

Provisions on Administration of Foreign-Invested Telecommunications Enterprises

Full text

Article 1

These Provisions are formulated in accordance with laws and administrative regulations on foreign investment and the Regulations of the People's Republic of China on Telecommunications (hereinafter referred to as the Regulations on Telecommunications) to meet the needs for the opening up to the outside world of the telecommunications industry and promote the development of telecommunications industry.

Article 2

Foreign-invested telecommunications enterprises mean the enterprises providing telecommunications services which are established according to law with joint investment and in the form of Chinese-foreign joint ventures by foreign and Chinese investors within the territory of the People's Republic of China.

Article 3

In addition to abiding by these Provisions, foreign-invested telecommunications enterprises providing telecommunications services shall abide by the Regulations on Telecommunications and other relevant laws and administrative regulations.

Article 4

Foreign-invested telecommunications enterprises may operate the basic telecommunications services and value-added telecommunications services. The service categorization shall be governed by the Regulations on Telecommunications.

The business geographical coverage for the foreign-invested telecommunications enterprises shall be determined by the competent information industry department of the State Council in accordance with the relevant provisions.

Article 5

The registered capital of a foreign-invested telecommunications enterprise shall comply with the following provisions:

- (1) The minimum registered capital shall be RMB 2 billion yuan for providing basic telecommunications services throughout the country or across different provinces, autonomous regions and municipalities directly under the Central Government, or shall be RMB 10 million yuan for providing value-added telecommunications services;
- (2) The minimum registered capital shall be RMB 200 million yuan for providing basic telecommunications services within a province, an autonomous region or a municipality directly under the Central Government, or shall be RMB 1 million yuan for providing value-added telecommunications services.

Article 6

The proportion of foreign investment in a foreign-invested telecommunications enterprise providing basic telecommunications services (excluding radio paging) shall not exceed 49% in the end.

The proportion of foreign investment in a foreign invested telecommunications enterprise providing value-added telecommunications services (including radio paging in basic telecommunications services) shall not exceed 50% in the end.

The proportion of the investment made by Chinese and foreign investors to a foreign-invested telecommunications enterprise in different phases shall be determined by the competent information industry department of the State Council in accordance with the relevant provisions.

Article 7

In addition to the conditions specified in Articles 4, 5 and 6 of these Provisions, a foreign-invested telecommunications enterprise providing telecommunications services shall also comply with the conditions specified in the Regulations on Telecommunications on the provision of basic or value-added telecommunications services.

Article 8

The major Chinese investor of a foreign-invested telecommunications enterprise providing basic telecommunications services shall meet the following conditions:

- (1) being a legally established company;
- (2) having the funds and professionals commensurate with its business operation; and
- (3) complying with due diligence and the requirements for special industry provided for by the competent information industry department of the State Council.

The major Chinese investor of a foreign-invested telecommunications enterprise referred to in the preceding paragraph means the largest investor whose investment amount is the largest among all the Chinese investors and constitutes 30% or more of the total Chinese investment.

Article 9

The major foreign investor of a foreign-invested telecommunications enterprise providing basic telecommunications services shall meet the following conditions:

- (1) being qualified as an enterprise legal person;
- (2) having obtained the license for providing basic telecommunications services from the registration country or region;
- (3) having the funds and professionals commensurate with its business operation; and
- (4) having a good performance record and experiences in providing basic telecommunications services.

The major foreign investor of a foreign-invested telecommunications enterprise referred to in the preceding paragraph means the largest investor whose investment amount is the largest among all the foreign investors and constitutes 30% or more of the total investment made by all the foreign investors.

Article 10

The major foreign investor in a foreign-invested telecommunications enterprise providing value-added telecommunications services shall have a good performance record and experiences in providing value-added telecommunications services.

Article 11

To establish a foreign-invested telecommunications enterprise providing basic telecommunications services or providing value-added telecommunications services across different provinces, autonomous regions and municipalities directly under the Central Government, the major Chinese investor shall make an application to the competent information industry department of the State Council and submit the following documents:

- (1) the project proposal;
- (2) the feasibility study report;
- (3) the certificates or relevant confirmation documents certifying the qualifications of the investors from each party to the joint venture as provided for in Articles 8, 9 and 10 of these Provisions; and
- (4) the certificates or confirmation documents certifying the satisfaction of other conditions provided for in the Regulations on Telecommunications on the provision of basic telecommunications and value-added telecommunications services.

The competent information industry department of the State Council shall examine the documents provided for in the preceding paragraph from the date of receipt of the application. The examination of the application for the provision of basic telecommunications services shall be completed within 180 days and a decision of approval or disapproval be made; the examination of the application for the provision of value-added telecommunication services shall be completed within 90 days and a decision of approval or disapproval be made; if it is approved, the Examination Opinions on Foreign Investment in Telecommunications Services Provision shall be issued; if it is not approved, the applicant shall be notified in writing with the reasons therefor stated.

Article 12

To establish a foreign-invested telecommunications enterprise providing basic telecommunications services or value-added telecommunications services across different provinces, autonomous regions and municipalities directly under the Central Government, the major Chinese investor, in making an application according to Article 11 of these Provisions, may, in light of the actual situations, first submit the documents other than the feasibility study report, upon the examination, confirmation and being notified in writing by the competent information industry department of the State Council, then submit the feasibility study report. However, the period from the date of notice to the submission of the feasibility study report shall not exceed one year, and such period shall not be included in the examination period specified.

Article 13

To establish a foreign-invested telecommunications enterprise providing value-added telecommunications services within a province, autonomous region and municipality directly under the Central Government, the major Chinese investor shall make an application to the local telecommunications administration department of the province, autonomous region or municipality directly under the Central Government and submit the following documents:

- (1) the feasibility study report;
- (2) the certificates or relevant confirmation documents certifying qualifications as provided for in Article 10 of these Provisions; and
- (3) the certificates or confirmation documents certifying the satisfaction of other conditions provided

for in the Regulations on Telecommunications on the provision of value-added telecommunications services.

The telecommunications administration department of the province, autonomous region or municipality directly under the Central Government shall give its comments within 60 days from the date of receipt of the application. If it is assented to, the application shall be forwarded to the competent information industry department of the State Council; if it is not assented to, the applicant shall be notified in writing with the reasons therefor stated.

The competent information industry department of the State Council shall complete examination within 30 days from the date of receipt of application documents with comments signed by the telecommunications administration department of the province, autonomous region or municipality directly under the Central Government and make a decision of approval or disapproval; if it is approved, the Examination Opinions on Foreign Investment in Telecommunications Services Provision shall be issued; if it is not approved, the applicant shall be notified in writing with the reasons therefore stated.

Article 14

The main contents of the project proposal for a foreign-invested telecommunications enterprise shall include: the names and basic situations of the parties to the joint venture, the total volume of investment to the enterprise to be established, the registered capital, the proportions of investment contributions by the parties, the types of services to be applied for and the period for the joint venture.

The main contents of the feasibility study report for a foreign-invested telecommunications enterprise shall include: the basic situations of the enterprise to be established, service items, business forecast and development planning, analysis on the return of investment and the expected time for the commencement of operation.

Article 15

Where the investment project of the establishment of a foreign-invested telecommunications enterprise requires the examination and approval by the competent planning department or the comprehensive economy administration department of the State Council according to the relevant provisions of the State, the competent information industry department of the State Council shall transfer the application materials for examination and approval to the competent planning department or the comprehensive economy administration department of the State Council before issuing the Examination Opinions on Foreign Investment in Telecommunications Services Provision. Where the application is transferred for examination and approval to the competent planning department or the comprehensive economy administration department of the State Council, the examination period specified in Articles 11 and 13 may be extended for 30 days.

Article 16

To establish a foreign-invested telecommunications enterprise providing basic telecommunications services or providing value-added telecommunications services across different provinces, autonomous regions and municipalities directly under the Central Government, the major Chinese investor shall submit the contract and articles of association of the enterprise to be established to the competent foreign trade and economic cooperation department of the State Council on the strength of the Examination Opinions on the Foreign Investment in Telecommunications Services Provision; to

establish a foreign-invested telecommunications enterprise providing value-added telecommunications services within a province, autonomous region or municipality directly under the Central Government, the major Chinese investor shall submit the contract and articles of association of the enterprise to be established to the competent foreign trade and economic cooperation department of the relevant province, autonomous region or municipality directly under the Central Government on the strength of Examination Opinions on Foreign Investment Telecommunications Services Provision.

The competent foreign trade and economic cooperation department of the State Council or the competent foreign trade and economic cooperation department of the province, autonomous region or municipality directly under the Central Government shall complete examination within 90 days from the date of receipt of the contract and articles of association of the foreign-invested telecommunications enterprise to be established and make a decision of approval or disapproval. If it is approved, an Approval Certificate for Foreign-invested Enterprise shall be issued; if it is not approved, the applicant shall be notified in writing with the reasons therefor stated.

Article 17

The major Chinese investor shall undertake the formalities with regard to License for the Telecommunications Services Provision at the competent information industry department of the State Council on the strength of the Approval Certificate for Foreign-invested Enterprise.

The major Chinese investor of the foreign-invested telecommunications enterprise shall, on the strength of the Approval Certificate for Foreign-invested Enterprise and the License for Telecommunications Services Provision, undertake the formalities for registration at the department for industry and commerce administration.

Article 18

To provide trans-boundary telecommunications services, the foreign-invested telecommunications enterprise must obtain approval from the competent information industry department of the State Council and provide the services through the international entry and exit gateway agency the establishment of which has been approved by the competent information industry department of the State Council.

Article 19

In case of violation of Article 6 of these Provisions, the competent information industry department of the State Council shall order to make corrections within the specified time limit and concurrently impose a fine of not less than 100,000 yuan but not more than 500,000 yuan; if no corrections are made within the specified time limit, the License for Telecommunications Services Provision shall be revoked by the competent information industry department of the State Council and the Approval Certificate for Foreign-invested Enterprise shall be withdrawn by the competent foreign trade and economic cooperation department which has issued the Certificate.

Article 20

In case of violation of Article 18 of these Provisions, the competent information industry department of the State Council shall order to make corrections within the specified time limit and concurrently impose a fine of not less than 200,000 yuan but not more than 1,000,000 yuan; if no corrections are made within the specified time limit, the License for Telecommunications Services Provision shall be revoked by the

competent information industry department of the State Council and the Approval Certificate for Foreign-invested Enterprise shall be withdrawn by the competent foreign trade and economic cooperation department which has issued the Certificate.

Article 21

Where false or forged certificates or confirmation documents certifying qualification are provided to obtain approval in applying for the establishment a foreign-invested telecommunications enterprise, the approval shall be invalid, and the competent information industry department of the State Council shall impose a fine of not less than 200,000 yuan but not more than 1,000,000 yuan, revoke the License for Telecommunications Services Provision and the competent foreign trade and economic cooperation department which has issued the Approval Certificate for Foreign-invested Enterprise shall withdraw the Certificate.

Article 22

Where a foreign-invested telecommunications enterprise violates the Regulations on Telecommunications or other laws and regulations in providing telecommunication services, it shall be punished by the relevant organs according to law.

Article 23

Listings overseas by domestic telecommunications enterprises must be subject to examination of and consent from the competent information industry department of the State Council and be approved in accordance with the relevant provisions of the State.

Article 24

These Provisions shall apply mutatis mutandis to the investment into and provision of telecommunications services in Chinese mainland by the companies and enterprises from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan region.

Article 25

These Provisions shall be effective as of January 1, 2002.