO SHUI FA No.045 [1993])

During the period in which a company may want to reorganize towards establishing stronger management, if foreign enterprises want to transfer their own stock of enterprises in China or enterprises with foreign investment want to transfer stock of enterprises in or outside China to companies with the relation of directly owned, indirectly owned or owned 100% stock by the same person, including the investment companies with that relation inside China, they are allowed to transfer with the cost price. Income Tax shall not be collected because no benefit or loss from transfer of stock occurs.

(GUO SHUI HAN No.207 [1997])

"CCCCP" is the abbreviation of "the Central Committee of Chinese Communist Party"

"SAN LAI YI BU" stands for 4 modes of transnational trade, which are respectively mode of processing with materials supplied by clients outside China, mode of assembling equipment supplied by clients outside China, mode of processing according to the samples provided by oversea clients, and mode of compensation transactions

This English document is not an official translation and is for reference ONLY. In case of discrepancy, the original version in Chinese shall prevail.\*\*\*)

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## **SZ03 Provisions on Guiding the Orientation of Foreign Investment**

Decree [2002] No.346 of the State Council

The Provisions on Guiding the Orientation of Foreign Investment are hereby promulgated and shall enter into force on April 1, 2002.

Premier of the State Council: Zhu Rongji

February 11, 2002

Enclosure: The Provisions on Guiding the Orientation of Foreign Investment

Article 1 In order to guide the orientation of foreign investment, to keep the orientation of foreign investment in line with the national economy and social development planning of China, and to protect of the lawful rights and interests of investors, these Provisions have been formulated according to the laws and provision on foreign investment and the requirements of industrial policies of the State.

Article 2 These Provisions shall be applicable to the projects of investment and establishment of Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises (hereinafter referred to all as enterprises with foreign investment), and projects with foreign investment in other forms (hereinafter referred to as projects with foreign investment) within the territory of China.

Article 3 The Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region shall be formulated by the State Development Planning Commission, the State Economic and Trade Commission, the Ministry of Foreign Trade and Economic Cooperation jointly with other relevant departments under the State Council, and shall be promulgated upon the approval of the State Council; when it is needed to partly adjust the Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region in light of the actual situation, the State Economic and Trade Commission, the State Development Planning Commission, the Ministry of Foreign Trade and Economic Cooperation jointly with the relevant departments under the State

Council shall make the revision and promulgation timely.

The Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region shall be the basis of the application of relevant policies in directing and examining and approving projects with foreign investment and enterprises with foreign investment.

Article 4 Projects with foreign investment fall into 4 categories, namely encouraged, permitted, restricted and prohibited ones.

The Projects with foreign investment that are encouraged, restricted and prohibited shall be listed in the Guidance Catalog of Industry with Foreign Investment. And the projects with foreign investment that don't fall into the categories of encouraged, restricted or prohibited projects shall be the permitted projects with foreign investment. The permitted projects with foreign investment shall not be listed in the Guidance Catalog of Industry with Foreign Investment.

Article 5 A project in any of the following situations shall be listed as the encouraged projects with foreign investment:

1) being of new agriculture technologies, agriculture comprehensive development, or energy, transportation and important raw material industries;

2) being of high and new technologies or advanced application technologies that can improve the product performance and increase the technology economic efficiency of the enterprises or those that can produce the new equipments and new materials which the domestic production capacity fails to produce;

3) meeting the market needs and being able to improve the product level, develop new markets or increase the international competitive capacity of the products;

4) being of new technologies and new equipments that can save energy and raw material, comprehensively utilize resources and regenerate resources, and prevent environment pollutions;

5) being capable of bringing into the advantages of human power and resources of the mid-west region into full play and being in conformity to the industrial policies of the State;

6) other situations as provided for by laws and administrative regulations.

Article 6 A project in any of the following situations shall be a restricted project with foreign investment:

- 1) being of technology lagged behind;
- 2) being adverse to saving resources and improving environment;
- 3) engaged in the prospecting and exploitation of the specific type of mineral resources to which the State applies protective exploitation;
- 4) falling into the industries that the State opens step by step;
- 5) other situations as provided by laws and administrative regulations.

Article 7 A project in any of the following situations shall be a prohibited project with foreign investment:

- 1) harming the State safety or impairing the public interests;
- 2) polluting the environment, damaging natural resources or harming human health;
- 3) occupying too much farmland and being adverse to the protection and development of land resources;
- 4) harming the safety and usage of military facilities;
- 5) using the particular techniques or technologies of China to produce products;
- 6) other situations as provided for by laws and administrative regulations.

Article 8 The Guidance Catalog of Industry with Foreign Investment may provide that a enterprise with foreign investment is "limited to joint venture, contractual venture", "with Chinese party at the holding position" or "with Chinese party at the relatively holding position".

"Limited to joint venture and operative venture" shall refer to that only Chinese-foreign joint ventures and Chinese-foreign contractual joint ventures are allowed; "with the Chinese parties at the holding position" shall refer to that the total investment

proportion of the Chinese parties in the project with foreign investment shall be 51% or more; "with Chinese parties at the relatively holding position" shall refer to that the total investment proportion of the Chinese parties in the project with foreign investment shall be higher than the investment proportion of any foreign party.

Article 9 Apart from enjoying the preferential treatments according to the provisions of the relevant laws and administrative regulations, the encouraged projects with foreign investment that engage in the construction and operation of energy, transportation, municipal infrastructure (coal, oil, natural gas, electric power, railways, highways, ports, airports, city roads, sewage disposition, and garbage disposition, etc.) that needs large amount of investment and long term for recovery may expand their relevant business scope upon approval.

Article 10 The permitted projects with foreign investment of which the products are all directly exported shall be regarded as the encouraged project with foreign investment; the restricted projects with foreign investment of which the export sales accounts for more than 70% of their total amount of sales may be regarded as the permitted projects with foreign investment upon the approval of the people's governments of provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan or the competent department under the State Council.

Article 11 The conditions may be eased for the permitted and restricted projects with foreign investment that really can bring the advantages of the mid-west region into full play; among which, those listed in the Guidance Catalog of Industry with Foreign Investment may enjoy the preferential policies for the encouraged projects with foreign investment.

Article 12 Projects with foreign investment shall be examined and approved, and put on record respectively by the departments of development planning and the economic and trade departments according to the limit of authority for examination and approval; the contracts and articles of association of enterprises with foreign investment shall be examined and approved, and put on record by the departments of foreign trade and economic cooperation. Among which, the projects with foreign investment under the limit for restricted projects with foreign investment shall be subject to the examination and approval of the corresponding competent departments of the people's governments of the

provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan, and shall be reported to the competent departments at the next higher level and the competent industrial departments, the power for examination and approval of this kind of projects may not be granted to the authorities at lower levels. The projects with foreign investment in the service area that are opened to the outside world step by step shall be subject to the examination and approval according to the relevant provisions of the State.

The projects with foreign investment involving quotas and licenses must apply to the departments for quotas and licenses first.

Where there are otherwise provisions of laws and administrative regulations on the procedures and measures for the examination and approval of projects with foreign investment, those provisions shall be observed.

Article 13 With respect to the projects with foreign investment examined and approved in violation of the present provisions, the organ of examination and approval at the next higher level shall cancel it within 30 workdays from the day of receiving the documents for record of that project, its contract and articles of association shall be void, the department of enterprise registration shall not register it and the customs shall not handle the procedures for import and export for it.

Article 14 Where the applicant of a project with foreign investment manages to obtain the approval for the project by deceiving or other illicit means, his legal liabilities shall be investigated for according to law regarding the seriousness of the circumstances; the organ of examination and approval shall cancel the approval for that project and the relevant competent organs shall deal with it correspondingly according to law.

Article 15 Where any of the personnel of the organ of examination and approval abuses his power or neglects his duties, criminal responsibilities shall be investigated for according to the provisions of the criminal law on the crime of abusing powers or the crime of neglecting duties; where the circumstances are not serious enough for criminal punishment, administrative punishment of recording a special demerit or more severe punishment shall be given.

Article 16 With respect to the investment projects established by overseas Chinese

and the investors from the Hong Kong Special Administration Region, Macao Special Administrative Region or Taiwan Area, these Provisions shall be applicable by reference in implementation.

Article 17 These Provisions shall enter into force on April 1, 2002. The Interim Provisions on the Guidance of Foreign Investment Directions approved by the State Council on June 7, 1995 and promulgated by the State Planning Commission, the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation on June 20, 1995 shall be nullified simultaneously.



## **ZJ01 Catalogue of Encouraged Foreign Investment Industries in Zhejiang Province**

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### **I. Farming, Forestry, Animal Husbandry and Fishery Industries**

1. Improvement of low and medium yielding field
2. Planting technology, without social effects of pollution, of vegetables (including edible fungus and melon-watermelon), fruits, teas and serial development and production of these products
3. Development and production of new breed varieties (excluding those gene-modified varieties) of fine quality, high-yielding crops such as sugar-yielding crops, fruit trees, flowers and plants, forage grass and related new techniques
4. Production of flowers and plants, and construction and operation of nursery base
5. Reusing in fields and comprehensive utilization of straws and stalks of crop, development and production of resources of organic fertilizers
6. Cultivation of traditional Chinese medicines (equity joint ventures or contractual joint ventures only)
7. Planting of forest trees (including bamboo) and cultivation of fine strains of forest trees
8. Planting of caoutchoucs, sisals and coffees
9. Breeding of quality varieties of breeder animals, breeder birds and aquatic offspring (excluding precious quality varieties peculiar to China)
10. Breeding of famous, special and fine aquatic products, as well as cage culture in deep water
11. Construction and operation of ecological environment protection projects preventing and treating desertification and soil erosion such as planting trees and grasses, etc.

### **II. Mining and Quarrying Industries**

- \*1. Venture prospecting and exploitation of petroleum, natural gas
- \*2. Exploitation of oil and gas deposits (fields) with low osmosis
- \*3. Development and application of new technologies that can increase the recovery factor of crude oil
- \*4. Development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well drilling, well-logging and downhole operation, etc.
5. Prospecting and exploitation of coal and associated resources
6. Prospecting and exploitation of coal-bed gas
7. Exploration and beneficiation of gold mines with low quality or difficult to beneficiate (equity joint ventures or contractual joint ventures only)

8. Prospecting, exploitation, and beneficiation of iron ores and manganese ores
9. Prospecting and exploitation of copper ores, plumbum ores and zinc ores (equity joint ventures or contractual joint ventures only, wholly foreign-owned enterprises are permitted in west regions)
10. Prospecting and mining of aluminum ores (equity joint ventures or contractual joint ventures only, wholly foreign-owned enterprises are permitted in west regions)
11. Mining and beneficiation of chemical mines including sulfur ores, phosphate ores, kalium ores, etc.

### III. Manufacturing Industries

#### 1. Food Processing Industry

- (1) Storage and processing of food, vegetables, fruits, fowl and livestock products
- (2) Aquatic products processing, seashell products cleansing and processing, and development of function food made from seaweed
- (3) Development and production of drinks of fruits, vegetables, albumen, teas and coffees
- (4) Development and production of food for babies and agedness, as well as function food
- (5) Production of dairy products
- (6) Development and production of biology feeds and albumen feeds

#### 2. Tobacco Processing Industry

- (1) Production of secondary cellulose acetate and processing of tows
- (2) Production of tobacco slices in the way of paper making

#### 3. Textile Industry

- (1) Production of special textiles for engineering use
- (2) Weaving and dyeing as well as post dressing of high-grade loomage face fabric

#### 4. Leather, Coat Products Industry

- (1) Processing of wet blue skin of pig, cow and sheep with new technology
- (2) Post ornament and processing of leather with new technology

#### 5. Lumber Processing Industry and Bamboo, Bine, Palm, Grass Products Industry

- (1) Development and production of new technology and products for the comprehensive utilization of "sub-quality, small wood and fuel wood" and bamboo in the forest area

#### 6. Paper Making and Paper Products Industry

- (1) Project based on the mode of integration of forest and paper with an annual production capacity of over 300 thousand tons of chemical wood pulp or an annual production capacity of over 100 thousand tons of chemical mechanical wood pulp (equity joint ventures or contractual joint ventures only)
- (2) Production of high-quality paper and cardboard (equity joint ventures or contractual joint ventures only)

#### 7. Petroleum Refining and Coking Industry

- (1) Deep processing of needle coke and coal tar
- (2) Production of heavy traffic road asphalt

#### 8. Chemical Raw Material and Products Manufacturing Industry

- (1) Production of alkene through catalyzing and cracking of heavy oil
- (2) Production of ethylene with an annual production capacity of 600 thousand tons or over (the Chinese partners shall hold relative majority of shares)

- (3) Comprehensive utilization of ethylene side-products such as C5-C9
  - (4) Mass production of corvic (in the way of ethylene)
  - (5) Production of organochlorine serial chemical industrial products (excluding high-residual organochlorine products)
  - (6) Production of basic organic chemical industrial raw materials such as the production of benzene, methylbenzene, dimethylbenzene, etc. and its derivatives
  - (7) Production of supporting raw materials for synthesized materials: bisphenol-A, 4,4' diphenylmethane, diiso-cyan ester, and vulcabond toluene
  - (8) Production of synthetic fibre raw materials: precision terephthalic acid, vinyl cyanide, caprolactam and nylon 66 salt
  - (9) Production of synthetic rubber: liquid butadiene styrene rubber by butadiene method, butyl rubber, isoamyl rubber, butadiene neoprene rubber, butadiene rubber, acrylic rubber, chlorophydrin rubber
  - (10) Production of engineering plastics and plastic alloys
  - (11) Fine chemistry industry: new products and technology for catalytic agent, auxiliary and pigment; processing technology for the commercialization of dye (pigment); production of high-tech chemicals for electronics and paper-making, food additives, feed additives, leather chemical products, oil-well auxiliaries, surface active agent, water treatment agent, adhesives, inorganic fibre, inorganic powder stuffing and equipment
  - (12) Production of auxiliary agent, preparation agent, and dye-stuff for textile and chemical fibre ladder
  - (13) Production of depurant of automobile tail gas, catalyzer and other assistant agents
  - (14) Production of nature spices, synthetic spices and single ion spices
  - (15) Production of high capability dope
  - (16) Production of chloridized titanium white
  - (17) Production of chlorofluorocarbon substitution
  - (18) Production of mass coal chemical industrial products
  - (19) Development and production of new technology and products for the forestry chemicals
  - (20) Production of ion film for caustic soda
  - (21) Production of biologic fertilizers, high-density fertilizers (potash fertilizer, phosphate fertilizer) and compound fertilizers
  - (22) Development and production of new varieties of effective, low poison and low residual agriculture chemicals and pesticides
  - (23) Development and production of biology agriculture chemicals and pesticides
  - (24) Development and production of inorganic, organic and biologic films for environment protection
  - (25) Comprehensive utilization and disposure of exhaust gas, discharge liquid, waste residue
9. Medicine Industry
- (1) Production of material medicines under patent and administrative protection in our country or chemical material medicines which we have to import
  - (2) Vitamins: production of niacin
  - (3) Amino acid: production of serine, tryptophan, histidine, etc.

- (4) Production of analgesic-antipyretic medicines with new technique and new equipment
- (5) Production of new variety of anticarcinogen medicines, as well as cardiovascular and cerebrovascular medicines
- (6) Production of new, effective and economical contraceptive medicines and devices
- (7) Production of new variety of medicines which are produced by means of biological engineering technology
- (8) Production of vaccine through genic engineering technology (vaccine against AIDS, vaccine against type-C hepatitis, contraceptive vaccine, etc.)
- (9) Development and production of medicines made from allopathics
- (10) Production of diagnostic reagent for AIDS and radioimmunity diseases
- (11) Medicines and pharmaceuticals: production of new products and new dosage forms adopting new techniques such as slow release, control release, target preparation and absorbed through skins
- (12) Development and applications of new variety of adjuvant medicines
- (13) Processing and production of traditional Chinese herb medicines, products which distill from traditional Chinese herb medicines and Chinese patent medicines (excluding preparing technique of traditional Chinese medicines in small pieces ready for decoction)
- (14) Production of biological medical materials and products
- (15) Production of antibiotic material medicines used for animals (including antibiotics and chemical synthesis medicines)
- (16) Development and production of new products and new dosage forms of antibiotic medical, anthelmintic, insecticide, anti-coccidiosis medicines used for animals

#### 10. Chemical Fibre Manufacturing Industry

- (1) Production of differential chemical fibre and high, new technological fibre such as aromatic synthetic fibre, functional environment-amicable ammo synthetic fibre with an annual production capacity of over 5000 tons, carbon fibre, high tensible and high modulus polythene
- (2) Production of chemical fibre of environmental protection variety such as direct viscose and asepis spinning, etc.
- (3) Production of polyester used for non-fibre with a daily production capacity of over 500 tons, and production of new type polyester used for fibre and non-fibre (poly terephthalic acid propylene glycol ester, poly sebacic acid glycol ester, polybutylene terephthalate (PBT), etc.)

#### 11. Plastic Products Industry

- (1) Production of polyamide film which can keep fresh
- (2) Development and production of new products and new technologies for agricultural films (photolysis film, multifunctional film and the raw materials, etc.)
- (3) Reutilization and counteraction of waste and old plastic

#### 12. Non-metal Mineral Products Processing Industry

- (1) Production of fine-quality floating glass with a daily melting capacity of 500 tons or over (only in mid-west region of China)
- (2) Production of new type dry process cement of clinker with a daily output capacity of 2,000 tons or over (only in midwest region of China)
- (3) Production of glass fibre (product line with technology of wire drawing in tank furnace)

and glass fibre reinforced plastic products with an annual capacity of 10,000 tons or more  
(4) Production of high level sanitation porcelain with an annual production of 500,000 pieces or over

(5) Standardization refine of ceramic material and production of high-level decorative materials used for ceramics

(6) Production of high-level refractory material used in furnaces for glass, ceramics and glass fibre

(7) Production of inorganic, non-metal materials and products (artificial crystal, high-capability complex materials, special kind of glass, special kind of ceramics, special kind of airproof materials and special kinds of cementation materials)

(8) Production of new type of building materials (lightweight high-intensity and multi-function materials for wall, high-level environment protecting decorating and finishing materials, high quality water-proof and airproof materials, and effective thermal insulation materials)

(9) Deep processing of non-metal mineral products (super-thin comminution, high level pure, fine production, modification)

#### 13. Ferrous Metallurgical Smelting and Rolling Processing Industry

(1) Production of direct and fusion reduced iron

#### 14. Non-Ferrous Metallurgical Smelting and Rolling Processing Industry

(1) Smelting of gold mines with low quality or difficult to beneficiate (equity joint ventures or contractual joint ventures only, wholly foreign-owned enterprises are permitted in west regions)

(2) Production of hard alloy, tin compound and antimony compound

(3) Production of non-ferrous composite materials, new type of alloy materials

(4) Utilization of rare-earth

#### 15. Metal Products Industry

(1) Design and manufacturing of non-metal products molds

(2) Design and manufacturing of car and motorcycle molds (including plunger die, injection mold, moldingdie, etc.) and chucking appliances (chucking appliances for welding, inspection jig, etc.)

(3) Development and production of high-grade hardware for construction, hot-water heating equipment and hardware parts

#### 16. General Machine-building Industry

(1) Manufacturing of numerically controlled machine tools, digital control system and servomechanism installations which exceed triaxiality linkage

(2) Manufacturing of high performance welding robot and effective welding and assembling production equipment

(3) Production of high temperature resistant and insulation material (with F, H insulation class), as well as insulation shaped parts

(4) Production with techniques of proportional, servo-hydraulic pressure, low-power pneumatic control valve and stuffing static seal

(5) Production of precision plunger dies, precision cavity molds and standard components of molds

(6) Manufacturing of precision bearings and all kinds of bearings used specially for

principal machines

- (7) Manufacturing of casting and forging workblanks for cars and motorcycles
17. Special Equipment Manufacturing
  - (1) Development and manufacturing of new technology and equipment for the storage, preservation, classifying, packing, drying, transporting and processing of food, cotton, oil, vegetables, fruits, flowers, pastura plants, meat and aqua-products
  - (2) Manufacturing of facility agriculture equipment
  - (3) Manufacturing of new technical agriculture and forestry equipment
  - (4) Design and manufacturing of engines for tractors, combine harvesters, etc.
  - (5) Manufacturing of equipment for reusing in fields and comprehensive utilization of straws and stalks of crop
  - (6) Manufacturing of equipment for comprehensive utilization of waste agriculture products and waste fowl and livestock products which are bred in scale
  - (7) Manufacturing of water-saving irrigation equipment with new technique
  - (8) Manufacturing of earthwork for wet land and desilting machines
  - (9) Technology of hydrophily ecological system for protecting environment and equipment manufacturing
  - (10) Manufacturing of equipment for scheduling system which is used in long-distance transmitting water engineering
  - (11) Manufacturing of special machines and equipment for flood prevention and emergency rescue
  - (12) Manufacturing of key equipment in food industry such as high-speed asepsis canning equipment and brander equipment, etc.
  - (13) Production technology and key equipment manufacturing of aminophenol, zymin, food additive
  - (14) Manufacturing of complete set of equipment with an hourly feed processing capacity of 10 tons or more and key spare parts
  - (15) Manufacturing of multi-color offset press for web and folio of paper or larger size
  - (16) Manufacturing of equipment with new technique for post ornament and processing of leather
  - (17) Manufacturing of high-tech involved special industrial sewing machines
  - (18) Manufacturing of complete set of equipment of new type of knitting machines, new type of paper (including pulp) making machines
  - (19) Design and manufacturing of new type of mechanical equipment for highways and ports
  - (20) Manufacturing of equipment for highways and bridges maintenance, automatic detection
  - (21) Manufacturing of equipment for operation supervisory control, ventilation, disaster prevention and rescue system of highway and tunnels
  - (22) Design and manufacturing of large equipment for railway construction and maintenance
  - (23) Manufacturing of equipment for garden machines and tools with new technique
  - (24) Manufacturing of special equipment for cities' sanitation and environment work
  - (25) Manufacturing of machines for road milling and overhauling

- (26) Manufacturing of tunneling diggers, equipment of covered digging for city metro
  - (27) Manufacturing of city sewage-disposal equipment with capacity of 80,000 tons/day or more, industrial sewage film treatment equipment, up-flow anaerobic fluidized bed equipment, and other biological sewage disposal equipment, recycling equipment for waste plastics, desulphurization and denitration equipment for industrial boiler, large high-temperature resistant, acid resistant bag dust remover, incinerating equipment for rubbish treatment
  - (28) Manufacturing of turbine compressors and combined comminutors of the complete set of equipment with an annual production capacity of 300,000 tons or over of synthetic ammonia, 480,000 tons or over of urea, 450,000 tons or over ethylene
  - (29) Technique for desulfurization of thermal power station and equipment manufacturing
  - (30) Manufacturing of sheet conticasters
  - (31) Deep processing technique and equipment manufacturing of plate glass
  - (32) Manufacturing of equipment for downhole trackless mining, loading and transporting, mechanical power-driven dump trucks for mining of 100 tons or over, mobile crushers, 3,000 m<sup>3</sup> /h or over bucket excavator, 5 m<sup>3</sup> or larger mining loader, full-section tunneling machines
  - (33) Design and manufacturing of new instruments and equipment for prospecting and exploitation of petroleum
  - (34) Manufacturing of cleaning equipment for electromechanical wells and production of medicines
  - (35) Manufacturing of electronic endoscopes
  - (36) Manufacturing of medical X-ray machines set with high-frequency technique, direct digital imagery processing technique and low radiation (80kW or over)
  - (37) Manufacturing of equipment for high magnetic field intensity and superconduct (MRI)
  - (38) Manufacturing of machines for collecting blood plasm only
  - (39) Manufacturing of equipment for auto elisa immuno system (including the functions of application of sample, elisa photo meter, wash plate, incubation, data, post treatment, etc.)
  - (40) New techniques of quality control of medicine products and new equipment manufacturing
  - (41) New analytical techniques and extraction technologies, and equipment development and manufacturing for the effective parts of traditional Chinese medicines
  - (42) Producing and manufacturing of new packing materials, new containers for medicine, and advanced medicine producing equipment
18. Communication and Transportation Equipment Industries
- \* (1) Manufacture of complete automobiles (including R&D activities)
  - (2) Manufacture of engines for automobiles (including R&D activities)
  - (3) Manufacture of key spare parts for automobiles: complete disc brakes, complete driving rods, automatic gearboxes, fuel pumps of diesel engine, inhalant supercharger of engines, electromotion steering system, adhesive axial organ (used for four-wheel drive), gas filling vibration absorber, air spring, hydraulic tappet, cluster gauge
  - (4) Production of automobile electronic devices (including engine control system, underchassis control system, autocar body electric control system)

- (5) Manufacture of vehicles for special-purpose in petroleum industry; vehicles for deserts, etc.
  - (6) Technology and equipment for railway transportation: design and production of locomotives and main parts, design and production of equipment for railways and bridges, related technology and equipment production for rapid transit railway, production of equipment for communicational signals and transportation safety monitoring, production of electric railway equipment and instrument
  - (7) Equipment for urban rapid transit track transportation: design and manufacture of powered car and main parts for metro, city light rail
  - (8) Design and manufacture of civil planes (Chinese partner shall hold the majority of shares)
  - (9) Production of spares parts for civil planes
  - (10) Design and manufacture of civil helicopters (Chinese partner shall hold the majority of shares)
  - (11) Design and manufacture of aeroplane engines (Chinese partner shall hold the majority of shares)
  - (12) Design and manufacture of civil air-borne equipment (Chinese partner shall hold the majority of shares)
  - (13) Manufacture of light gas-turbine engine
  - (14) Design and manufacture of crankshafts of low-speed diesel engine for vessel
  - (15) Repairing, design and manufacture of special vessels, high-performance vessels (the Chinese partner shall hold the relative majority of shares)
  - (16) Design and manufacture of the equipment and accessories of high-speed diesel engines, auxiliary engines, radio communication and navigation for vessels (the Chinese partner should hold relative majority shares)
  - (17) Manufacture of fishing boats and yachts made of glass fibre reinforced plastic
19. Electric Machinery and Equipment Industries
- (1) Fire power equipment: manufacture of super-critical units of 600,000 kW or over, large gas turbines, gas-steam combined cycle power equipments of 100,000 kW or over, coal gasification combined cycle technique and equipment (IGCC), pressure boost fluidized bed (PFBC), large scale air cooling generating units of 600,000 kW or more, large scale cycle fluidized bed (CFB) boiler of 300 thousand kW (equity joint ventures or contractual joint ventures only)
  - (2) Hydropower plant equipment: manufacture of large pump-storage power units of 150,000kW and over, large tubular turbine units of 150,000kW or over (equity joint ventures or contractual joint ventures only)
  - (3) Nuclear-power plant equipment: manufacture of power units of 600,000kW or over (equity joint ventures or contractual joint ventures only)
  - (4) Power transmitting and transforming equipment: manufacture of super high-voltage DC power transmitting and transforming equipment of 500 kilovolts or over (equity joint ventures or contractual joint ventures only)
20. Electronic and Telecommunications Industries
- (1) Manufacture of digital television, digital video camera, digital record player, digital sound-playing equipment



- (2) Manufacture of new type plate displays, medium and high resolution color kinescope and glass shielding
- (3) Manufacture of key parts used in big-screen color project display, such as optical engine, lamp-house, screen for projection, high definition projection pipe
- (4) Manufacture of digital audio and visual coding or decoding equipment, digital broadcasting TV studio equipment, digital cable TV system equipment, digital audio broadcast transmission equipment
- (5) Design of integrated circuit and production of large scale integrated circuit with a line width of 0.35 micron or smaller
- (6) Manufacture of medium- and large-sized computers, portable microcomputers, high-grade server
- (7) Development and manufacture of drivers of high capacity compact disk and disk and related parts
- (8) Manufacture of 3-dimension CAD, CAT, CAM, CAE and other computer application system
- (9) Development and manufacture of software
- (10) Development and production of materials specific for semi-conductors and components
- (11) Manufacture of electronic equipment, testing equipment, tools and moulds
- (12) Manufacture of new type electronic components and parts (slice components, sensitive components, sensors, frequency monitoring and selecting components, hybrid integrated circuit, electrical and electronic components, photoelectric components, new type components for machinery and electronics)
- (13) Manufacture of hi-tech green batteries: non-mercury alkali-manganese batteries, powered nickel-hydrogen batteries, lithium-ion batteries, high-capacity wholly sealed maintenance-proof lead-acid accumulators, fuel batteries, pillar-shaped zinc-air batteries
- (14) Development and manufacture of key components for high-density digital compact disk driver
- (15) Reproduction of read-only compact disk and manufacture of recordable compact disk
- (16) Design and manufacture of civil satellites (Chinese partner shall hold the majority of shares)
- (17) Manufacture of civil satellites effective payload (Chinese partner shall hold the majority of shares)
- (18) Manufacture of spare parts for civil satellites
- (19) Design and manufacture of civil carrier rockets (Chinese partner shall hold the majority of shares)
- (20) Manufacture of telecommunication system equipment for satellites
- (21) Manufacture of receiving equipment of satellite navigation and key components (equity joint ventures or contractual joint ventures only)
- (22) Manufacture of optical fibre preformrod
- (23) Manufacture of serial transmission equipment of digital microwave synchronization of 622 MB/S
- (24) Manufacture of serial transmission equipment of phototiming synchronization of 10

## GB/S

- (25) Manufacture of equipment for cut-in communication network with broad band
- (26) Manufacture of optical cross-linking equipment (OXC)
- (27) Manufacture of ATM and IP data communication system
- (28) Manufacture of mobile communication systems (GSM, CDMA, DCS1800, DECT, IMT2000): mobile telephone, base station, switching equipment and digital colonization system equipment
- (29) Development and manufacture of high-end router, network switchboard of gigabit per second or over
- (30) Manufacture of equipment for air traffic control system (equity joint ventures or contractual joint ventures only)

## 21. Machinery Industries for Instrument and Meter, Culture and Office

- (1) Development and production of digital cameras and key components
- (2) Development and manufacture of precision on-line measuring instrument
- (3) Manufacture of new technical equipment for safe production and environment protection detecting instrument
- (4) Manufacture of new-tech equipment of water quality and fume on-line detecting instrument
- (5) Manufacture of instrument and equipment for hydrological data collecting, processing, transmitting and flood warning
- (6) Production of new type of meters' spare parts and materials (mainly new switches and function materials for meters such as intelligent sensors, socket connectors, flexible circuit boards, photoelectric switches and proximity switches.)
- (7) Manufacture of new type printing devices (laser printers, ink-jet printers)
- (8) Maintenance of precision instrument and equipment, post-sale services

## 22. Other Manufacture Industries

- (1) Development and utilization of clean-coal technical product (coal gasification, coal liquefaction, water-coal, industrial lump-coal)
- (2) Coal ore dressing by washing and comprehensive utilization of powered coal (including desulphurized plaster), coal gangue

## IV. Production and Supply of Power, Gas and Water

- 1. Construction and management of thermal-power plants with a single unit installed capacity of 300,000kW or above
- 2. Construction and management of power plants with the technology of clean coal burning
- 3. Construction and management of heat power plants
- 4. Construction and management of power plants with natural gas;
- 5. Construction and management of hydropower stations with the main purpose of power generating
- 6. Construction and management of nuclear-power plants (Chinese partner shall hold the majority of shares)
- 7. Construction and management of new energy power plants (solar energy, wind energy, magnetic energy, geothermal energy, tide energy and biological mass energy, etc.)

8. Construction and management of urban water plants

V. Water Resources Management Industry

1. Construction and management of key water control projects for comprehensive utilization (Chinese partner shall hold the relative majority of shares)

VI. Communication and Transportation, Storage, Post and Telecommunication Services

1. Construction and management of grid of national trunk railways (Chinese partner shall hold the majority of shares)
2. Construction and management of feeder railways, local railways and related bridges, tunnels and ferry facilities (equity joint ventures or contractual joint ventures only)
3. Construction and management of highways, independent bridges and tunnels
4. Construction and management of public dock facilities of ports
5. Construction and management of civil airports (Chinese partner shall hold the relative majority of shares)
6. Air transportation companies (Chinese partner shall hold the majority of shares)
7. General aviation companies for agriculture, forest and fishery (equity joint ventures or contractual joint ventures only)
- \*8. International liner and tramp maritime transportation business
- \*9. International containers inter-modal transportation
- \*10. Road freight transportation companies
11. Construction and management of oil (gas) pipelines, oil (gas) depots and petroleum wharf
12. Construction and management of the facilities of coal delivery pipelines
13. Construction and management of storage facilities relating to transportation services

VII. Wholesale and Retail Trade Industry

- \*1. Wholesale, retail and logistic distribution of general goods

VIII. Real Estate Industry

1. Development and construction of ordinary residential houses

IX. Social Service Industry

1. Public Facility Service Industries
  - (1) Construction and management of urban access-controlled roads
  - (2) Construction and management of metro and city light rail (Chinese partner shall hold the majority of shares)
  - (3) Construction and management of treatment plants for sewage, garbage, the dangerous wastes (incineration and landfill), and the facilities of environment pollution treatment
2. Information, Consultation Service Industries
  - (1) Information consulting agencies of international economy, science and technology, environmental protection
  - \* (2) Accounting and auditing

X. Public Health, Sports and Social Welfare Industries

1. Service agencies for the elderly and the handicapped

XI. Education, Culture and Arts, Broadcasting, Film and TV Industries

1. Higher education institutes (equity joint ventures or contractual joint ventures only)

XII. Scientific Research and Poly-technical Services Industries

1. Biological engineering technique and bio-medical engineering technique
2. Isotope, irradiation and laser technique
3. Ocean and ocean energy development technology
4. Seawater desalting and seawater utilization technology
5. Oceanic monitoring technology
6. Development of energy-saving technology
7. Technology for recycling and comprehensive utilization of resources
8. Technology for environment pollution treatment and monitoring
9. Technology for preventing from desertification and desert improvement
10. Application technique of civil satellite
11. Research and development centers
12. Centers for hi-tech, new products developing, and incubation of enterprises

XIII. Permitted foreign invested projects whose products are to be wholly exported directly

## **ZJ02 Provisions of the State Council concerning the encouragement of investments by compatriots from Taiwan**

### Important Notice:

This English document is coming from the "LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA GOVERNING FOREIGN-RELATED MATTERS" (1991.7) which is compiled by the Bureau of Legislative Affairs of the State Council of the People's Republic of China, and is published by the China Legal System Publishing House. In case of discrepancy, the original version in Chinese shall prevail.

### Whole Document (法规)

#### PROVISIONS OF THE STATE COUNCIL CONCERNING THE ENCOURAGEMENT OF INVESTMENTS BY COMPATRIOTS FROM TAIWAN

(Adopted by the Tenth Executive Meeting of the State Council on  
June 25, 1988, promulgated by Decree No. 7 of the State Council of the  
People's Republic of China on July 3, 1988, and effective as of the date  
of promulgation)

#### Article 1

These Provisions are formulated in order to promote economic and technological exchanges between China's mainland and the region of Taiwan, thereby boosting common prosperity of the two parts of the motherland on both sides of the Straits, and to encourage companies, enterprises and individuals on Taiwan (hereinafter referred to as "investors from Taiwan") to make investments on China's mainland.

#### Article 2

Investors from Taiwan may make investments in all provinces, autonomous regions, municipalities directly under the Central Government, and special economic zones on China's mainland.

Investors from Taiwan are encouraged to engage themselves in land development operations in Hainan Province and on the designated islands and in areas along the coastal regions of the Provinces of Fujian,

Guangdong and Zhejiang.

#### Article 3

The investments made by investors from Taiwan on China's mainland may take the following forms:

- (1) to establish enterprises with the capital wholly owned by investors from Taiwan;
- (2) to establish equity or contractual joint ventures;
- (3) to carry out compensation trade, to process supplied materials, to assemble supplied parts, and to carry out contractual production;
- (4) to purchase shares and various kinds of bonds and debentures of existing enterprises;
- (5) to purchase real estate;
- (6) to obtain land use right according to law and to engage in land development operations; and
- (7) to adopt other forms of investment permitted under the laws and regulations.

#### Article 4

Investors from Taiwan may make investments in various trades in China's mainland: industries, agriculture, service trades, and other trades that are in conformity with the orientation of social and economic development. Investors from Taiwan may select investment projects from the lists of projects published by the departments concerned under various local people's governments; they may also put forward, of their own accord, proposals as to their investment intent and file their applications to the departments of foreign economic relations and trade or to the examining and approving organs designated by various local people's governments in areas where they intend to make investments.

The State encourages investors from Taiwan to make investments in the establishment of export oriented enterprises and of technological advanced enterprises and gives corresponding preferential treatment to such enterprises.

#### Article 5

With respect to the various types of enterprises established with investments by investors from Taiwan - enterprises with the capital wholly owned by investors from Taiwan, equity and contractual joint ventures (hereinafter referred to as "enterprises with investments by compatriots from Taiwan"), they shall all be operated in accordance with these Provisions; in addition to this, they may also enjoy the corresponding preferential treatment as enjoyed by enterprises with foreign investments with reference to the relevant provisions in foreign-related economic laws, decrees and regulations of the state.

With respect to the other forms of investment made by investors from

Taiwan on China's mainland, and with respect to those investors from Taiwan who have not set up business offices on the mainland, but have dividends, interest, rental, royalties and other incomes that come from China's mainland, in addition to the application of these Provisions, reference shall be made to the relevant foreign-related economic law, decrees and regulations.

Article 6

Investors from Taiwan may make investments by using freely convertible currencies, machinery and equipment or other physical goods, industrial property right, and proprietary technology.

Article 7

The investments made on China's mainland by investors from Taiwan, the assets they have purchased, their industrial property rights, their profits from investments, and other lawful rights and interests shall be protected by state laws, and may be transferred or inherited according to law.

Investors from Taiwan shall, in their activities on China's mainland, abide by state laws, decrees and regulations.

Article 8

The state shall not nationalize the investments made by investors from Taiwan or other assets belonging to them.

Article 9

Where the state, in light of the needs of social and public interest, has to requisition the enterprises with investments by compatriots from Taiwan, the State shall handle the requisitioning according to the legal procedures and the investors concerned shall be duly compensated.

Article 10

The lawful profits gained by the investors from Taiwan from their investments, their other lawful income and the funds after liquidation may be remitted out of China's mainland according to law.

Article 11

Machinery and equipment imported to meet the needs of the enterprises with investments by compatriots from Taiwan and included in the total amount of investment, the motor vehicles for use in production, the office equipment, as well as the articles and means of communications for personal use and within reasonable quantities, imported by individual compatriots from Taiwan during the period when they work in the aforesaid enterprises shall be exempted from Customs duties and consolidated industrial and commercial tax, and also from application of import licences.

The raw and processed materials, fuels, bulk parts, spare and component parts, primary parts, and fittings, which are imported by the enterprises with investments by compatriots from Taiwan for the production of export

commodities, shall all be exempted from Customs duties and consolidated industrial and commercial tax and also from obtaining import licences, and placed under the supervision of the Customs. In case that the aforesaid imported raw materials and parts are used for the production of commodities to be sold on the market of China's mainland, it is imperative to make up the procedures for importation and to pay taxes and duties according to the regulations. The export commodities produced by the enterprises with investments by compatriots from Taiwan shall, with the exception of those commodities the export of which is under restriction by the state, be exempted from Customs duties on export goods and consolidated industrial and commercial tax.

#### Article 12

Enterprises with investments by compatriots from Taiwan may obtain loans from financial institutions of China's mainland; they may also obtain loans from financial institutions outside China's mainland, and may use their assets as well as their rights and interests as mortgage or security.

#### Article 13

With respect to the enterprises with the capital wholly owned by investors from Taiwan, their period of operation shall be determined by the investors themselves; as to equity and contractual joint ventures their period of operation shall be determined, through consultation, by the various parties to the ventures, they may also choose not to stipulate a period of operation.

#### Article 14

The composition of the board of directors of equity joint ventures and the appointment of the chairman of the board of directors, the composition of the board of directors or of the joint managerial organs of contractual joint ventures and the appointment of the chairman or the appointment of the director of the joint managerial organs, shall be determined, through consultation, by the various parties to the equity or contractual joint ventures in light of the proportion of investments or the terms of contract.

#### Article 15

Enterprises with investments by compatriots from Taiwan shall conduct their operational and managerial activities in accordance with the approved contract or articles of association. The enterprises' decision-making power for business operations and management shall not be interfered with.

#### Article 16

The technical and managerial personnel, engaged by individuals and enterprises investing on China's mainland may apply and obtain multiple-journey travel documents.



## Article 17

The investors from Taiwan, who make investments on China's mainland, may appoint their relatives or friends residing on the mainland as their agents. The agents should hold legally effective letters of authority.

## Article 18

In areas where enterprises with investments by compatriots from Taiwan are concentrated, the investors from Taiwan may apply to the local people's government for the establishment of the association of investors from Taiwan.

## Article 19

With respect to equity and contractual joint ventures to be established, on China's mainland, with investments by investors from Taiwan, the application for the establishment of the aforesaid enterprises shall be filed by the mainland party; as to the enterprises to be established with capital wholly owned by investors from Taiwan, the application shall be filed directly by the investors from Taiwan themselves, or they may entrust their relatives or friends residing on the mainland, or entrust the institution providing advisory services, with the application. The applications for the establishment of enterprises with investments by investors from Taiwan shall be accepted and handled, in a unified manner, by the local department for foreign economic relations and trade, or by the examining and approving organs designated by the local people's government. Cases concerning the examination and approval of the application for the establishment of enterprises with investments by compatriots from Taiwan shall be handled in accordance with the authority prescribed by the State Council. Departments for foreign economic relations and trade at various levels or the examining and approving organs designated by the local people's government shall, within forty-five days of receipt of complete application documents, make the decision on whether the said application is approved or disapproved.

The applicants shall, within thirty days receipt of the written approval, file an application to the department for the administration of industry and commerce, and, in accordance with the relevant procedures for registration and administration, go through the procedures for registration and obtain business licences.

## Article 20

With respect to the investors from Taiwan who have made investments in China's mainland, in case that a dispute arises during the execution of, or in connection with, a contract, the parties concerned shall try their best to settle the dispute through consultation or mediation.

Where the parties concerned are unwilling to settle the dispute through consultation or mediation, or the consultation or mediation has failed, the parties concerned may, in accordance with the stipulation of the

arbitration articles in the contract, or in accordance with the written arbitration agreement reached by the parties concerned after the dispute has arisen, submit their dispute to the arbitration authorities on China's mainland or in Hong Kong for settlement.

In the event that the parties concerned did not include an arbitration article in their contract, and no written arbitration agreement has been reached after the dispute has arisen, then the dispute may be brought before the people's court.

**Article 21**

The right to interpret these Provisions resides in the Ministry of Foreign Economic Relations and Trade.

**Article 22**

These Provisions shall go into effect as of the date of promulgation.

## **ZJ04 Provisions of the State Council concerning the encouragement of Investments by overseas Chinese and Compatriots from HongKong and Macao**

### Important Notice:

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### Whole Document

#### PROVISIONS OF THE STATE COUNCIL CONCERNING THE ENCOURAGEMENT OF INVESTMENTS BY OVERSEAS CHINESE AND COMPATRIOTS FROM HONG KONG AND MACAO

(Promulgated by Decree No. 64 of the State Council of the People's Republic of China on August 19, 1990, and effective as of the date of promulgation)

##### Article 1

These Provisions are formulated with a view to promoting the economic development of our country and to encouraging overseas Chinese and compatriots from Hong Kong and Macao (hereinafter referred to as "overseas Chinese investors and those from Hong Kong and Macao") to make investments in China's inland areas.

##### Article 2

Overseas Chinese investors and those from Hong Kong and Macao can make investments in the various provinces, autonomous regions, municipalities directly under the Central Government, and special economic zones in China's inland areas.

Overseas Chinese investors and those from Hong Kong and Macao are encouraged to engage themselves in business operations of land development in accordance with the pertinent regulations of the state.

##### Article 3

The investments made by the overseas Chinese investors and those from Hong Kong and Macao may take the following forms:

- (1) to establish enterprises with the capital wholly owned by the overseas Chinese investors and those from Hong Kong and Macao;
- (2) to establish equity joint ventures and contractual joint ventures;
- (3) to carry out compensation trade, to process supplied materials, to assemble supplied parts, and to carry out contractual production;
- (4) to purchase shares and various bonds and debentures of existing enterprises;
- (5) to purchase real estate;
- (6) to obtain land use right according to law and to engage in land development operation;
- (7) to use other forms of investment permitted under the laws and regulations.

#### Article 4

Overseas Chinese investors and those from Hong Kong and Macao can make investments in various trades in China's inland areas: in industries, in agriculture, in service trades, and in other trades that are in conformity with the orientation of social and economic development. Overseas Chinese investors and compatriots from Hong Kong and Macao may select their investment projects from the lists of projects made public by the departments concerned under various local people's governments; they may also put forward, of their own accord, proposals as to their investment intent and file their applications to the departments of foreign economic relations and trade or to the examining and approving organs designated by various local people's governments located in areas where they intend to make their investments.

The State encourages overseas Chinese investors and those from Hong Kong and Macao to make investments in the establishment of export-oriented enterprises and of technologically advanced enterprises, and gives corresponding preferential treatment to such enterprises.

#### Article 5

With respect to the various types of enterprises established with investments by overseas Chinese investors and those from Hong Kong and Macao - enterprises with the capital wholly owned by such investors equity, joint ventures, and contractual joint ventures (hereinafter referred to as "enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao"), they shall all be operated in accordance with these Provisions; in addition, they may also enjoy the corresponding preferential treatment as enjoyed by enterprises with foreign investments, in the light of the relevant provisions in the state laws, decrees and regulations on external economic relations. Cases

concerning other forms of investment made by such investors in China's inland areas, and concerning their dividends, interest, rental, royalties and other incomes that come from China's inland areas without establishing business offices here, shall be handled in accordance with these Provisions, and, if need be, with reference to foreign-related economic laws, decrees and regulations of the State.

Article 6

Overseas Chinese investors and those from Hong Kong and Macao may make their investments by using convertible currencies, machinery and equipment or other physical goods industrial property rights, and proprietary technology.

Article 7

The investment made in China's inland areas by overseas Chinese investors and those from Hong Kong and Macao, the assets they have purchased, their industrial property rights, the profits from their investments, and other lawful rights and interests shall be protected by State laws, and may be transferred or inherited according to law. Overseas Chinese investors and those from Hong Kong and Macao shall abide by State laws and regulations in their activities in inland areas.

Article 8

The State shall not nationalize the investment made by overseas Chinese investors and compatriots from Hong Kong and Macao or other assets belonging to them.

Article 9

Where the state, in accordance with the needs of social and public interest, has to requisition the enterprises with investments by overseas Chinese investors and those from Hong Kong and Macao, the state shall handle the case according to the legal procedures and the investors concerned shall be duly compensated.

Article 10

The lawful profits gained by overseas Chinese investors and those from Hong Kong and Macao from their investments, their other lawful incomes and the funds after liquidation may be remitted out of China's inland areas according to law.

Article 11

Machinery and equipment imported to meet the needs of enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao and, included in the total amount of investment, motor vehicles for use in production, office equipment, as well as articles and means of communications for personal use and within reasonable quantities, imported by overseas Chinese and compatriots from Hong Kong and Macao during the period when they work in the aforesaid enterprises shall be exempted from Customs duties and consolidated industrial and commercial tax, and also

from the application for import licences.

The raw and processed materials, fuels, bulk parts, spare and component parts, primary parts, and fittings, which are imported by enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao for the production of export commodities, shall all be exempt from Customs duties and consolidated industrial and commercial tax and also from the application for import licences and placed under the supervision of the Customs. In case that the aforesaid imported materials and parts are used for the production of commodities to be sold on China's inland markets, it is imperative to make up the procedures for importation and to pay taxes and duties according to the regulations.

The export commodities produced by the enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall, with the exception of those commodities the exportation of which is under restriction by the State, be exempt from Customs duties on export goods and consolidated industrial and commercial tax.

#### Article 12

Enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao may obtain loans from financial institutions in China's inland areas; they may also obtain loans from financial institutions outside China's inland areas, and may use their assets as well as their rights and interests as mortgage or security.

#### Article 13

With respect to enterprises with the capital wholly owned by overseas Chinese investors and compatriots from Hong Kong and Macao, their period of operation shall be determined by the investors themselves; as to equity joint ventures and contractual joint ventures, their period of operation shall be determined, through consultation, by the various parties to the above-said joint ventures; they may also set no limit to the period of operation.

#### Article 14

The composition of the board of directors of joint ventures and the appointment of the chairman of the board of directors, the composition of the board of directors or of the joint management organs of contractual joint ventures and the appointment of the chairman or the appointment of the director of the joint management organs, shall be determined, through consultation, by the various parties to the equity joint ventures or to the contractual joint ventures in the light of the proportion of investments or the terms of contract.

#### Article 15

Enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall conduct their operational and management activities in accordance with the approved contract or articles of association. The

enterprises' decision-making power for business operations and management shall not be interfered with.

Article 16

Overseas Chinese and compatriots from Hong Kong and Macao who have made investments in China's inland areas, and the technical and managerial personnel engaged from outside the boundaries of China's inland areas by enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao, may apply for multi-journey travel documents.

Article 17

Overseas Chinese investors and those from Hong Kong and Macao who make investments in China's inland areas may appoint their relatives or friends residing in the inland areas as their agents. The agents should hold legally effective letters of authority.

Article 18

In areas where enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao are concentrated, overseas Chinese investors and those from Hong Kong and Macao may apply to the local people's government for the establishment of the association of overseas Chinese investors and investors from Hong Kong and Macao.

Article 19

With respect to equity joint ventures and contractual joint ventures to be established in China's inland areas, with the investments by overseas Chinese investors and those from Hong Kong and Macao, the application for the establishment of the aforesaid enterprises shall be filed by the inland party; as to the enterprises to be established with capital wholly owned by overseas Chinese investors and those from Hong Kong and Macao, the application shall be filed directly by such investors themselves, or they may entrust their relatives or friends residing in China's inland areas, or entrust the institution providing consultancy services, with the application. Applications for the establishment of enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall be accepted and handled exclusively by the local department for foreign economic relations and trade, or by the examining and approving organs designated by the local people's government.

The examination and approval of the applications for the establishment of enterprises with investments from overseas Chinese and compatriots from Hong Kong and Macao shall be handled in accordance with the authorization by the State Council. Departments for foreign economic relations and trade at the various levels or the examining and approving organs designated by the local people's government shall, within forty-five days of receipt of complete application documents, make the decision on whether the said application is approved or disapproved.

The applicant shall, within thirty days of receipt of the written

approval, file an application to the department for the administration of industry and commerce, and, in accordance with the relevant procedures for registration and administration, go through the procedures for registration and obtain the business licence.

#### Article 20

With respect to overseas Chinese investors and those from Hong Kong and Macao who have made investments in China's inland areas, in case that a dispute arises during the execution of or in relation to a contract, the parties concerned shall try their best to settle the dispute through consultation or mediation.

In case that the parties concerned are unwilling to settle the dispute through consultation or mediation, or the dispute cannot be settled through consultation or mediation, the parties concerned may, in accordance with the stipulations of the arbitration articles in the contract, or in accordance with the written arbitration agreement reached by the parties concerned after the dispute has arisen, submit their dispute to the arbitration authorities in China's inland areas or elsewhere for settlement.

In the event that the parties concerned did not specify an arbitration article in their contract, and no written arbitration agreement has been reached after the dispute occurs, then the dispute may be brought before the people's court.

#### Article 21

The right to interpret these Provisions rests with the Ministry of Foreign Economic Relations and Trade.

#### Article 22

These Provisions shall go into effect as of the date of promulgation.



## **ZJ05 Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions**

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Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions  
(Promulgated by the State Economic and Trade Commission, the Ministry of Finance,  
the State Administration for Industry and Commerce and the State Administration of  
Foreign Exchange on 8 November 2002 and effective as of 1 January 2003.)

Article 1 These Provisions have been formulated pursuant to the PRC, Company Law, the PRC, Contract Law and State laws and regulations concerning foreign investment and administration of State-owned assets, in order to attract and regulate the use of foreign investment to reorganize State-owned enterprises, promote the strategic restructuring of the State-owned economy, accelerate the pace at which State-owned enterprises establish modern corporate systems and safeguard social stability.

Article 2 These Provisions shall govern the use of foreign investment to reorganize State-owned enterprises and company system enterprises with State-owned equity (with the exception of financial enterprises and listed companies) or to establish them as company system foreign-invested enterprises (hereafter, Use of Foreign Investment to Reorganize State-owned Enterprises).

Article 3 For the purpose of these Provisions, the Use of Foreign Investment to Reorganize State-owned Enterprises shall include the following:

1. the owner of State-owned property rights in a State-owned enterprise assigns all or part of the property rights to a foreign company, enterprise or other economic organization or individual (Foreign Investor) and the enterprise is reorganized as a foreign-invested enterprise;

2. the owner of State-owned equity in a company system enterprise assigns all or part of the State-owned equity to a Foreign Investor and the enterprise is reorganized as a foreign-invested enterprise;

3. the domestic creditor of a State-owned enterprise assigns its claim to a Foreign Investor and the enterprise is reorganized as a foreign-invested enterprise;

4. a State-owned enterprise or a company system enterprise with State-owned equity sells all or its main assets to a Foreign Investor and the Foreign Investor uses the assets

that it purchased, alone or together with the enterprise that sold the assets, to establish a foreign-invested enterprise: or

5. a State-owned enterprise or a company system enterprise with State-owned equity attracts investment from a Foreign Investor to increase its capital and its shares and the enterprise is reorganized as a foreign-invested enterprise.

Article 4 The State-owned enterprises and company system enterprises described in Items (1), (2), (3) and (5) of Article 3 hereof shall be termed "Enterprises to be Reorganized".

The State-owned property rights of State-owned enterprises and the State-owned equity of company system enterprises shall collectively be termed "State-owned Property Rights". The owners of State-owned property rights and State-owned equity shall collectively be termed "Owners of State-owned Property Rights".

The term "Owner of State-owned Property Rights" means a department authorized by the State or an organization, an enterprise owning State-owned capital or other economic organization authorized to invest by the State. The Owners of State-owned Property Rights, creditors of State-owned enterprises that assign their claims and enterprises that sell their assets shall collectively be termed the "Reorganizing Party".

Article 5 The Reorganizing Party shall select a Foreign Investor that satisfies the following conditions:

1. having the business qualifications and technical level required by the Enterprise to be Reorganized;
2. having a fine business reputation and management capabilities; and
3. having a solid financial position and economic strengths.

The Reorganizing Party shall require the Foreign Investor to submit a restructuring programme to improve the enterprise's corporate governance structure and promote the sustained growth of the enterprise. The restructuring programme shall include the development of new products, technical transformation and a related investment plan, measures to strengthen corporate management, etc.

Article 6 The following principles shall be complied with when Using Foreign Investment to Reorganize State-owned Enterprises:

1. abiding by State laws and regulations and ensuring the economic security of the State;

2. satisfying the requirements of State industrial policy: if the business scope of the enterprise (including those enterprises in which it has a direct or indirect interest) is in an industry in which foreign investment is prohibited by the Foreign Investment Industrial Guidance Catalogue. Foreign Investors may not participate in the reorganization: if the enterprise is one in which the Chinese party must have a controlling interest or a relative controlling interest. the Chinese party shall maintain its controlling interest or relative controlling interest after the reorganization;

3. being beneficial in the economic restructuring effort and promoting the optimal deployment of State-owned capital:

4. emphasizing the introduction of advanced technology and management experience, establishing a compliant corporate governance structure and promoting corporate technical advance and industrial upgrading;

5. adhering to the principles of openness, fairness, impartiality and good faith, preventing the loss of State-owned assets, not evading, repudiating or suspending the claims of banks and other creditors, not prejudicing the lawful rights and interests of staff and workers and safeguarding the lawful rights and interests of Foreign Investors: and

6. promoting fair competition and not leading to monopolization of the market.

Article 7 Prior to the assignment of the property rights of a State-owned enterprise or a wholly State-owned company or the State-owned equity of a limited liability company invested in and established by two or more State-owned enterprises or two or more State-owned investment entities other than State-owned enterprises, the Reorganizing Party shall seek the opinions of the staff and worker congress of the Enterprise to be Reorganized. The assignment of the State-owned equity of a company system enterprise shall require the consent of the shareholders' meeting of the Enterprise to be Reorganized. If claims against a State-owned enterprise are to be assigned, the consent of the Owner of the State-owned Property Rights of the Enterprise to be Reorganized shall be required. Prior to selling all of or its main assets, the enterprise shall obtain the consent of the Owner of the State-owned Property Rights of the enterprise or the shareholders' meeting of the enterprise and notify its creditors thereof.

Article 8 The Use of Foreign Investment to Reorganize a State-owned Enterprise shall satisfy the following requirements:

1. Prior to the reorganization of the enterprise, the Owner of the State-owned Property Rights shall arrange for an inventory of the assets, a determination of the property rights and a screening of the claims and debts of the Enterprise to be Reorganized, engage qualified intermediary organizations to conduct a financial audit and to conduct an asset appraisal in accordance with such relevant regulations as the Administration of State Asset Valuation Procedures (State Council Order No.91), the

Several Issues Concerning the Administration of State Asset Valuation Provisions (Ministry of Finance Order No.14), etc. After the appraisal results have been approved or placed on the record in accordance with regulations, they shall serve as the basis for determining the price of the State-owned Property Rights or assets.

2. If the controlling interest in the enterprise is to pass to, or if all or the main business assets of the enterprise are to be sold to, the Foreign Investor after the reorganization, the Reorganizing Party and the Enterprise to be Reorganized shall formulate an appropriate plan to settle the staff and workers that shall be subject to the approval of the staff and worker congress. The Enterprise to be Reorganized shall use its existing assets to pay in full all such expenses as the wages of its staff and workers, non-refunded pooled wages, unpaid social insurance premiums, etc. The Enterprise to be Reorganized shall offer its staff and workers two options. It shall, in accordance with the law, execute new labour contracts with, or amend the labour contracts of, its staff and workers who are kept on. It shall, in accordance with the law, pay severance pay to those staff members and workers whose labour contracts are terminated and for those staff and workers, the responsibility for whom is transferred to the social insurance authority, it shall pay in full in one lump sum the social insurance premiums. The funds required shall be deducted from the net assets of the Enterprise to be Reorganized before the reorganization or on a priority basis from the proceeds derived by the Owner of the State-owned Property Rights from the assignment of the State-owned Property Rights.

3. If the reorganization is to be effected through the sale of assets, the original enterprise shall succeed to the enterprise's claims and debts, otherwise the reorganized enterprise shall succeed to the enterprise's claims and debts. The assignment of mortgaged or pledged State-owned Property Rights or assets shall comply with the relevant provisions of the PRC, Security Law. The successor to the debts shall execute rel

evant agreements for the disposal of claims and debts with the creditors.

4. The Reorganizing Party shall publish information on the reorganization, recruit Foreign Investors extensively and investigate the Foreign Investors' qualifications, reputation, financial position, management capabilities, payment guarantees, business ethics, etc. It shall give priority consideration to medium and long-term Foreign Investors that can offer advanced technology, management experience and a high degree of industrial compatibility.

The Reorganizing Party and the Foreign Investor shall respond to the reasonable demands of the opposite party by providing relevant truthful and detailed information and data, may not mislead or deceive the opposite party and shall bear the appropriate confidentiality obligations.

5. If the enterprise reorganization is to be effected through the assignment of

State-owned Property Rights or the sale of assets, the Reorganizing Party shall preferentially opt for an open competitive pricing method to determine the Foreign Investor and assignment price. When selecting an open competitive pricing method of assignment, the relevant procedures shall be carried out in accordance with the law and the relevant details on the State-owned Property Rights to be assigned or the assets to be sold shall be announced publicly. If assignment by agreement is opted for, such assignment shall be conducted in an open manner.

Regardless of the assignment method opted for, the Reorganizing Party and the Foreign Investor shall execute an assignment agreement in accordance with the relevant State regulations and these Provisions. The terms of the assignment agreement shall mainly include the basic information on the State-owned Property Rights to be assigned, the settlement arrangements for the staff and workers, the disposal of claims and debts, the assignment ratio, the assignment price, the method of payment and payment conditions, matters relating to the delivery of the property rights, corporate restructuring, etc.

Article 9 The Use of Foreign Investment to Reorganize State-owned Enterprises shall be effected in accordance with the following procedure:

1. The Reorganizing Party (if there are two or more Reorganizing Parties, one shall be selected as the Reorganizing Party) shall submit a reorganization application to the competent department in charge of foreign trade and economic cooperation at the same level. Such documents as a feasibility study, details of the Reorganizing Party and the Enterprise to be Reorganized, details of the Foreign Investor (including its financial statements for the most recent three years audited by a certified accountant and the market share accounted for by the products or services of the enterprises in the same industry in China actually controlled by the Foreign Investor), the reorganization program (including the arrangements for the settlement of staff and worker and for the disposal of claims and debts and the corporate restructuring program), the business scope and equity structure of the reorganized enterprise (including the enterprises in which it has a direct or indirect interest) shall be included with the reorganization application materials.

The department in charge of foreign trade and economic cooperation that received the application shall examine the same in accordance with the authority bestowed by the Guiding the Direction of Foreign Investment Provisions and the relevant laws and regulations. If an enterprise operated by the central government or Party authorities and its wholly-owned enterprises or the enterprises in which it has controlling interest is to be reorganized, or if the Enterprise to be Reorganized directly or indirectly holds equity in a listed company or if the reorganized enterprise is to have total assets of not less than US\$30 million, the examination shall be conducted by the State Council department in charge of foreign trade and economic cooperation. If the reorganization of such an enterprise might lead to monopolization of the market or impede fair competition, hearings shall be organized before the examination. The department in charge of foreign

trade and economic cooperation shall issue its official reply on whether or not it consents to the reorganization within 45 working days after receipt of the reorganization application materials. If hearings are held, the official reply shall be issued within three months.

If the State has other regulations on the use of foreign investment in the industry of which the Enterprise to be Reorganized and the enterprises in which it has a direct or indirect interest are a part or on the change in the nature of the State-owned shares of the Owners of the State-owned Property Rights in a listed company arising due to the change in the property rights, such regulations shall prevail.

2. The assignment agreement executed by the Reorganizing Party and the Foreign Investor shall be submitted for approval in accordance with the relevant provisions of the Ministry of Finance. Issue of the Circular (ref. Cai Qi [2001] No.325). The assignment agreement shall enter into effect upon approval.

Such documents as the State-owned Property Rights Registration Certificate, information on the approval or record filing of the audit report and asset appraisal report of the Enterprise to be Reorganized, the staff and worker settlement program, the claim and debt agreement, the corporate restructuring program, the relevant resolutions of the Reorganizing Party and the Enterprise to be Reorganized, the opinions or resolution of the staff and worker congress of the Enterprise to be Reorganized, etc. shall accompany the assignment agreement.

3. The Reorganizing Party or the Enterprise to be Reorganized shall, on the strength of the approval documents for the reorganization application and assignment agreement, carry out examination and approval procedures for foreign-invested enterprises in accordance with the law. If the reorganized enter

prise is to be a company limited by shares, matters shall be handled in accordance with the relevant provisions of the PRC Company Law.

4. The reorganized enterprise or the investors shall, on the strength of the approval documents specified in Items (1) and (3) of this Article and in accordance with laws and regulations on the administration of registration, carry out registration procedures with the original registration authority, if it has the authority to register foreign-invested enterprises, or the registration authority with the authority to register foreign-invested enterprises of the place where the enterprise is located. If the reorganized enterprise is to be a company limited by shares, matters shall be handled in accordance with the relevant provisions of the PRC Company Law.

5. The Reorganizing Party shall, on the strength of the approval documents for the reorganization application and assignment agreement, the foreign investment exchange registration certificate and the relevant documents, carry out the procedures for the

delivery of State-owned Property Rights and the procedures for registration of the change of ownership in accordance with relevant provisions and engage a certified accountant to issue a capital verification report in accordance with the law. If the land to be used by the reorganized enterprise is State-owned allocated land, the procedures for the examination and approval and granting of leaseholds shall be carried out in accordance with the law.

6. The foreign exchange proceeds derived by the Reorganizing Party from the assignment of State-owned Property Rights or claims or the sale of assets shall be settled after reporting to the foreign exchange department for its approval on the strength of the approval documents for the reorganization application and assignment agreement and the relevant documents.

If the Enterprise to be Reorganized is to be reorganized through a capital and share increase effected through the attraction of investment from Foreign Investors, it may, subject to the approval of the foreign exchange department, open a foreign exchange capital account to retain the foreign exchange funds injected by the Foreign Investors.

7. The reorganization applications, assignment agreements and the approval certificates thereof of key State enterprises, enterprises whose debt to equity swaps have been approved by the State and enterprises in the restricted category of industries in the Foreign Investment Industrial Guidance Catalogue that are under the investment limit and that are subject to the examination and approval of local departments in charge of foreign trade and economic cooperation and finance shall be submitted to the State Council departments in charge of foreign trade and economic cooperation and finance respectively for the record.

Article 10 Foreign Investors shall pay the assignment price or make their capital contributions in the form of a freely convertible currency or other lawful property rights remitted from overseas. Subject to the approval of the foreign exchange department, they may also pay the assignment price or make their capital contributions in the form of net Renminbi profits or other lawful property rights obtained in China. The afore-mentioned other lawful property rights shall include the following:

1. property obtained by Foreign Investors originating from the liquidation of, the assignment of the equity of, the advance recovery of investment from or the reduction in the capital of other foreign-invested enterprises established by them in China;

2. the State-owned Property Rights or assets of State-owned enterprises or company system enterprises with State-owned equity acquired by Foreign Investors;

3. the claims acquired by Foreign Investors of creditors of State-owned enterprises;  
and

4. other capital contribution methods specified in laws and regulations.

When a certified accountant conducts a capital verification for a Foreign Investor, he shall carry out the capital verification procedure and issue a capital verification report in accordance with the Ministry of Finance and State Administration of Foreign Exchange. Further Strengthening the Work of Capital Verification for Foreign Investment Enterprises and Improving the System of Registration of Foreign Capital and Foreign Exchange Circular (ref. Cai Kuai [2002] No.1017).

Article 11 If the reorganization is effected through an assignment, generally, the Foreign Investor shall pay the entire price within three months after the date on which the foreign-invested enterprise is issued its business licence. In the event that the Foreign Investor truly experiences difficulty in doing so, 60% or more of the total price shall be paid within six months after the date of issuance of the business licence. security shall be provided for the remaining amount and such remaining amount shall be paid in full within one year.

Article 12 If the controlling interest in the enterprise is to pass to, or if all or the main business assets of the enterprise are to be sold to, the Foreign Investor after the assignment of the State-owned Property Rights, the Reorganizing Party has the right, prior to the Foreign Investor paying the price in full, to be kept informed of and supervise the production, operational and financial situation of the reorganized enterprise and the Foreign Investor and the reorganized enterprise shall appropriately facilitate the Reorganizing Party's staying informed and supervising.

Prior to using the acquired assets to invest in and establish a foreign-invested enterprise, the Foreign Investor may not use the aforementioned assets to engage in business activities.

Article 13 The proceeds derived from the assignment of State-owned Property Rights or assets shall be received by the Reorganizing Party and managed and used in accordance with the relevant provisions of the State Council department in charge of finance.

Article 14 The share of the net profits of the reorganized enterprise obtained by the Foreign Investor, proceeds it derives from an equity assignment, the share of the funds that it obtains after the expiration of the business term or termination of the enterprise and other lawful revenues may be remitted abroad in accordance with the law or, subject to the approval of the foreign exchange department, may be reinvested in China.

Article 15 In the course of Using Foreign Investment to Reorganize State-owned Enterprises, tax policies in respect thereof shall be handled in accordance with relevant State laws and administrative regulations on taxation and fee policies in respect thereof shall be handled in accordance with the State Development Planning Commission, State Economic and Trade Commission, Ministry of Supervision, Ministry of Finance,



Auditing Administration and the Office for Checking Unhealthy Tendencies in Business Activities of the State Council. Reduction or Exemption of Charges for Enterprises Undergoing Reform. Reorganization or Restructuring Circular (ref. Ji Jia Fei [1998] No.1077).

Article 16 If a member of the personnel of the Reorganizing Party or the Enterprise to be Reorganized acts ultra vires, is derelict in his duties, secretly colludes with the Foreign Investor, practises graft or accepts bribes thus prejudicing the lawful rights and interests of the State, creditors, staff members and workers, he shall be subjected to administrative penalties and sanctions by the relevant department in accordance with the law; if a criminal offence is constituted, his criminal liability shall be pursued in accordance with the law.

Article 17 If a member of the working personnel of a government authority responsible for examination and approval violates these Provisions by granting approvals without authorization or uses his authority in the examination and approval process for private gain thus prejudicing the lawful rights and interests of the State, creditors, staff members and workers, the administrative liability of the person directly in charge and the personnel in authority shall be pursued by the relevant authority in accordance with the administrative authority of cadres; if a criminal offence is constituted, criminal liability shall be pursued in accordance with the law.

Article 18 The participation of investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan and of established foreign-invested enterprises in the reorganization of State-owned enterprises shall be handled with reference to these Provisions.

Article 19 The State Economic and Trade Commission, the Ministry of Finance, the State Administration for Industry and Commerce and the State Administration of Foreign Exchange are in charge of interpreting these Provisions.

Article 20 These Provisions shall be implemented as of 1 January 2003

# **ZJ06 Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors**

August 8, 2006

## **Contents**

Chapter I General Provisions

Chapter II Basic Systems

Chapter III Examination, Approval and Register

Chapter IV Equity-payment-based Takeover of Domestic Companies by Foreign Investors

Section 1 Conditions for Equity-payment-based Takeover

Section 2 Application Documents and Procedures

Section 3 Special Provisions on Special-purpose Companies

Chapter V Antitrust Review

Chapter VI Supplementary Provisions

## **Chapter I General Provisions**

Article 1 For the purposes of promoting and regulating foreign investors' investments in China, absorbing advanced technologies and management experiences from abroad, improving the level of utilizing foreign investments, realizing the reasonable allocation of resources, ensuring employment, as well as maintaining fair competition and state economic security, these provisions are formulated in accordance with the laws and administrative regulations on foreign-funded enterprises, the Company Law and other relevant laws and administrative regulations.

Article 2 The phrase "takeover of a domestic enterprise by a foreign investor" as mentioned in the present provisions means that the foreign investor purchases by agreement the equities of the shareholders of a domestic non-foreign-funded enterprise (hereinafter referred to as "domestic company") or subscribes to the increased capital of a domestic company, and thus changes the domestic company into a foreign-funded enterprise (hereinafter referred to as "share right takeover"); or, a foreign investor establishes a foreign-funded enterprise, and through which it purchases by agreement the assets of a domestic enterprise and operates its assets, or, a foreign investor purchases by agreement the assets of a domestic enterprise, and then invest such assets to establish a foreign-funded enterprise and operate the assets (hereinafter referred to as "asset takeover").

Article 3 To take over a domestic enterprise, a foreign investor shall abide by the laws, administrative regulations, and rules of China, comply with the principles of fairness, reasonableness, making compensation for equal value, as well as good faith, and shall not cause excessive centralization, exclude or limit competition, or disturb the social economic order, or damage the public benefits, or result in any loss to the state-owned assets.

Article 4 To take over a domestic enterprise, a foreign investor shall satisfy the requirements of the laws, administrative regulations, and rules of China concerning the qualifications of investors, and shall comply with the policies on the industry, land, environmental protection, etc.

For the industries where solely foreign-owned operation is not permitted by the "Catalog of Industries for the Guidance of Foreign Investment", the takeover shall not lead to the consequence of a foreign investor's holding all the equity rights of the enterprise; for the industries where it is required for a Chinese party to control or relatively control the shares, the Chinese party shall, after an enterprise in such industries is taken over, still control or relatively control the shares of the enterprise; for the industries where foreign investors are prohibited from operation, no foreign investor shall take over any enterprise in such industries.

The business scope of any enterprise invested by the domestic enterprise prior to the takeover shall meet the requirements in the industrial policies on foreign investments. If it does not, adjustment shall be made.

Article 5 If the takeover of a domestic enterprise by a foreign investor involves the transfer of state-owned property rights of the enterprise and management of state-owned property rights of listed companies, the relevant provisions on the management of state-owned assets shall be followed.

Article 6 Where a foreign investor intends to establish a foreign-funded enterprise by merging a domestic enterprise, it shall, in accordance with these Provisions, be subject to the approval of the examination and approval organ and modify the registration or go through the establishment registration in the registration administrative organ.

If the enterprise to be taken over is a domestic listed company, it shall, pursuant to the Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors, go through the relevant formalities in the securities regulatory institution of the State Council.

Article 7 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall pay taxes under Chinese tax laws and accept the supervision of the tax organs.

Article 8 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall abide by the laws and administrative regulations of China on the administration of foreign exchange. They shall timely go through the approval, register, archival filing and modification formalities in the foreign exchange control organs.

#### Chapter II Basic System

Article 9 For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments exceeds 25% of the registered capital of this enterprise, this enterprise shall be entitled to enjoy the treatments to foreign-funded enterprises.

For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments is less than 25% of the registered capital of this enterprise, this enterprise shall not enjoy the treatments to foreign-funded enterprises unless it is otherwise provided for by any law or administrative regulation. It shall follow the relevant provisions on borrowing foreign loans by non-foreign-funded enterprises when it borrows foreign loans. The examination and approval organ shall issue to it a Foreign-funded Enterprise Approval Certificate (hereinafter referred to as the Approval Certificate") with the remark "The proportion of foreign investments is less than 25%". The registration administrative organ and the foreign exchange control organ shall respectively issue to it a Foreign-funded Enterprise Business License and a Foreign Exchange Register Certificate with the remark "The proportion of foreign investments is less than 25%".

Where a domestic company, enterprise or natural person takes over a domestic affiliated company in the name of an overseas company it lawfully established or controls, the foreign-funded enterprise so established shall not enjoy the treatments to foreign-funded enterprises, except that this overseas company subscribes to the increased capital of the domestic company or that it increases the capital of the enterprise established after takeover and the proportion of the capital increase exceeds 25% of the registered capital of the enterprise so established. For a foreign-funded enterprise established in either of the forms as mentioned in this paragraph, if the proportion of investments made by a foreign investor, who is not its actual controller, exceeds the 25% of its registered capital, it shall be entitled to enjoy the treatments to foreign-funded enterprises.

The treatments to a foreign-funded enterprise which is established after a foreign investor takes over a domestic listed company shall be governed by the relevant provisions of the state.

Article 10 The term "examination and approval organ" as mentioned in these Provisions refers to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as the MOFCOM) or the provincial commerce administrative departments (hereinafter

referred to as the provincial examination and approval organs"). The term "registration administrative organ" refers to the State Administration for Industry and Commerce (hereinafter referred to as the SAIC) or its authorized local administrations for industry and commerce. The term "foreign exchange control organ" refers to the State Administration of Foreign Exchange (hereinafter referred to as the SAFE) or its branches.

Under the provisions of laws, administrative regulations, and rules, if a foreign-funded enterprise established after takeover falls within any special category or sector of foreign-funded enterprises which are subject to the examination and approval of the Ministry of Commerce (hereinafter referred to as the MOFCOM), the provincial examination and approval organ shall forward the application materials to the MOFCOM for examination and approval. The MOFCOM shall make a decision of approval or disapproval in pursuance of law.

Article 11 Where a domestic company, enterprise or natural person intends to take over its domestic affiliated company in the name of a company which it lawfully established or controls, it shall be subject to the examination and approval of the MOFCOM.

The parties concerned shall not dodge the aforesaid requirements by making investments within China through the foreign-funded enterprise, or by other ways.

Article 12 Where a foreign investor intends to obtain the actual controlling power of a domestic enterprise it plans to take over, and if any important industry is concerned, or if it has an impact on or may have an impact on the national economic security, or it will lead to the transfer of the actual controlling power of a domestic enterprise which holds a famous trademark or China Time-honored Brand, the parties concerned shall file an application with the MOFCOM.

If the parties concerned fail to do so, but its takeover has had or may have a serious impact on the national economic security, the MOFCOM may, jointly with the relevant departments, demand the parties concerned to terminate the transaction or transfer the relevant equities / assets or take other effective measures to eliminate the takeover's impact on the national economic security.

Article 13 For an equity-based takeover by a foreign investor, the foreign-funded enterprise established after takeover shall succeed to the credits and debts of the domestic company it takes over.

For an asset-based takeover by a foreign investor, the domestic enterprise which sells its assets shall undertake its former credits and debts.

The foreign investor, the domestic enterprise to be taken over, the creditors and other parties concerned may enter into a separate agreement on the disposal of the credits and debts of the domestic enterprise to be taken over, provided that this agreement shall not

impair the interests of any third party or public interests. An agreement on the disposal of credits and debts shall be submitted to the examination and approval organ.

A domestic enterprise to sell assets shall, not later than 15 days before the investor submits the application documents to the examination and approval organ, send a notice to the creditors and shall publish an announcement on a provincial newspaper or above, which is circulated nationwide.

Article 14 The parties to a takeover shall determine the transaction price on the basis of the assessment result of the equities to be transferred or of the assets to be sold, which is given by an asset assessment institution. The parties to a takeover may agree on an asset assessment institution lawfully established within China. A common international assessment method shall be adopted for the asset assessment. It is prohibited to divert any capital abroad in any disguised form by transferring any equities or selling assets at a price which is obviously lower than the assessment result.

The takeover of a domestic enterprise by a foreign investor, which may cause the modification of any equity formed by investments to state-owned assets or transfer of the property right of state-owned assets, shall satisfy the relevant provisions on the management of state-owned assets.

Article 15 The parties to a takeover shall state whether there is a connected relationship between the parties to the takeover. If both parties belong to a same actual controller, the parties shall disclose their actual controller to the examination and approval organ and make an explanation about whether the purpose of takeover and the assessment result conform to the fair value of the market. The parties shall not dodge the aforesaid requirements by trust, holding shares on behalf of others, or by other means.

Article 16 To establish a foreign-funded enterprise by taking over a domestic enterprise, a foreign investor shall, within 3 months from the date of issuance of business license to the foreign-funded enterprise, pay all the considerations to the shareholders who transfer the equities or to the domestic enterprise which sells the assets. In the case of any particular circumstance under which it is necessary to extend the time limit, the foreign investor shall, upon the approval of the examination and approval organ, pay 60% or more of the consideration within 6 months as of the date of issuance of the business license to the foreign-funded enterprise, and pay off the balance of consideration within one year, and distribute the proceeds according to the proportion of investments it has actually contributed.

Where a domestic company subscribes to the increased capital of a domestic company, the shareholders of the limited liability company or of the domestic joint stock limited company established by way of promotion shall pay at least 20% of the newly increased registered capital when the company applies for a business license for foreign-funded enterprise. The time to pay the other newly increased registered capital shall be in line

with the Company Law, the laws on foreign investments and the Regulation on the Administration of Company Registration. If it is provided for in any other law or administrative regulation, such law or administrative regulation shall prevail. Where a joint stock limited company increase the registered capital by issuing new stocks, the shareholders shall subscribe to the new stocks in accordance with the relevant provisions on the payment for shares in the establishment of a joint stock limited company.

Where a foreign investor carries out an asset takeover, it shall stipulate the time limit for contribution of investments in the contract and articles of association of the foreign-funded enterprise to be established. Where the foreign investor establishes a foreign-funded enterprise, and through which purchases the assets of a domestic enterprise and operates such assets, it shall contribute the investments equivalent to the consideration of the assets within the time limit for payment of consideration as provided for in Paragraph 1 of the present Article. As for the remaining investments, the time limit for contribution shall satisfy the relevant provisions on the capital contribution for the establishment of foreign-funded enterprise.

Where a foreign investor establishes a foreign-funded enterprise by merging a domestic enterprise, if its investment proportion is less than 25 % of the registered capital of the enterprise and if it plans to make investments in cash, it shall make full contribution within 3 months from the day when a business license is issued to the foreign-funded enterprise; if it plans to make investments in kind or industrial property, it shall make full contribution within 6 months from the day when a business license is issued to the foreign-funded enterprise.

Article 17 The means of payment for the consideration shall conform to the relevant laws and administrative regulations of the state. If the foreign investor uses the Renminbi assets it lawfully owns as a means of payment, it shall obtain the approval of the department of foreign exchange control. If the foreign investor uses the shares over which it has the right of disposition, it shall comply with Article 4 of these Provisions.

Article 18 After a foreign investor purchases the equities of a domestic company by agreement, and the domestic company has been modified into a foreign-funded enterprise, the foreign-funded enterprise's registered capital shall be the registered capital of the original domestic company, and the proportion of investments contributed by the foreign investor shall be the proportion of the purchased equities in the original registered capital.

Where a foreign investor subscribes to the capital increase of a domestic limited liability company, the registered capital of a foreign-funded enterprise established after the takeover shall be the summation of the registered capital of the former domestic company and the amount of capital increase. As to the foreign investor and other shareholders of the former domestic company it takes over, their respective proportion of capital contributions to the foreign-funded enterprise shall be determined on the basis of the

assessment of the assets of the domestic company.

Where a foreign investor subscribes the capital increase of a domestic joint stock limited company, the registered capital shall be determined under the Company Law.

Article 19 For an equity-based takeover by a foreign investor, the upper limits on the total investments to the foreign-funded enterprise after takeover shall be determined according to the following rates, unless the state provides otherwise:

- (1) If the registered capital is less than US\$ 2.1 million, the total investments shall not exceed 10/7 of the registered capital;
- (2) If the registered capital is not less than US\$ 2.1 million but not more than US\$ 5 million, the total investments shall not exceed two times the registered capital;
- (3) If the registered capital is not less than US\$ 5 million but not more than US\$ 12 million, the total investments shall not exceed 2.5 times the registered capital; and
- (4) If the registered capital is more than US\$ 12 million, the total investments shall not exceed 3 times the registered capital.

Article 20 For an asset-based takeover, the foreign investor shall, according to the transaction price for the purchased assets and the actual production and operation scale, determine the total investments to the foreign-funded enterprise to be established. The proportion between the registered capital and total investments of the foreign-funded enterprise to be established shall conform to the relevant provisions.

### Chapter III Examination, Approval and Registration

Article 21 For an equity-based takeover, a foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded enterprises:

- (1) A resolution of the shareholders of the domestic limited liability company or of the domestic joint stock limited company on the full consent to the equity-based takeover or asset-based takeover by the foreign investor;
- (2) An application for the establishment of the foreign-funded enterprise;
- (3) A contract and the articles of association of the foreign-funded enterprise to be established after takeover;
- (4) An agreement on the foreign investor's acquisition of equities of shareholders of the domestic company or on the foreign investor's subscription of the capital increase of domestic companies;
- (5) The previous-year financial audit report of the domestic company taken over;
- (6) The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;
- (7) The descriptions about the enterprises invested by the domestic enterprise taken over;
- (8) The (duplicates) of the business licenses of the domestic company taken over and



enterprises it invests in;

- (9) The proposal on the settlement of employees domestic enterprise taken over;
- (10) The documents to be submitted as required by Articles 13 through 15 of the present provisions.

If the business scope, scale, obtainment of land use right of a foreign-funded enterprise established after takeover are subject to the license of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Article 22 An equity purchase agreement, or domestic company capital increase agreement shall be governed by Chinese law and shall contain the following contents:

- (1) The status of each party to the agreement, including The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;
- (2) The proportion of price of the equities purchased or capital increase subscribed;
- (3) The time period of the agreement, and the method of execution thereof;
- (4) The rights and obligations of each party to the agreement;
- (5) The liabilities for breach of contract, and settlement of disputes; and
- (6) The time and place for the conclusion of agreement.

Article 23 For an asset-based takeover, the foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded enterprises:

- (1) A resolution of the property right holders or power authority of the domestic enterprise on the consent to the sale of assets;
- (2) An application for the establishment of a foreign-funded enterprise;
- (3) A contract and the articles of association of the foreign-funded enterprise to be established;
- (4) An asset purchase agreement signed by the foreign-funded enterprise to be established and the domestic enterprise, or by the foreign investor and the domestic enterprise;
- (5) The articles of association and the business license (duplicate) of the domestic enterprise it has taken over;
- (6) The notice of the domestic enterprise taken over, certifications of the creditors announced, and statement about whether the creditors have raised any objections;
- (7) The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;
- (8) The proposal on the settlement of employees of the domestic enterprise that is taken over; and
- (9) The documents as required by Articles 13 through 15 if these Provisions.

If the business scope, scale, obtainment of land use right of a foreign-funded enterprise establishment after takeover involve licensing of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Where a foreign investor purchases the assets of a domestic enterprise by agreement and invests such assets in establishing a foreign-funded enterprise, it shall not, prior to the establishment of the foreign-funded enterprise, carry out any business activities with such assets.

Article 24 The agreement on the purchase of assets shall be governed by Chinese law and shall contain the following main contents:

- (1) The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;
- (2) A list of the assets to be purchased and the price thereof;
- (3) The time period and method for the execution of the agreement;
- (4) The rights and obligations of each party to the agreement;
- (5) The liabilities for breach of contract, and settlement of disputes;
- (6) The time and place for the conclusion of the agreement.

Article 25 Where a foreign investor intends to establish a foreign-funded enterprise by taking over a domestic enterprise, unless it is otherwise provided for in these Provisions, the examination and approval organ shall, within 30 days after the examination and approval organ receives the complete set of documents as required, it shall make a decision of approval or disapproval. If it decides to make a decision of approval, the examination and approval organ shall issue to the foreign investor an approval certificate.

For a foreign investor which intends to purchase the equities of a domestic company by agreement, if the examination and approval organ makes a decision of approval, it shall simultaneously send a copy of the relevant approval documents to the foreign exchange control departments of the places where the equity transferor and the domestic company are located, respectively. The foreign exchange control department of the place where the equity transferor is located shall handle the foreign exchange registration for equity-transfer-based foreign investments, which indicates that the consideration to the foreign investor's equity takeover has been fully paid.

Article 26 For an asset-based takeover, the foreign investor shall, within 30 days after it receives the approval document, apply to the registration administrative organ for establishment registration so as to fetch a foreign-funded enterprise business license.

For an equity-based takeover by a foreign investor, the domestic company taken over shall apply to the original registration administrative organ for modifying its registration in accordance with these Provisions. If the original registration administrative organ has registration jurisdiction, it shall, within 10 days after it receives the application documents,

transfer these application documents to the competent registration administrative organ and simultaneously accompany them by the registration files of the domestic company. When the domestic company taken over applies for modifying the registration, it shall submit the following documents and shall be responsible for their genuineness and validity:

- (1) An application for modifying registration;
- (2) An agreement on the purchase of equities of the domestic company or on the subscription of increased capital of a domestic company by a foreign investor;
- (3) The post-revision articles of association or revisions to the original articles of association, and the foreign-funded enterprise contract which shall be submitted in pursuance of law;
- (4) The foreign-funded enterprise approval document;
- (5) The certification for the qualifications of the foreign investor as the subject, or the identity certification of the foreign investor as a natural person;
- (6) The post-revision name list of the members of the board of directors, the documents which state the name and domicile of the newly increased directors, and the documents on the appointment of the newly increased directors;
- (7) Other relevant documents and certificates as required by the State Administration for Industry and Commerce.

The investor shall, within 30 days after it receives a foreign-funded enterprise business license, go through the registration formalities in the tax, customs, land administration and foreign exchange administration departments.

#### Chapter IV Equity-payment-based Takeover of Domestic Companies by Foreign Investors

##### Section 1 Conditions for Equity-payment-based Takeover

Article 27 The term "equity-payment-based takeover of a domestic enterprise by a foreign investor" means that the shareholders of an overseas company purchase the equities of a domestic company by paying the equities of the overseas company it holds, or that an overseas company purchases the increased capital of a domestic company by paying its increased shares.

Article 28 The term "overseas company" as mentioned in this Chapter shall be a lawfully established company, there is a sound system of company law in its registration place, and the company and its management level have no record of punishment by the regulatory institution within recent 3 years. Except for special-purpose companies as mentioned in Section 3 of this Chapter, an overseas company shall be a listed company and there shall be a sound securities dealing system in the place where it gets listed.

Article 29 The equities of the domestic and overseas companies involved in the equity-based takeover of a domestic company by a foreign investor shall meet the following conditions:

- (1) They are lawfully held by the shareholders and may be transferred in accordance with the law;
- (2) There is no dispute over their ownership, they are not held in pledge and they are not subject to any other limit of right;
- (3) The equities of an overseas company shall be listed publicly in an overseas lawful securities exchange market (excluding the over-counter exchange market); and
- (4) The transaction price of the equities of the overseas company in the recent 1 year remains stable.

The Items (3) and (4) of the preceding Paragraph is inapplicable to the special-purpose companies as mentioned in Section 3 of this Chapter.

**Article 30** For an equity-based takeover of a domestic company by a foreign investor, the overseas company or its shareholders shall hire an intermediary institution registered within China to serve as a consultant (hereinafter referred to as the "takeover consultant"). The takeover consultant shall make due investigations to the genuineness of the takeover application documents, the financial status of the overseas company as well as whether the takeover meets the requirements of Articles 14, 28 and 29 of these Provisions, shall make a takeover consultant report and shall put forward express professional opinions on each of the aforesaid items.

**Article 31** A takeover consultant shall satisfy the following conditions:

- (1) Having a good reputation and having relevant practicing experiences;
- (2) Having no record of serious violation of any law or regulation; and
- (3) Being capable of investigating and analyzing the legal systems of the registration place of the overseas company and the place where the overseas company is get listed, as well as the financial status of the overseas company.

## Section 2 Application Documents and Procedures

**Article 32** An equity-based takeover of a domestic company by a foreign investor shall be subject to the examination and approval of the MOFCOM. The domestic company shall not only submit the documents as required in Chapter III of these Provisions, but also the following documents:

- (1) A statement of the changes of equities and important changes of assets of the domestic company within the recent 1 year;
- (2) A takeover consultant's report;
- (3) The business opening certifications or identity certification documents of the relevant domestic and overseas companies and their shareholders;
- (4) Descriptions about the equities held by the shareholders of the overseas company, and the name list of the shareholders who hold 5 % or more of the equities of the overseas company;
- (5) The articles of association of the overseas company and a description about the guaranties it provides to outsiders; and

(6)The recent annual financial statements upon audit and a report on the stock dealings of the overseas company in the recent half year.

Article 33 The MOFCOM shall, within 30 days after it receives a complete set of documents, examine a takeover application. If the relevant requirements are satisfied, it shall issue to the applicant an approval document, which is given the remark that "For the equity-based takeover of a domestic company by a foreign investor, it will be valid for 6 months as of the date of issuance of a business license."

Article 34 The overseas company shall, within 30 days after it receives an aforesaid approval document, it shall modify the registration in the registration administrative organ and the foreign exchange control organ. The registration administrative organ and the foreign exchange control organ shall respectively issue to it a foreign-funded enterprise business license and a foreign exchange register certificate which are given the remark that "To be valid for 8 months as of the date of issuance".

When a domestic company goes through the registration modification formalities in the registration administrative organ, it shall, in advance, submit an equity change application, the revised articles of association, the equity transfer agreement and other documents signed by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 35 Within 6 months as of the date of issuance of a business license, the domestic company and its shareholders shall, in regard to the matters relating to the overseas company's equities it plans to hold, apply to the MOFCOM and the foreign exchange control organ for going through the formalities for the examination, approval and registration of investments to run an enterprise abroad .

The parties concerned shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also a foreign-funded enterprise approval certificate with the said remark and a foreign-funded enterprise business license with the said remark. After the MOFCOM examines and approves the overseas company's equities to be held by the domestic company or its shareholders, it shall issue to the applicant a Chinese enterprise overseas investment approval certificate and replace the foreign-funded enterprise approval certificate with a remark by one with no remark.

After a domestic company obtains a foreign-funded enterprise approval certificate without a remark, it shall, within 30 days, apply to the registration administrative organ and the foreign exchange control organ, for replacing the foreign-funded enterprise business license and the foreign exchange register certificate with a remark by new ones with no remark.

Article 36 With 6 months as of the date of issuance of a business license, if the domestic

and overseas companies fail to finish the equity modification formalities, the approval certificate with a remark and the Chinese enterprise overseas investment approval certificate shall be invalidated automatically. The registration administrative organ shall, according to the equity modification registration application documents submitted by the domestic company in advance, examine and approve the modification registration and shall make the equity structure of the domestic company resume to the state prior to the takeover of equities.

In the case of failure to acquire the shares increased by a domestic company, before the registration administrative organ examines and approves the modification registration under the preceding Paragraph, the domestic company shall, pursuant to the Company Law, reduce the registered capital correspondingly and publish an announcement on a newspaper.

If the domestic company fails to go through the relevant registration formalities according to the preceding Paragraph, the registration administrative organ shall punish it in accordance with the Regulation on the Administration of Company Registration.

Article 37 After a domestic company obtains a foreign-funded enterprise approval certificate with a remark and a foreign exchange register certificate with a remark, it shall not distribute its profits to its shareholders, nor provide a guaranty to any connected company, nor make any payment to any outsider for the capital items such as the equity transfer, capital decrease or liquidation.

Article 38 A domestic company or its shareholders may, upon the strength of approval document with no remark and the business license with no remark issued by the MOFCOM and the registration administrative organ, go through the tax modification registration in the tax organ.

### Section 3 Special Provisions on Special-purpose Companies

Article 39 The term "special-purpose company" refers to an overseas company which a domestic company or natural person directly or indirectly controls for the purpose of making its actual domestic company equities get listed abroad.

The provisions of this Section shall apply to a special-purpose company, which, for the purpose of getting listed abroad, its shareholders or the special-purpose company purchase (purchases) the equities of the shareholders of a domestic company or the share increase of a domestic company by paying with the equities of the special-purpose company it holds or by paying with the share-increase of the special-purpose company.

If the parties concerned makes an overseas company, which holds any equities of a special-purpose company, serve as a subject to get listed abroad, this overseas company

shall satisfy the relevant requirements for the special-purpose company as described in this Section.

Article 40 The transaction for the overseas listing of a special-purpose company shall be subject to approval of the securities regulatory institution of the State Council.

The country or region where the special-purpose company gets listed shall have sound legal and regulatory systems, and securities regulatory institution of this country or region shall have signed a memorandum of cooperation and understanding with the securities regulatory institution of the State Council of China and keep an effective cooperation in the regulatory work.

Article 41 A domestic company with its equities listed abroad as mentioned in this Section shall satisfy the following conditions:

- (1) Its property right is clear. There is no dispute or potential dispute over its property right;
- (2) It has a complete business system and a good sustainable operation capacity;
- (3) It has a sound corporate governance structure and internal management system; and
- (4) The company and its main shareholders have no record of serious violation of any law or regulation.

Article 42 To set up a special-purpose company abroad, an overseas company shall apply to the MOFCOM for going through the examination and approval formalities. When doing so, the domestic company shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also the following documents:

- (1) The identity certification documents on the final controller of the special-purpose company;
- (2) The business plan on the overseas listing of the special-purpose company; and
- (3) The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

After the party who establishes or controls a special-purpose company obtains approval document for Chinese enterprise to make overseas investment, it shall apply to the foreign exchange control organ of the place where it is located for going through the formalities for the register of overseas investments.

Article 43 The total value of the stocks of a special-purpose company listed abroad shall not be lower than the value of the equities of the domestic company upon the assessment of the relevant asset assessment institution.

Article 44 Where a special-purpose company intends to take over a domestic company by equities, the domestic company shall not only submit to the MOFCOM the documents as required in Article 32 of these Provisions, but also the following documents:

- (1) The approval documents and certificate for the investor to run an enterprise abroad at

the time of establishment of the special-purpose company;

(2) The foreign exchange register form for the overseas investments of the special-purpose company;

(3) The identity certification documents on the final controller of the special-purpose company, or the business opening certification or articles of association of the special-purpose company;

(4) The business plan on the overseas listing of the special-purpose company; and

(5) The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

If the parties concerned makes an overseas company, which holds the equities of a special-purpose company, serve as a subject to get listed abroad, the domestic company shall, apart from the aforesaid documents, submit the following documents:

(1) The business opening certification and the articles of association of the overseas company; and

(2) The arrangement of the special-purpose company and the overseas company for the transaction of the equities of the domestic company taken over, as well as the detailed descriptions of the method to convert the equities to money.

Article 45 If the MOFOCOM approves the documents as required in Article 44 of these Provisions upon preliminary examination, it shall issue a letter of in-principle approval. The domestic company shall, upon the strength of the letter of in-principle approval, submit to the securities regulatory institution of the State Council the application documents for getting listed. The securities regulatory institution of the State Council shall make a decision of approval or disapproval within 20 working days.

After the domestic company obtains an approval, it shall apply to the MOFCOM for an approval certificate. The MOFCOM shall issue to it an approval certificate with the remark "For holding equities of overseas special-purpose company, it shall be valid for 1 year as of the issuance of a business license".

If the takeover causes the change of equities of the special-purpose company, the domestic company or natural person holding the equities of the special-purpose company shall, upon the strength of the foreign-funded enterprise approval certificate with a remark, apply to the MOFCOM for going through the formalities for the examination and approval of the change of the overseas investment to run an enterprise abroad and shall apply to the local foreign exchange control organ for modifying the foreign exchange register of overseas investments.

Article 46 The domestic company shall, within 30 days after it receives an approval document with a remark, apply to the registration administrative organ and the foreign exchange control organ for modifying the registration. The registration administrative organ and the foreign exchange control organ shall respectively issue to a foreign-funded enterprise business license and a foreign exchange register certificate with a remark "To



be valid for 14 months as of the date of issuance".

When the domestic company handles the modification registration in the registration administrative organ, it shall, in advance, submit the equity change application, the revised articles of association, the equity transfer agreement and other documents signed by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 47 The domestic company shall, within 30 days after the special-purpose company or its connected overseas company realizes the overseas listing, report to the MOFOCOM about the information about the overseas listing and its plan on the transfer-back of the raised funds and apply for a unremarked foreign-funded enterprise approval certificate. At the same time, it shall, within 30 days after the realization of overseas listing, report to the securities regulatory institution of the State Council the information about the overseas listing and provide it with the relevant documents for archival purposes. It shall also submit to the foreign exchange control organ its plan on the transfer-back of the raised funds and execute this plan under the supervision of the foreign exchange control organ. It shall, within 30 days after it receives an unremarked approval certificate, apply to the registration administrative organ and foreign exchange control organ for replaying its foreign-funded enterprise business license and foreign exchange register certificate with a remark by a new unremarked one.

If the domestic company fails to report to the MOFOCOM within the aforesaid time limit, its approval certificate with a remark shall be invalidated automatically, its equities structure will resume to the state prior to the equity-based takeover and it shall go through the formalities for modifying the registration in accordance with Article 36 of these Provisions.

Article 48 The funds of a special-purpose company raised from overseas listing shall, according to the transfer-back plan submitted to the foreign exchange control organ for archival purposes, be transferred back into China according to the existing foreign exchange control provisions. The raised funds may be transferred back into China by:

- (1) providing commercial loans to the domestic company;
- (2) setting up a new foreign-funded enterprise within China; and
- (3) taking over a domestic enterprise.

To transfer back the funds of a special-purpose company raised overseas under the aforesaid circumstances, the relevant parties shall abide by the laws and administrative regulations on the administration of foreign investments and on foreign debts. If, as a consequence of the transfer-back of the funds a special-purpose company raised overseas, the domestic company or natural person who holds more equities of the special-purpose company or the net assets of the special-purpose company increase, the parties concerned shall faithfully disclose the relevant information and apply for examination and approval. After it finishes the examination and approval formalities, it shall go through the formalities for modifying the foreign exchange register of foreign

investments and the register of overseas investments.

The profit, bonus and capital change income in a foreign currency obtained by the domestic company or natural person from the special-purpose company shall be transferred back to China within 6 months after the date of obtainment. The profit or dividends may enter into the foreign exchange account for current items or may be converted into RMB. The capital change income in a foreign currency may, upon the examination and approval of the foreign exchange control organ, be deposited in a special capital account opened for it or be converted into RMB.

Article 49 Within 1 year after the date of issuance of a business license, if the domestic company fails to obtain an unremarked approval certificate, the approval certificate with a remark shall be invalidated automatically. The domestic company shall go through the formalities for modifying the registration.

Article 50 After the special-purpose company has realized the overseas listing and the domestic company has obtained an approval certificate and a business license with no remark, if the relevant party concerned continues to take over this domestic company by paying its equities, the provisions of Sections 1 and 2 of this Chapter shall apply to this case.

#### Chapter V Antitrust Review

Article 51 If the takeover of a domestic company by a foreign investor is under any of the following circumstances, the investor shall report the relevant information to the MOFCOM and the State Administration for Industry and Commerce (hereinafter referred to as the SAIC):

- (1) The current-year business volume of any party to the takeover in the Chinese market exceeds RMB 1.5 billion yuan;
- (2) The foreign investor has accumulatively taken over more than 10 enterprises in the domestic relevant industries;
- (3) The market share of any party to the takeover has reached 20% in China; and
- (4) The takeover leads to the fact that the market share of the party to the takeover has reached 25% in China.

When the foreign investor fails to meet the conditions as mentioned in the preceding Paragraph, but upon request of a domestic enterprise of competitive relationship, a relevant functional department or industrial association, the MOFCOM or the SAIC believes that the takeover by the foreign investor involves a huge market share, or that there are other major factors which seriously impact market competition, it may also demand the foreign investor to prepare a report.

The aforesaid merging party includes the connected enterprises of the foreign investor.

Article 52 If the takeover of a domestic company by a foreign investor is under any of the circumstances as mentioned in Article 51 and if the MOFCOM and the SAIC believe that it may lead to excessive concentration, hamper fair competition or impair the interests of the consumer, they shall, within 90 days as of the receipt of all the documents as required, either solely convene through negotiation or jointly convene the relevant departments, institutions, enterprises and other interested parties and hold a hearing, and shall make a decision of approval or disapproval in accordance with the law.

Article 53 Where an overseas takeover is under any of the following circumstances, the parties to the takeover shall, before announcing the takeover proposal or when submitting the said proposal to the competent authority in the country of its locality, submit the takeover proposal to the MOFCOM and the SAIC. The MOFCOM and the SAIC shall examine whether it will lead to excessive centralization in the domestic market, hinder domestic fair competition, or damage the domestic consumers' benefits, and shall make a decision on whether approve the proposal or not:

- (1) The overseas party to the takeover owns more than RMB 3 billion Yuan of assets inside the territory of China;
- (2) The business volume of the overseas party to the takeover in the Chinese market is more than RMB 1.5 billion yuan in the current year;
- (3) The market share of the overseas party to the takeover and its connected enterprises in China has reached 20%;
- (4) The market share of the overseas party to the takeover and its connected enterprises in China has reached 25% due to the overseas takeover; or
- (5) Due to the overseas takeover, there will be more than 15 foreign-funded enterprises in the relevant domestic industries with direct or indirect shares of the foreign-funded enterprises.

Article 54 Where a takeover is under any of the following circumstances, the parties to the takeover may apply to the MOFCOM and the SAIC for exemption of examination:

- (1) The takeover may improve the conditions for fair competition in the market;
- (2) A loss-making enterprise is taken over and the employment is ensured;
- (3) The takeover helps the absorption of advanced technologies and management personnel and is able to improve the enterprise's international competitiveness; or
- (4) The takeover may improve the environment.

#### Chapter VI Supplementary Provisions

Article 55 Where an investment company established by a foreign investor within China intends to take over a domestic enterprise, it shall be governed by these Provisions.

Where a foreign investor intends to purchase the equities of a foreign-funded enterprise within China or to subscribe to the increased capital of a foreign-funded enterprise within China, it shall be governed by the existing laws and administrative regulations on foreign-funded enterprises as well as the relevant provisions on changes of equities of

investors of foreign-funded enterprise; if any matter is not covered by the aforesaid laws, administrative regulations or provisions, it shall be governed by these Provisions.

Where a foreign investor intends to combine with or take over a domestic enterprise through a foreign-funded enterprise established by it within China, it shall be governed by the relevant provisions on the combination and split-up of foreign-funded enterprises and the relevant provisions on domestic investments of foreign-funded enterprise; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Where a foreign investor takes over a domestic limited liability company, if it transforms it into a joint stock limited company, or if the domestic company is a joint stock limited company, it shall be governed by the relevant provisions on the establishment of a joint stock limited company; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Article 56 For the submission of documents, an applicant or declarer shall classify the documents into different categories under these Provisions and accompany them with a list of documents. All documents required to be submitted shall be written in Chinese.

Article 57 A Chinese natural-person shareholder of a domestic company taken over by equities may, upon approval, continue to be a Chinese investor of the foreign-funded enterprise established after modification.

Article 58 If a natural-person shareholder of a domestic company changes his nationality, the enterprise nature of the company will remain unchanged.

Article 59 The functionaries of the government organs shall be dutiful, shall perform their duties in pursuance of the law, shall not seek any improper benefit by taking the advantage of their positions, and shall keep confidential the commercial secrets they have access to.

Article 60 Where an investor from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan Region intends to take over a domestic enterprise of any other region, it shall be governed by these Provisions.

Article 61 These Provisions shall come into force as of September 8, 2006.

## ZJ07 Preferential Policies of Zhejiang Province

2006-3-29 16:18:24

### (1) Enterprise Income Tax

The income tax on enterprises with foreign investment established in Special Economic Zones, on foreign enterprises which have establishments or places in Special Economic Zones engaged in production or business operations, and on production-oriented enterprises with foreign investment in Economic and Technological Development Zones, shall be levied at the reduced rate of fifteen percent.

The income tax on production-oriented enterprises with foreign investment established in coastal economic open zones or in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, shall be levied at the reduced rate of twenty-four percent.

The income tax on enterprises with foreign investment engaged in energy resource, transportation, port, and dock projects may be levied at the reduced rate of fifteen percent with the approval of the State Administration of Taxation.

Production-oriented enterprises with foreign investment scheduled to operate for a period of not less than ten years shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a fifty percent reduction in the third to fifth year. However, the exemption from or reduction of income tax on enterprises with foreign investment engaged in the exploitation of resources such as petroleum, natural gas, rare metals, and precious metals shall be regulated separately by the State Council.

Chinese-foreign equity joint ventures engaged in port and dock construction where the period of operation is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of provinces, autonomous regions, or municipalities directly under the Central Government of the location and commencing with the first profit-making year, be exempt from enterprise income tax from the first year to the fifth year and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

Enterprises with foreign investment engaged in agriculture, forestry or animal husbandry and enterprises with foreign investment established in remote underdeveloped areas may, upon application filed by the enterprise and approval by the competent department of tax affairs under the State Council, be allowed a fifteen to thirty percent reduction of the amount of income tax payable for a period of another ten years following the expiration of the period for tax exemption or reduction.

Export-oriented enterprises invested in and operated by foreign businesses may be levied at the reduced rate of fifty percent after the expiration of the period for tax exemption or reduction in accordance with the provisions of the Tax Law if the export value accounts for 70% or more of that year's total output value of the enterprise. However, export-oriented enterprises in the special economic zones and economic and technological development zones and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the above-mentioned conditions shall pay enterprise income tax at the tax rate of 10%.

Advanced technology enterprises invested in and operated by foreign businesses which remain advanced technology enterprises after the period of enterprise income tax exemptions or reductions has expired in accordance with the provisions of the Tax Law may continue to be taxed by half for an additional three years.

Losses incurred in a tax year by any enterprise with foreign investment and by an establishment or a place set up in China by a foreign enterprise to engage in production or business operations may be made up by the income of the following tax year. Should the income of the following tax year be insufficient to make up for the said losses, the balance may be made up by its income of the subsequent year, and so on, over a period not exceeding five years.

#### (2) Individual Income Tax

For foreign nationals working in enterprises with foreign investment or foreign enterprises set up in China, their taxable income is the balance of their monthly income after the deductions for expenses of 3200 RMB in addition to a monthly deduction for expenses of 800 RMB.

#### (3) Profit

The profits that foreign investors make from the enterprises with foreign investment are exempt from the income tax.

#### (4) Importing Equipment

Tariffs and import link value-added tax shall be exempted with respect to import equipment for their own use (including technology, matching components and parts along with imported equipment in accordance with contract) within the total amount of investment of encouraged projects in line with the Catalogue for the Guidance of Foreign Investment Industries, with the exception of the commodities listed in the Catalogue of Non-Duty-Free Commodities to Be Imported for Foreign-Funded Projects.

Foreign-funded enterprises whose business scope falls into the Encouragement Industry Catalogue stipulated by the state, or foreign-funded R&D centers, or foreign-funded

technically advanced enterprises or foreign-funded export-oriented enterprises will be exempted from tariffs and import link value added tax in accordance with Circular of the State Council on the Adjustment of Tax Policy on Equipment Imports (Guo Fa [1997] No. 37) when they import, for their own technical updating, equipment and supporting parts, auxiliaries and relative technology within their original business scope that the local enterprises cannot produce or supply or the local products' performance can not meet their requirement.

If foreign-funded enterprises import equipment for self use, as well as technology, matching components and parts along with imported equipment in accordance with contract in order to manufacture the commodities listed in the Catalog of the State High-tech Products, these items, except the ones listed in Catalogue of Non-Duty-Free Commodities to Be Imported for Domestic Investment Projects (Guo Fa [1997] No. 37), shall be exempted from tariffs and import link value-added tax.

#### (5) Purchasing Domestic Equipment

For investment projects whose capital of foreign investors reaches 25% or above of the capital paid up by all the investors of the foreign-funded enterprises and which also accord with the encouraged types in Catalogue for the Guidance of Foreign Investment Industries and Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State, the unused domestic equipment purchased by foreign-invested enterprises with currency in China (including products of plastic, rubber, ceramic and porcelain and petrochemical tubes purchased together with the equipment and listed in purchase contracts), will be refunded the value-added tax in full amount.

For equipment purchased from the domestic market specified in the Catalogue of Non-Duty-Free Commodities to Be Imported for Foreign-Funded Projects and Catalogue of Non-Duty-Free Commodities to Be Imported for Domestic Investment Projects issued by the State Council, enterprises can not enjoy the preferential policy of tax drawback.

#### (6) Reinvestment

Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly into that enterprise by increasing its registered capital, or uses the profit as investment capital to establish other enterprises with foreign investment to operate for a period of not less than five years shall, upon approval by the tax authorities of an application filed by the investor, be refunded forty percent of the income tax already levied on the reinvested amount.

Where foreign investors reinvest directly to set up or expand export-oriented or advanced technology enterprises within the boundaries of China, the entire portion of enterprise income tax levied on the reinvested amount may, in accordance with the provisions of the State Council, be refunded.

#### (7) Fixed Assets Depreciation

Where, for special reasons, it is necessary to shorten the useful life of fixed assets, an application may be submitted by the enterprise to the local tax authorities which following examination and verification shall be reported level-by-level to the State Tax Bureau for approval. Such fixed assets include include:

- (1) machinery and equipment subject to strong corrosion by acid or alkali and factory buildings and structures subject to constant shaking and vibration;
- (2) machinery and equipment operated continually year-round for the purpose of raising the utilization rate or increasing the intensity of use;
- (3) fixed assets of a Chinese-foreign contractual joint venture having a period of cooperation shorter than the useful life specified in Article 35 of these Rules and which will be left with the Chinese party upon termination of the cooperation.

#### (8) Miscellaneous

Income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communications industries, agricultural, forestry and animal husbandry production, and the development of important technologies may, upon approval by the competent department for tax affairs under the State Council, be levied at the reduced rate of ten percent. Where the technology supplied is advanced or the terms are preferential, exemption from income tax may be allowed.

Incomes of units or individuals (including enterprises with foreign investment, R&D centers invested and set up by foreign investors, foreign enterprises and foreign nationals) from technology transfer, business of technology development and related business of technical consultancy and service shall be exempt from business tax.

Imported advanced technologies that are listed in the Catalog of State New and High-Tech Products, and the software fee paid overseas in accordance with the contract, are exempt from customs duty and import-link value added tax.

Enterprises with foreign investment where technology development fee in China has increased by over 10% (including 10%) than that for the previous year, shall be permitted, upon examination and approval by the taxation authorities, to re-offset 50% of the amount actually used for technology development fee for the taxable income for the same year, upon examination and approval of taxation authorities concerned. In the enterprises where technology development fee has increased by over 10% from that for the previous year, and 50% of the amount actually used by the enterprises is higher than the taxable income for this year, the enterprises may be permitted to offset the portion which is not exceeding their taxable income; for the exceeding portion, they shall not be allowed to offset in this year or for the succeeding years.



## ZJ08 Catalogue of Restricted Foreign Investment

### Industries

2006-3-29 17:44:27

#### I. Farming, Forestry, Animal Husbandry and Fishery Industries

1. Development and production of grain (including potatoes), cotton and oilseed (Chinese partner shall hold the majority of shares)
2. Processing of the logs of precious varieties of trees (equity joint ventures or contractual joint ventures only)

#### II. Mining and Quarrying Industries

1. Exploring and mining of minerals such as wolfram, tin, antimony, molybdenum, barite, fluorite (equity joint ventures or contractual joint ventures only)
2. Exploring and mining of precious metals (gold, silver, platinum families)
3. Exploring and mining of precious non-metals such as diamond
4. Exploring and mining of special and rare kinds of coal (Chinese partner shall hold the majority of shares)
5. Mining of szaibelyite and szaibelyite iron ores
6. Mining of celestite

#### III. Manufacturing Industries

##### 1. Food Processing Industry

- (1) Production of millet wine and spirits of famous brands
- (2) Production of soda beverage of foreign brand
- (3) Production of synthetic sweet agent such as saccharin
- (4) Processing of fat or oil

##### 2. Tobacco Processing Industry

- (1) Production of cigarettes and filter tips

##### 3. Textile Industry

- (1) Wool spinning, cotton spinning
- (2) Silk reeling

##### 4. Printing and Record Medium Reproduction Industry

- (1) Printing of publications (Chinese partner shall hold the majority of shares except printing of package decoration)

##### 5. Petroleum Processing and Coking Industries

- (1) Construction and management of refineries

##### 6. Chemical Raw Material and Products Manufacturing Industry

- (1) Production of ionic membrane caustic soda
- (2) Production of sensitive materials
- (3) Production of benzidine

- (4) Production of chemical products from which narcotics are easily made (ephedrine, 3, 4-idene dihydro phenyl- 2-acetone, phenylacetic acid, 1-phenyl- 2-acetone, heliotropin, safrole, isosafrole, acetic oxide)
  - (5) Production of sulphuric acid basic titanium white
  - (6) Processing of baron, magnesium, iron ores
  - (7) Barium salt production
7. Medical and Pharmaceutical Products Industry
- (1) Production of chloramphenicol, penicillin G, lincomycin, gentamicin, dihydrostreptomycin, amikacin, tetracycline hydrochloride, oxytetracycline, medemycin, kitasamycin, ilotylin, ciprofloxacin and ofloxacin
  - (2) Production of analgin, paracetamol, Vitamin B1, Vitamin B2, Vitamin C, Vitamin E
  - (3) Production of immunity vaccines, bacterins, antitoxins and anatoxin (BCG vaccine, poliomyelitis, DPT vaccine, measles vaccine, Type-B encephalitis, epidemic cerebrospinal meningitis vaccine) which are included in the State's Plan
  - (4) Production of material medicines for addiction narcotic and psychoactive drug (Chinese partner shall hold the majority of shares)
  - (5) Production of blood products
  - (6) Production of non-self-destructible expendable injectors, transfusion systems, blood transfusion systems, blood bags
8. Chemical Fibre Production Industry
- (1) Production of chemical fibre drawnwork of conventional chipper
  - (2) Production of viscose staple fibre with an annual single thread output capacity of less than 20,000 tons
  - (3) Production of polyester and spandex used for fibre and non-fibre with a daily production capacity of less than 400 tons
9. Rubber Products
- (1) Cross-ply and old tire recondition (not including radial tire), and production of industrial rubber fittings of low-performance
10. Non-Ferrous Metal Smelting and Rolling Processing Industry
- (1) Smelting and separation of rare earth metal (equity joint ventures or contractual joint ventures only)
11. Ordinary Machinery Manufacturing Industry
- (1) Manufacture of containers
  - (2) Manufacture of small and medium type ordinary bearings
  - (3) Manufacture of truck cranes of less than 50 tons (equity joint ventures or contractual joint ventures only)
12. Special Purpose Equipment Manufacturing Industry
- (1) Production of low or middle class type-B ultrasonic displays
  - (2) Manufacture of equipment for producing long dacron thread and short fibre
  - (3) Manufacture of crawler dozers of less than 320 horsepower, wheeled mechanical loaders of less than 3 cubic meter (equity joint ventures or contractual joint ventures only)
13. Electronic and Telecommunication Equipment Manufacturing Industry
- (1) Production of satellite television receivers and key parts
- IV. Production and Supply of Power, Gas and Water

1. Construction and operation of conventional coal-fired power plants whose unit installed capacity is less than 300,000kW (with the exception of small power grid)

V. Communication and Transportation, Storage, Post and Telecommunication Services

1. Road passenger transportation companies

\*2. Cross-border automobile transportation companies

\*3. Water transportation companies

\*4. Railway freight transportation companies

5. Railway passenger transportation companies (Chinese partner shall hold the majority of shares)

6. General aviation companies engaging in photographing, prospecting and industry (Chinese partner shall hold the majority of shares)

\*7. Telecommunication companies

VI. Wholesale and Retail Trade Industries

\*1. Commercial companies of commodity trading, direct selling, mail order selling, Internet selling, franchising, commissioned operation, sales agent, commercial management companies, and wholesale, retail and logistic distribution of grain, cotton, vegetable oil, sugar, medicines, tobaccos, automobiles, crude oil, capital goods for agricultural production

\*2. Wholesale or retail business of books, newspapers and periodicals

\*3. Distributing and selling of audiovisual products (excluding movies)

4. Commodity auctions

\*5. Goods leasing companies

\*6. Agencies (ship, freight forwarding, tally for foreign vessels, advertising)

\*7. Wholesaling product oil and construction and operation of gasoline stations

8. Foreign trade companies

VII. Banking and Insurance Industries

1. Banks, finance companies, trust investment companies

\*2. Insurance companies

\*3. Security companies, security investment fund management companies

4. Financial leasing companies

5. Foreign exchange brokerage

\*6. Insurance brokerage companies

VIII. Real Estate Industry

1. Development of pieces of land (equity joint ventures or contractual joint ventures only)

2. Construction and operation of high-ranking hotels, villas, high-class office buildings and international exhibition centers

3. Construction and operation of large scale theme park

IX. Social Service Industry

1. Public Facility Service Industries

(1) Construction and operation of networks of gas, heat, water supply and water drainage in large and medium sized cities (Chinese partner shall hold the majority of shares)

2. Information, Consultation Service Industries

(1) Legal consulting

(2) Market Research (equity joint ventures or contractual joint ventures only)

X. Public Health, Sports and Social Welfare Industries

1. Medical treatment establishments (equity joint ventures or contractual joint ventures only)

2. Construction and operation of golf courts

XI. Education, Culture and Arts, Broadcasting, Film and TV Industries

1. Education establishments for senior high school students (equity joint ventures or contractual joint ventures only)

2. Construction and operation of cinemas (Chinese partner shall hold the majority of shares)

3. Production and publication of broadcasting and TV programs and film-making (Chinese partner shall hold the majority of shares)

XII. Scientific Research and Poly-technical Services Industries

1. Mapping companies (Chinese partner shall hold the majority of shares)

\*2. Inspection, verification and attestation companies for imported and exported goods

XIII. Other industries restricted by the State or international treaties that China has concluded or taken part in.

## **ZJ09 Catalogue of Prohibited Foreign Investment**

### **Industries**

2006-3-29 17:42:43

#### **I. Farming, Forestry, Animal Husbandry and Fishery Industries**

1. Cultivation of China's rare precious breeds (including fine genes in plants industry, husbandry and aquatic products industry)
2. Production and development of genetically modified plants' seeds
3. Fishing in the sea area within the Government jurisdiction and in in-land water

#### **II. Mining and Quarrying Industries**

1. Exploring, mining and dressing of radioactive mineral products
2. Exploring, mining and dressing of rare earth metal

#### **III. Manufacturing Industry**

##### **1. Food Processing Industry**

(1) Processing of green tea and special tea with China's traditional crafts (famous tea, dark tea, etc.)

##### **2. Medical and Pharmaceutical Products Industry**

(1) Processing of traditional Chinese medicines that have been listed as the State protection resources (musk, licorice, jute, etc.)

(2) Application of preparing technique of traditional Chinese medicines in small pieces ready for decoction, and production of the products of secret recipe of traditional Chinese patent medicines

##### **3. Non-Ferrous Metal Smelting and Rolling Processing Industry**

(1) Smelting and processing of radioactive mineral products

##### **4. Manufacture of Weapons and Ammunition**

5. Other Manufacturing Industries

- (1) Ivory carving
- (2) Tiger-hone processing
- (3) Production of bodiless lacquerware
- (4) Production of enamel products
- (5) Production of Xuan-paper (rice paper) and ingot-shaped tablets of Chinese ink
- (6) Production of carcinogenic, teratogenic, mutagenesis and persistent organic pollutant products

IV. Production and Supply of Power, Gas and Water

1. Construction and operation of power network

V. Communication and Transportation, Storage, Post and Telecommunication

Services

1. Companies of air traffic control
2. Companies of postal services

VI. Finance, Insurance Industries

1. Futures companies

VII. Social Service Industry

1. Development of wild animal and plant resources protected by the State
2. Construction and operation of animal and plant natural reserves
3. Social investigation
4. Gambling (including the racecourse for gambling)
5. Pornographic services

## VIII. Education, Culture and Arts, Broadcasting, Film and TV Industries

1. Educational institutes for basic education (compulsory education)
2. Business of publishing, producing, master issuing, and importing of books, newspapers and periodicals
3. Business of publishing, producing, master issuing and importing of audio and visual products and electronic publications
4. News agencies
5. Radio stations, TV stations, radio and TV transmission networks at various levels (transmission stations, relaying stations, radio and TV satellites, satellite up-linking stations, satellite receiving stations, microwave stations, monitoring stations, cable broadcasting and TV transmission networks)
6. Companies of publishing and playing of broadcast and TV programs
7. Companies of films issuing
8. Companies of video tape showing

## IX. Other Industries

1. Projects that endanger the safety and performance of military facilities
- X. Other industries restricted by the State or international treaties that

China has concluded or taken part in

## Note:

1. In the case that the Mainland/Hong Kong Closer Economic Partnership Arrangement and its supplement or the Mainland/Macao Closer Economic Partnership Arrangement and its supplement have prescribed specific rules, those regulations shall be observed.
2. The items marked "\*" are related to the commitment of China's accession to WTO. Please see the Attachment for details.

## ZJ10 Industrial Policies of Zhejiang Province

2006-3-29 17:41:09

- I. Develop infrastructure construction projects such as transportation, energy resources, water supply and sewage disposal etc.
- II. Introduce advanced and applicable agricultural technology and import improved varieties so as to facilitate the restructuring of agriculture and the development of profitable agriculture and ecological agriculture. Increase agricultural projects oriented towards export and foreign exchange earnings and promote the production of green food, organic food and competitive agricultural products, such as vegetables, fruits, flowers, tea, livestock and poultry and aquatic products etc.
- III. Develop advanced and large-scale raw material projects such as petrochemical industry, synthetic materials, new building materials, etc. by taking advantage of the ports in Zhejiang and by using resources at home and abroad.
- IV. Introduce high and new technology, advanced applicable technology and modern management concept so as to develop traditional industries such as mechanical industry, textile industry, chemical industry, food industry and building materials industry, etc.
- V. Develop market-oriented hi-tech industrial projects such as software, photoelectron, microelectronics, biology, new medicine, new materials, environmental protection and photoelectrical-mechanical-electrical industry projects.
- VI. Develop modern service industry centering on modern logistics, e-commerce, tourism with distinctive features and intermediary service.
- VII. Develop production-oriented projects on new technology and equipment that utilize resources and renewable resources in a comprehensive way and that prevent and control environmental pollution.

### Appendices

2006-3-29 17:40:49

#### I. Notes for Catalogue of Encouraged Industries:

1. Prospecting and exploitation of oil and natural gas: In cooperation with Chinese partner only.
2. Exploitation of oil deposits (fields) with low osmosis: In cooperation with Chinese partner only.
3. Development and application of new technologies that can increase recovery factor of crude oil: In cooperation with Chinese partner only.
4. Development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well-drilling, well-logging and downhole



operation, etc.: In cooperation with Chinese partner only.

5. Manufacturing of automobile and motorcycle: The proportion of foreign investments shall not exceed 50%.

6. International liner and tramp maritime transportation business: The proportion of foreign investments shall not exceed 49%.

7. International container multi-modal transportation: The proportion of foreign investments shall not exceed 50%. Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign ownership will be permitted no later than Dec. 11, 2005.

8. Road freight transportation companies: Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign ownership will be permitted no later than Dec. 11, 2004.

9. Wholesale, retail and logistic distribution of general goods: As described in No. 5 of Notes for Catalogue of Restricted Industries of the Appendix,

10 Accounting and auditing: In cooperation with Chinese partner and in the form of partnership only.

#### II. Notes for Catalogue of Restricted Industries:

1. Cross-border automobile transportation companies: Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign owned enterprises will be permitted no later than Dec. 11, 2004.

2. Water transportation companies: The proportion of foreign investment shall not exceed 49%.

3. Rail freight transportation companies: The proportion of foreign investment shall not exceed 49%. Foreign majority ownership will be permitted no later than Dec. 11, 2004. Wholly foreign owned enterprises will be permitted no later than Dec. 11, 2007.

#### 4. Telecommunication Companies

(1) Value-added services and paging services in basic telecommunication services: Foreign investments are permitted no later than Dec. 11, 2001 with the proportion of foreign investment not exceeding 30%. The proportion of foreign investment in joint venture shall not exceed 49% no later than Dec. 11, 2002, and shall be allowed to reach 50% no later than Dec. 11, 2003.

(2) Mobile voice and data services in basic telecommunication services: Foreign investments are permitted no later than Dec. 11, 2001 with the proportion of foreign investment not exceeding 25%. The proportion of foreign investment in joint venture shall not exceed 35% no later than Dec. 11, 2002 and shall be allowed to reach 49% no later than Dec. 11, 2004.

(3) Domestic and international services in basic telecommunication services: Foreign investments will be permitted no later than Dec. 11, 2004 with the proportion of foreign investment not exceeding 25%. The proportion of foreign investment in joint venture shall not exceed 35% no later than Dec. 11, 2006 and shall be allowed to reach 49% no later than Dec. 11, 2007.

5. Commodities trade, direct selling, mail-order selling, Internet selling, sales agent, franchising, commercial management; wholesale, retail and logistic distribution of grain,

cotton, vegetable oil, sugar, pharmaceutical products, tobacco, automobile, crude oil, capital goods for agricultural production; wholesale and retail of books, newspapers, periodicals; wholesale of product oil, construction and operation of gasoline station

(1) Commission agents' services and wholesale trade services (excluding salt, tobacco): Foreign invested enterprises are permitted no later than Dec. 11, 2002 with foreign investment not exceeding 50%, but can not engage in the distribution of books, newspapers, magazines, pharmaceutical products, pesticides, mulching films, chemical fertilizers, processed oil and crude oil. Foreign majority ownership will be permitted no later than Dec. 11, 2003. And wholly foreign-owned enterprises will be permitted no later than Dec. 11, 2004, and can engage in the distribution of books, newspapers, magazines, pharmaceutical products, pesticides, mulching films. The distribution of chemical fertilizers, processed oil and crude oil are permitted no later than Dec. 11, 2006.

(2) Retailing services (excluding tobacco): Foreign invested enterprises are permitted but can not engage in the distribution of books, newspapers, magazines, pharmaceutical products, pesticides, mulching films, chemical fertilizers, processed oil. The proportion of foreign investment can reach 50% no later than Dec. 11, 2002, and can engage in the distribution of books, newspapers and magazines. Foreign majority ownership will be permitted no later than Dec 11, 2003. And wholly foreign-owned enterprises will be permitted no later than Dec. 11, 2004, and can engage in the distribution of pharmaceutical products, pesticides, mulching films, and processed oil. The distribution of chemical fertilizers are permitted no later than Dec. 11, 2006. Foreign investors can not take majority ownership of a chain-store that has over 30 branch stores and engages in the distribution of automobiles (the limitation will be lifted no later than Dec. 11, 2006), books, newspapers, magazines, pharmaceutical products, pesticides, mulching films, processed oil, chemical fertilizers, grain, vegetable oil, sugar, tobacco, cotton.

(3) Franchising and wholesale or retail trade services away from a fixed location: Foreign invested enterprises are permitted no later than Dec. 11, 2004.

6. The distribution of audiovisual products (excluding movies): Foreign investments shall be permitted no later than Dec.11, 2004.

7. Goods leasing companies: Foreign majority ownership shall be permitted no later than Dec.11, 2002. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2004.

#### 8. Agencies

(1) Ship agencies: The proportion of foreign investment shall not exceed 49%.

(2) Freight forwarding agencies (excluding those services specially reserved for Chinese postal authorities): The proportion of foreign investment shall not exceed 50% (not exceed 49% in the case of courier services). Foreign majority ownership shall be permitted no later than Dec. 11, 2002. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2005.

(3) Cargo handling for foreign vessels: In forms of equity joint ventures or contractual joint ventures only

(4) Advertising agencies: The proportion of foreign investment shall not exceed 49%. Foreign majority ownership shall be permitted no later than Dec. 11, 2003. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2005.

9. Insurance

(1) Non-life insurance companies: The proportion of foreign investments shall not exceed 51%. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2003.

(2) Life insurance companies: The proportion of foreign investments shall not exceed 50%.

10. Securities company, securities investment fund management companies

(1) Securities companies: Foreign investments shall be permitted no later than Dec. 11, 2004 with the proportion of foreign investment not exceeding 1/3.

(2) Securities investment fund management companies: The proportion of foreign investment shall not exceed 33%. The proportion of foreign investment shall be allowed to reach 49% no later than Dec. 11, 2004.

11. Insurance brokerage companies: The proportion of foreign investment shall not exceed 50%. The proportion shall be allowed to reach 51% no later than Dec. 11, 2004. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2006.

12. Companies of inspection, verification, attestation for imported and exported goods: Foreign majority ownership shall be permitted no later than Dec.11,2003. Wholly foreign owned enterprises shall be permitted no later than Dec.11, 2005.

Promulgated by the State Development and Reform Commission, the Ministry of Commerce on 2004-11-30