

# Provisions on Guiding Foreign Investment Direction

(Approved and promulgated by the State Council on Feb. 21, 2002.)

## Article 1

These provisions are formulated according to the related legal provisions on foreign investment and requirements of industrial policies of the State in order to guide the direction of foreign investment, to make foreign investment in accordance with the plan of the national economy and social development of our country, and to serve the purpose of protecting legitimate rights and interests of investors.

## Article 2

These provisions shall apply to the projects of Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures, wholly foreign owned enterprises(hereafter referred to as "foreign investment enterprises"), as well as to other forms of foreign investment (hereafter referred to as "foreign investment projects") within the territory of the People's Republic of China.

## Article 3

The State Development Planning Commission (SDPC), the State Economy and Trade Commission (SETC) and the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), in conjunction with the concerned ministries of the State Council, shall formulate Catalogue for the Guidance of Foreign Investment Industries and Catalogue of Advantaged Industries for Foreign Investment in Mid-west China, and promulgate these Catalogues after approval of the State Council. According to practical circumstance that partial adjustment need to be made to these Catalogues, SETC, SDPC and MOFTEC, in conjunction with the concerned ministries of the State Council shall make revision and promulgation in time.

Catalogue for the Guidance of Foreign Investment Industries and Catalogue of Advantaged Industries for Foreign Investment in Mid-west China shall be the basis for the guidance of examination and approval of foreign investment projects and for the policy application of foreign investment enterprises.

## Article 4

Foreign investment projects shall be classified into four categories: encouraged, permitted, restricted and prohibited projects.

Foreign investment projects belonging to encouraged, restricted and prohibited categories are listed in Catalogue for the Guidance of Foreign Investment Industries. Those permitted foreign investment projects which do not belong to the above three categories are not to be listed in Catalogue for the Guidance of Foreign Investment Industries.

## Article 5

Those foreign investment projects under one of the following circumstances shall be listed as encouraged foreign investment projects:

1. Projects for new agricultural technology, comprehensive agricultural development and for energy, transportation and key raw materials industries;
2. Projects for new and high technology, advanced applicable technology which can improve performance of products and increase tech-economic efficiency of enterprises or produce new equipment and new material that domestic capacity is deficient.
3. Projects that meet market demands, and can promote the quality of products, enter into new markets or strengthen the competing capability of products in intentional markets.
4. Projects adopting new technology and new equipment for saving energy and raw materials, for comprehensive utilization of resources and renewable resources, and for prevention environment pollution;
5. Projects that can make full use of man power and resource advantage in mid-west region and are in accordance with the State's industrial policies;
6. Other cases that are regulated by laws and administrative regulations of the State.

#### **Article 6**

Those foreign investment projects under one of the following circumstances shall be listed as restricted foreign investment projects:

1. Projects adopting out-of-date technologies;
2. Projects unfavorable to resource-saving and ecological environment improvement;
3. Projects for resources protected by laws and regulations of the State;
4. Projects in those industries that shall be opened gradually;
5. Other cases that are regulated by laws and administrative regulations of the State.

#### **Article 7**

Those foreign investment projects under one of the following circumstances shall be listed as prohibited foreign investment projects:

1. Projects that endanger the safety of the State or damage social and public interests;
2. Projects that pollute environment, destroy natural resources or impair the health of human beings;
3. Projects that occupy large amounts of arable land, unfavorable to protection and development of land resources;
4. Projects that endanger the safety of military facility and its performance;
5. Projects that adopt the unique craftsmanship or technology of our country to make products;
6. Other cases that are regulated by laws and administrative regulations of the State.

#### **Article 8**

“Equity joint venture and contractual joint venture only” or “Chinese partners shall hold the majority of shares” or “Chinese partners shall hold relative majority of shares ” may be regulated for certain foreign investment projects in Catalogue for the Guidance of Foreign Investment Industries.

" Equity joint venture and contractual joint venture only " means that such projects shall be conducted in forms of Chinese-foreign equity joint venture and Chinese-foreign contractual joint venture only; Chinese partner shall hold the majority of shares” means that the sum of shares held by Chinese investor(s) of such a project shall be 51% of the total or up; "Chinese partner shall hold the relative majority of shares" means that the Sum of shares held by Chinese investor(s) of such a project shall greater than the shares held by any single foreign investor in the project.

### **Article 9**

Encouraged foreign investment projects apart from the preferential terms stipulated in the relevant laws or administrative regulations of the State, may enlarge their scope of business with approval, if they are engaged in the construction and operation of infrastructure facilities related to energy, transportation and urban utility sectors(coal, oil, natural gas, power, railway, highway, port, airport, urban road, sewerage treatment and garbage disposal, etc.), which need a large amount of investment and a long payoff period.

### **Article 10**

Those permitted projects that export all their products directly shall be deemed as encouraged projects. Restricted foreign investments may be deemed as permitted foreign investment projects with approval from the government of provinces, autonomous regions, municipalities directly under the Central Government or cities of direct planning by the State, if the export sales of products amount to over 70% of the total sales of the product.

### **Article 11**

Restrictions can be properly eased for those permitted and restricted foreign investment projects that can really make full use of the advantages of mid-west regions. Those projects which listed in Catalogue of Advantaged Industries for Foreign Investment in Mid-west China can enjoy preferential treatments for encouraged foreign investment projects.

### **Article 12**

With existing project approval authorization, foreign investment projects shall be examined and approved or be filed for record by development economy and trade departments respectively according to the construction nature of the projects. Contracts and articles of associations of foreign investment enterprises shall be examined and approved or be filed for record by the departments in charge of foreign trade and economic cooperation. Those restricted foreign investment projects whose investment is lower than the competence limit shall be examined and approved by corresponding competent departments of provinces, autonomous regions, municipalities directly under

the Central Government or cities of direct planning by the State and shall be filed for record to higher-up responsible ministries and corresponding line ministries simultaneously. The approval authorization for restricted foreign investment projects shall not be allowed to be delegated to the lower levels. Foreign investment projects in service sector that shall be opened gradually should be examined and approved according to relevant regulations of the State.

Foreign investment projects that involve issues of quota or license shall apply to the competent departments of foreign economy and trade for quota or license. If laws or administrative regulations have otherwise stipulations concerning the procedures and measures of examination and approval of foreign investment projects, stipulations of those laws or administrative regulations shall be followed.

### **Article 13**

Examination and approval organs of higher levels shall cancel the foreign investment projects that are examined and approved in violation of these Provisions within 30 working days after receiving the recorded files of the concerned projects. The contracts and articles of association shall be invalid. The enterprise registration organs shall not register these projects. And the Customs shall not handle import or export formalities for these projects.

### **Article 14**

The relevant parties of foreign investment projects who have obtained approval of the project through swindle or other illicit means shall be investment for legal responsibility in the light of the seriousness of cases according to law. The examination and approval organs shall cancel the approval of the project, and relevant competent units should deal with these projects correspondingly according to the law.

### **Article 15**

Staff of examination and approval organs who abuse their authority, neglect their duties, shall be investigated for criminal responsibility as the crime of authority abusing or the crime of duty neglecting according to the criminal law. In cases that offenses are not serious enough to trigger criminal punishments, disciplinary sanctions harsher than special demerit for record shall be applied according to laws.

### **Article 16**

Investment projects sponsored by overseas Chinese and investors from Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region shall be handled by reference of these provisions.

### **Article 17**

These provisions shall enter into force on Apr. 1, 2002. And Interim Provisions on Guiding Foreign Investment Direction promulgated by the State Planning Commission, SETC and MOFTEC on Jun. 20, 1995 shall be abrogated simultaneously.

(Note: In case of differences of interpretation, the text in the English language. should be considered as the text of reference.)