

Provisions on the Administration of Foreign-funded Telecommunications Enterprises

(promulgated by Order No. 333 of the State Council of the People's Republic of China on December 11, 2001, amended according to the Decision of the State Council on Amending the Provisions on the Administration of Foreign-funded Telecommunications Enterprises on September 10, 2008)

Article 1 The present Provisions have been formulated according to relevant laws and administrative regulations concerning foreign investment and the Telecommunications Regulation of the People's Republic of China for the purpose of satisfying the demand of opening the telecommunications industry to the outside world and promoting the development of the telecommunications industry.

Article 2 A foreign-funded telecom enterprise is one established by foreign investors and Chinese investors within the territory of the People's Republic of China by way of a sino-foreign equity joint venture for engagement in the telecom services.

Article 3 Foreign-funded telecom enterprises shall, apart from observing the present Provisions in their telecom business activities, abide by the provisions of the Telecommunications Regulation and other relevant laws and administrative regulations.

Article 4 Foreign-funded telecom enterprises may be engaged in the basic telecom services and value-added services, the specific business classifications shall be implemented according to the provisions of the Telecommunications Regulation.

The geographical areas in which foreign-funded telecom enterprises may do business shall be provided by the administrative department of industry and information technology under the State Council according to relevant provisions.

Article 5 The foreign-funded telecom enterprise shall meet the following provisions in terms of their registered capital:

1.If the enterprises is engaged in the basic telecom business nationwide or beyond a single province, autonomous region or municipality directly under the Central Government, it shall have a registered capital of not less than 1 billion yuan. If it is engaged in the value-added telecom businesses, it shall have a registered capital of not less than 10 million yuan;

2.If the enterprise is engaged in the basic telecom business within a province, autonomous region or municipality directly under the Central Government, it shall have a registered capital of not less than 100 million yuan. If it is engaged in the value-added businesses, it shall have a registered capital of not less than 1 million yuan;

Article 6 The ultimate proportion of contribution of the foreign investors of a foreign-funded telecom enterprise that is engaged in the basic telecom services (except the radio paging services) shall not be more than 49%.

The ultimate proportion of contribution of the foreign investors of a foreign-funded telecom enterprise that is engaged in the value-added services (including the radio paging business in the basic telecom services) shall not be more than 50%.

The different proportions of contribution of the Chinese and foreign investors in a foreign-funded telecom enterprise at different stages shall be determined by the administrative department of industry and information technology under the State Council according to relevant provisions.

Article 7 In order to engage in the telecom businesses, a foreign-funded telecom enterprise shall not only meet the conditions as mentioned in Articles 4, 5 and 6 of the present Provisions but also those as provided in the Telecommunications Regulation for engaging in the basic telecom businesses and value-added telecom businesses.

Article 8 The major Chinese investor of a foreign-funded telecom enterprise that is engaged in the basic telecom businesses shall meet the conditions as mentioned below:

1.It is a legally established company;

2.It has capitals and a staff that suit its business operations;

3.It satisfies the requirements of the administrative department of industry and information technology under the State Council for discreet and special industries.

The term “major Chinese investor in a foreign-funded telecom enterprise” as mentioned in the preceding paragraph shall be the investor that makes the largest contribution among all the Chinese investors and has a share of over 30% of the total investment made by all the Chinese investors.

Article 9 The major foreign investor of a foreign-funded telecom enterprise that is engaged in the basic telecom businesses shall meet the conditions as mentioned below:

1.It has the status of a legal person enterprise;

2.It has obtained a license for engaging in the basic telecom businesses in the country or region where it is registered;

3.It has the capitals and a staff that suit its business operations;

4.It has good performances and operation experiences in the basic telecom businesses.

The term “major foreign investor of a foreign-funded telecom enterprise” as mentioned in the preceding paragraph shall refer to one that makes the largest contribution among all the foreign investors and has a share of more than 30% of the total investment made by all the foreign investors.

Article 10 The major foreign investor of a foreign-funded telecom enterprise that is engaged in the value-added telecom businesses shall have good performances and operation experiences in managing the value-added telecom businesses.

Article 11 To establish a foreign-funded telecom enterprise for engaging in the basic telecom businesses or in value-added telecom businesses within the area of more than 1 province, autonomous region or municipality directly under the Central Government, the major Chinese investor shall file an application to the administrative department of industry and information technology under the State Council and submit the documents as mentioned below:

1. A project application report;

2. Credentials of qualifications of the investors of the joint venture or other relevant certification documents as mentioned in Article 8, 9 and 10 of the present Provisions:

3. Certificates of meeting other conditions for engaging in the business of the basic telecom businesses or value-added telecom businesses and other certification documents as mentioned in the Telecommunications Regulation.

The department of industry and information technology under the State Council shall examine the relevant documents as mentioned in the preceding paragraph as of the day when the application is received. If the application is for engaging in the basic telecom businesses, the examination shall be completed within 180 days and a decision shall be made concerning whether to approve or disapprove the application; if the application is for engaging the value-added telecom businesses, the examination shall be completed within 90 days and a decision shall be made whether to approve or disapprove the application. If the application is to be approved, an Examination Decision of Foreign Investment in the Telecommunications; if the application is to be disapproved, the applicant shall be inform in writing together with a statement of the reasons.

Article 12 To establish a foreign-funded telecom enterprise for engaging in the value-added telecom businesses within a province, autonomous region or municipality directly under the Central Government, the major Chinese investor shall file an application to the telecom administrative organ of the provinces, autonomous region or municipality directly under the Central Government concerned together with the documents as mentioned below:

1. Credentials of qualifications or certification documents as provided in Article 10 of the present Provisions;

2. Certificates or other certification documents of meeting the other conditions for engaging in the value-added telecom businesses as mentioned in the Telecommunications Regulation.

The administrative organ of the provinces, autonomous regions and municipalities directly under the Central Government shall make a decision within 60 days after receiving the application. If application is to be approved, it shall be transferred to the administrative department of industry and information technology under the State Council; if the application is to be disapproved, the applicant shall be informed in writing together with a statement of the reasons.

The administrative department of the information industry under the State Council shall, within 30 days after receiving the decision of approving the application made by the telecom administrative organ of the provinces, autonomous regions and municipalities directly under the Central Government, complete the examination and decide whether to approve or disapprove. If approval is to be granted, an Examination Decision of Foreign Investment in the Telecommunications; if the application is to be disapproved, the applicant shall be inform in writing together with a statement of the reasons.

Article 13 The main contents of the project application report for establishing a foreign-funded telecom enterprise shall include: the titles and basic information of the parties to the joint venture, the total amount of investment and registered capital of the joint venture to be established, the proportion of contributions to be made by the parties concerned, the type of business to be engaged in and the term of the joint venture, etc.

Article 14 To establish a foreign-funded telecom enterprise, if the investment project shall be subject to the approval of the department of development and reform under the State Council as pursuant to the provisions of the State, the administrative department of industry and information technology under the State Council shall, prior to issuing an Examination Decision of Foreign Investment in the Telecommunications, transfer the application materials to subject to the approval of the department of development and reform under the State Council for examination and approval. If the application materials are transferred to subject to the approval of the department of development and reform under the State Council for examination and approval, the time limit for examination and approval as stipulated in Articles 11 and 13 of the present Provisions may be extended for 30 days.

Article 15 To establish a foreign-funded telecom enterprise that is to be engaged in the basic telecom businesses or the value-added telecom businesses within an area of more than 1 province, autonomous region or municipality directly under the Central Government, the major Chinese

investor shall, on the basis of the Examination Decision of Foreign Investment in the Telecommunications, submit to the administrative department of commerce under the State Council the contracts and articles of association of the foreign-funded telecom enterprise to be established; if the foreign-funded telecom enterprise is to be engaged in the value-added telecom businesses within the area of a province, autonomous region or municipality directly under the Central Government, the major Chinese investor shall, on the basis of the Examination Decision of Foreign Investment in the Telecommunications, submit to the administrative department of commerce of the people's government of the province, autonomous region or municipality directly under the Central Government the contracts and articles of association of the foreign-funded telecom enterprise to be established.

The administrative department of commerce under the State Council and the administrative department of commerce of the people's government of the provinces, autonomous regions and municipalities directly under the Central Government shall, within 90 days after receiving the contracts and articles of association of the foreign-funded telecom enterprise to be established, complete the examination and decide whether to approve or disapprove. If approval is to be granted, an Approval Certificate of Establishing A Foreign-funded Enterprise shall be issued; if disapproval is to be granted, the applicant shall be informed in writing together with a statement of the reason.

Article 16 The major Chinese investor of a foreign-funded telecom enterprise shall apply for a License of Telecom Business Operations at the administrative department of industry and information technology under the State Council on the basis of the Approval Certificate of Establishing A Foreign-funded Enterprise.

The major Chinese investor of the foreign-funded telecom enterprise shall apply to the administrative department for industry and commerce for registration as a foreign-funded telecom enterprise on the basis of the Approval Certificate of Establishing A Foreign-funded Enterprise and the License of Telecom Business Operations.

Article 17 To engage in cross-border telecom business, a foreign-funded telecom enterprise shall obtain the approval of the administrative department of industry and information technology under the State Council and does the business through the Entry and Exit Bureau of International Telecommunications established upon the approval of the administrative department of industry and information technology under the State Council.

Article 18 Any one who violates Article 6 of the present Provisions shall be ordered by the administrative department of industry and information technology under the State Council to make corrections and be fined not less than 100,000 yuan but not more than 500,000 yuan. In case the

violator fails to make the corrections within the time limit, the administrative department of industry and information technology under the State Council shall revoke the License of Telecom Business Operations and the department of foreign trade and economic cooperation that issued the Approval Certificate of Establishing A Foreign-funded Enterprise shall revoke the Approval Certificate of Establishing A Foreign-funded Enterprise.

Article 19 Any one who violates Article 18 of the present Provisions shall be ordered by the administrative department of industry and information technology under the State Council to make corrections and be fined not less than 200,000 yuan but not more than 1 million yuan. In case the violator fails to make the corrections within the time limit, the administrative department of industry and information technology under the State Council shall revoke the License of Telecom Business Operations and the administrative department of commerce that issued the Approval Certificate of Establishing A Foreign-funded Enterprise shall revoke the Approval Certificate of Establishing A Foreign-funded Enterprise.

Article 20 Any one who obtains approval by presenting false or counterfeited credentials or certification materials in its application for establishing a foreign-funded telecom enterprise, the approval shall be invalidated and the violator shall be fined not less than 200,000 yuan but not more than 1 million yuan by the administrative department of industry and information technology under the State Council, its License of Telecom Business Operations shall be revoked and the administrative department of commerce that issued the Approval Certificate of Establishing A Foreign-funded Enterprise shall revoke the Approval Certificate of Establishing A Foreign-funded Enterprise.

Article 21 Any foreign-funded telecom enterprise violates the Telecommunications Regulation and other relevant laws or administrative regulations in its telecom business operations shall be punished by relevant administrative organs.

Article 22 The present Provisions shall be applicable, by reference, to the companies and enterprises from the Hong Kong and Macao Special Administrative Regions and Taiwan in their investment in the Mainland of China to engage in the telecom businesses.

Article 23 The present Provisions shall take effect as of January 1, 2002.