

Measures for the Administration of Chinese-Foreign Cooperative Audio-video Product Distribution Enterprises

Full text

Article 1

The present Measures are hereby formulated in accordance with the law of the People's Republic of China on Chinese-foreign Cooperative Enterprises, the Regulations on the Administration of Audio-video Products and other laws and regulations for the purpose of enlarging foreign culture exchange and economic cooperation as well as strengthening the administration on Chinese-foreign Cooperative Audio-video products distribution enterprises.

Article 2

The present Measures shall be applicable to the Chinese-foreign cooperative audio-video product distribution enterprises established in the territory of china.

The term of Chinese-foreign cooperative audio-video product enterprise refers to, in light of the principles of equality and mutual benefits, upon the approval of relevant departments of the Chinese government, foreign enterprises and other economic organizations or individuals (hereinafter referred to as the foreign cooperator) cooperatively established inside the territory of the People's Republic of China with Chinese enterprises and other economic organizations (hereinafter referred to as the Chinese cooperators) to engage in the business of wholesale, retail and lease of the audio-video products.

The term "the audio-video products" refers to audio tapes, video tapes, gramophone records, laser audio discs, and laser video discs, etc. on which contents are recorded.

Article 3

The Chinese-foreign cooperative audio-video product distribution enterprise must abide by the related laws and regulations, and disperse thoughts, ethics, science and technology, cultural knowledge that are beneficial to the development of economy and the social progress.

Article 4

The legitimate business activities of the Chinese-foreign cooperative Audio-video Product Distribution Enterprises and the legitimate rights and interests of the cooperators shall be subject to the protection of Chinese law.

Article 5

Ministry of Culture and Ministry of Commerce, as well as their authorized competent departments of culture and commerce at the provincial level shall be responsible for the examination and approval of and supervision over the Chinese-foreign cooperative audio-video product distribution enterprises.

The responsible departments of culture and the responsible departments of commerce of the local people's governments at the county level or above shall, in accordance with separate functions and duties, be responsible for the everyday supervision and administration for the Chinese-foreign

cooperative audio-video product distribution enterprises within their own administrative regions.

Article 6

The establishment and development of the Chinese-foreign cooperative Audio-video Product Distribution Enterprises shall follow the development planning of the market of the audio-video market.

Article 7

The Chinese cooperator and foreign cooperator applying for establishing a Chinese-foreign cooperative audio-video product distribution enterprises shall have the corresponding capacity for establishing the audio-video product distribution enterprises; and shall be capable for bearing the civil responsibility independently and have no illegal records during the three consecutive years before the application.

Article 8

The Chinese-foreign cooperative audio-video product distribution enterprises shall meet the following conditions:

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

Article 9

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

Article 10

Where a Chinese cooperator takes the stated owned assets as cooperated term, it shall get the approval of the superior state-owned assets supervision and administration departments, in accordance with the related provisions of the evaluation and administration for the stated-owned assets, and the evaluation institution specified by the state-owned assets supervision and administration departments shall value for the stated-owned assets as the cooperated term. The valuation result shall be defined by the corresponding state-owned assets supervision and administration departments in accordance with the provisions of the administration of state-owned assets.

Article 11

The establishment of the Chinese-foreign cooperative audio-video product distribution enterprises of audio-video products engaging in the wholesale business of the audio-video products shall be handled in accordance with the following procedures:

- (1) The Chinese cooperator shall apply to the competent departments of culture at the province, autonomous regions and municipalities directly under the Central Government where the distribution Chinese-foreign cooperative Audio-video Product Distribution Enterprises of audio-video products to be

established, and the mentioned above departments shall submit to Ministry of Commerce for making program, examination and approval. Ministry of Culture shall make the decision of approval or not within 30 working days; the reason thereof shall be stated in writing if the application is not approved.

(2)The Chinese cooperator shall, within 6 months as of the date when the project initiation is approved by Ministry of Culture, apply to the competent departments of commerce of the province, autonomous regions and municipalities directly under the Central Government where the audio-video product distribution enterprises to be established is located for the establishment of such an enterprise. The mentioned above departments shall submit to Ministry of Commerce for examination and approval after its check and approval. Ministry of Commerce shall make a decision of approval or not within 30 working days. Upon the approval, an Approval Certificate for Enterprise with Foreign Investment shall be issued to the applicant. If not, the reasons thereof shall be stated in writing.

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

(4)The Chinese cooperator shall, within 30 days as of the date of receiving the Operation Permit for Audio-video Products issued by Ministry of Culture, and upon strength of the Operation Permit for Audio-video Products and the Approval Certificate for Enterprise with Foreign Investment, go through the registration procedures and obtain the Business License of an Enterprise Legal Person in compliance with the provisions of the administration for industry and commerce.

Article 12

the Chinese cooperator shall submit the following documents to Ministry of Culture while proposing the application for project initiation:

- (1)The application for project initiation which shall specify the name, address, scope of business, the source of the invested funds and its amount of the Chinese-foreign cooperative audio-video product distribution enterprises to be established;
- (2)The project proposals and feasibility study report programmed and admitted commonly by both/all cooperator;
- (3)The business license or certification of registration, certification of qualification by every cooperated cooperator and the valid certification of the legal representatives;
- (4)The appraisal and confirming documents issued by the state-owned assets administration departments of the state-owned assets to be invested by the Chinese cooperator (if the Chinese cooperator take the state-owned assets as a means of cooperation); and
- (5)Other documents as required by Ministry of Culture.

Article 13

the Chinese cooperator shall submit the following documents to Ministry of Commerce while proposing the application for establishing the Chinese-foreign cooperative audio-video product distribution enterprises:

- (1)An application for establishment;
- (2)A project proposals or feasibility study report programmed and admitted commonly by every cooperated cooperator, and approved by Ministry of Culture;

- (3)The approval documents for project initiation of the cooperation project issued by Ministry of Culture
- (4)The contract and articles of association of the Chinese-foreign cooperative audio-video product distribution enterprises to be established signed by the representatives authorized by both/all cooperators;
- (5)The confirming documents issued by the state-owned assets administration departments of the state-owned assets on appraising report of the state-owned assets to be used as investment by the Chinese cooperator (if the Chinese cooperator take the state-owned assets as a means of cooperation);
- (6)The cooperators' business license or certification of registration, credit certificates and the valid certificates of the legal representatives;
- (7)The notice of pre-approval for the name of the cooperative enterprise to be established;
- (8)The name list of the chairman, vice chairmen and members of the board of directors or of the joint management committee of the cooperative enterprises, which is determined by both/all cooperators through negotiation; and
- (9)Other documents as required by Ministry of Commerce.

Article 14

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

Other changes of the Chinese-foreign cooperative audio-video product distribution enterprises shall, in accordance with related provisions of the foreign investment enterprises, be submitted to the Ministry of Commerce for approval or record. In the case of the change of legal address, legal representative, the main responsible person and termination of the business activity due to expiry of operational period, the Chinese-foreign cooperative audio-video product distribution enterprises shall also report to Ministry of Culture for record within 30 days.

Article 15

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

- (1)The Chinese cooperator shall apply to the competent departments of culture at the level of province where the Chinese-foreign cooperative audio-video product distribution enterprises to be established is located, and then the competent departments of culture shall make the decision on whether to approve the project initiation within 30 working days; if the application is rejected, the reasons for it shall be stated in writing.
- (2)The Chinese cooperator shall, within 6 months as of the date when the project initiation is approved by the competent departments of culture at provincial level, apply to the competent departments of commerce at provincial level where the Chinese-foreign cooperative audio-video product distribution enterprises to be established is located for the establishment of such an enterprise, and then the competent departments of commerce at provincial level shall, within 30 working days, make a decision on whether to approve or not; the reason for it shall be stated in writing explanation if the application is rejected.
- (3)The Chinese cooperator shall, within 30 days as of the date of receiving the Approval Certificate for

Enterprises with Foreign Investment issued by the competent departments of Commerce at the provincial level, apply to the competent department of culture at the provincial level on behalf of the Chinese-foreign cooperative audio-video product distribution enterprise to be established for the Operation Permit for Audio-video Products upon strength of the approval documents on project initiation issued by the competent department of culture at the provincial level and the Approval Certificate for Enterprises with Foreign Investment issued by the competent department of commerce at the provincial level.

(4)The Chinese cooperator shall, within 30 days as of the date of receiving the Operation Permit for Audio-video Products issued by the competent departments of culture at provincial level, and upon strength of the Operation Permit for Audio-video Products and the Approval Certificate for Enterprises with Foreign Investment, go through the registration procedures and obtain the Business License of an Enterprise Legal Person in compliance with the provisions on the industry and commerce administration,

Article 16

The Chinese cooperator shall submit the following documents to the competent departments of culture at the provincial level while proposing the application for project initiation:

(1)The application for project initiation, which shall specify the name, address, scope of business, the source of the investment funds and its amount of the Chinese-foreign cooperative audio-video product distribution enterprises to be established;

(2)The project proposals or feasibility study report worked out or recognized by both/all cooperators;

(3)The business license or certificates of registration, credit certificates of every cooperator and the valid certificates of the legal representatives;

(4)The confirmation documents issued by the administrative departments of the state-owned assets on the appraising report of state-owned assets to be used as investment by the Chinese cooperator (if the Chinese cooperator take the state-owned assets as a means of cooperation); and

(5)Other documents as required by the competent departments of culture at the provincial level.

Article 17

The Chinese cooperator shall submit the following documents to the competent departments of commerce at provincial level while proposing the application for establishing the Chinese-foreign cooperative audio-video product distribution enterprises:

(1)An application for establishment:

(2)A project proposals and feasibility study report worked out and recognized by both/all cooperators, and approved by the competent departments of commerce at the provincial level;

(3)The approval documents on project initiation under cooperation issued by the competent departments of commerce at the provincial level;

(4)The contract and articles of association of the Chinese-foreign cooperative audio-video product distribution enterprises to be established, which are executed by the representatives authorized by both/all cooperators.

(5)The confirmation documents issued by the state-owned assets administration departments on the appraising report and the state-owned assets to be used as a means of investment by the Chinese cooperator (if the Chinese cooperator take the state-owned assets as a means of investment);

(6)The business license or registration certificates, credit certificates of the cooperators and the valid certificates of the legal representative;

(7)The notice of pre-approval for the name of the cooperative enterprises to be established;

(8)The name list of the chairmen, vice-chairmen and members of the board of directors or of the joint management committee of the cooperative enterprise, which is determined by both/all cooperators through negotiation; and

(9)Other documents as required by the competent departments of commerce at the level of province.

Article 18

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

In the case of other changes of the Chinese-foreign cooperative audio-video product distribution enterprises, the enterprise shall, in accordance with related provisions of the enterprises with foreign investment, report to the competent departments of commerce at the provincial level for approval or record.

In the case of the change of legal address, legal representative, the main responsible person and termination of the business activity due to expiry of operational period, the Chinese-foreign cooperative audio-video product distribution enterprises shall report to the competent departments of culture at the provincial level for putting on records within 30 days.

Article 19

The Chinese-foreign cooperative audio-video product distribution enterprises shall engage in the business activities of audio-video products within the approved scope of business.

Article 20

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

Article 21

No Chinese-foreign cooperative audio-video product distribution enterprises may engage in the business of importing the audio-video products

Article 22

Whoever, without the approval of the Ministry of Culture and the Ministry of Commerce and without authorization, establishes Chinese-foreign cooperative audio-video product distribution enterprises, or engages in the business of distributing audio-video products with foreign investment without approval, shall be punished by related departments of the state according to law. And the relevant person liable shall be prosecuted for liabilities.

Article 23

Where the investors of Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan of China establish the distribution Chinese-foreign cooperative audio-video product

distribution enterprises of the audio-video products within other provinces, autonomous regions and municipalities directly under the Central Government, it shall implement by reference to the present measures hereby.

Article 24

The power to interpret the present measures remains with the Ministry of Commerce and Ministry of Culture.

Article 25

The present measures and the annexes shall be effective as of the date of January 1, 2004; The administrative measures of Chinese-foreign cooperative audio-video product distribution enterprises promulgated on December 10, 2001 by Ministry of Culture and Ministry of Foreign Trade and Economic Cooperation shall be repealed simultaneously.

Annex:

In order to promote closer economic and trade relations between Hong Kong, Macao and the mainland, and encourage the service providers in Hong Kong and Macao to establish the audio-video product distribution enterprises in the mainland, in accordance with the arrange on establishing closer economic and trade relations between Hong Kong and the mainland, as well as the arrange on establishing closer economic and trade relations between Macao and the mainland upon the approval of the State Council, the following special provisions shall be made hereby on the related issues that the service providers in Hong Kong and Macao to establish the audio-video product distribution enterprises prescribed by measures for administration of distribution Chinese-foreign cooperative audio-video product distribution enterprises.

1. From the date of January 1, 2004, the providers with service in Hong Kong and Macao are permitted to establish the Chinese-foreign cooperative audio-video product distribution enterprises in the form of equity joint ventures in the mainland.
2. The providers with service in Hong Kong and Macao may possess the majority of the shareholders, but not more than 70 percent.
3. The providers with service in Hong Kong and Macao may possess the proportion of rights and interests not more than 70 percent in the contractual joint ventures.
4. Other provisions on the providers with service in Hong Kong and Macao to establish the Chinese-foreign cooperative audio-video product distribution enterprises in the mainland shall be governed by administrative measures of Chinese-foreign cooperative audio-video product distribution enterprises. While other provisions on the providers with service in Hong Kong and Macao to establish the Chinese-foreign cooperative audio-video product distribution enterprises in the mainland shall be implemented by reference to administrative measures of Chinese-foreign cooperative audio-video product distribution enterprises.
5. The service providers in Hong Kong and Macao defined in the provisions shall comply with the requests of related provisions and the definition specified by the arrange on establishing closer

economic and trade relations between Hong Kong and the mainland, as well as the arrange on establishing closer economic and trade relations between Macao and the mainland separately.

6. The present provisions shall be interpreted by Ministry of Commerce and Ministry of Culture in accordance with respective functions.