

# Circular of the Ministry of Commerce on Delegation of the Authority to Examine and Approve the Establishment of Investment Companies by Foreign Investors

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[Chinese Version](#)

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Competent commercial departments of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities, Harbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu, Xi'an and Xinjiang Construction Corp.,

For the purpose of fully carrying out the outlook on scientific development and the spirits of the 2nd Plenary Session of the 17th CPC Central Committee, further deepening the reform of administrative system and changing the functions of governments to improve works on examination and approval of foreign investment and promote investment facilities, the adjustment to the power to examine and approve the establishment of investment enterprises by foreign investors is herein notified as follows:

**Article 1** Items concerning the establishment and alteration of an investment company with registered capital of or less than USD100mn by foreign investors (exclusive of those with one-time increase of capital over USD100mn) shall be subject to the examination and approval of the competent commercial department of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities, Xinjiang Production & Construction Corp and sub-provincial cities (including Harbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu and Xi'an) at the place where the investment company makes registration and no competent commercial department at provincial level may

delegate the authority of examination and approval or entrust other departments.

**Article 2** Items concerning subsequent alteration of an investment company established upon approval of the MOFCOM (exclusive of those with one-time increase of capital over USD100mn or changes of investors) shall be subject to the examination and approval of the competent commercial department at provincial level.

**Article 3** When examining and approving any application of foreign investors, the competent commercial department at provincial level shall strictly comply with relevant provisions of the *Provisions on Establishment of an Investment Company by Foreign Investors* (Decree of the MOFCOM [2004] No.22) and the *Supplementary Provisions on Establishment of an Investment Company by Foreign Investors* (Decree of the MOFCOM [2006] No.3) on conditions for the qualifications of foreign investors, registered capital, capital contribution form, businesses and requirements on application documents, and take counsel with the tax bureaus, administrations for industry and commerce and administrations for foreign exchange at provincial level at the place where the company is located whether there is any practice of violation of provisions by the foreign investors and their investment companies in China. Those in violation of applicable provisions shall not be approved to establish an investment company.

**Article 4** A foreign investor (legal representative) shall issue a written commitment (format of which is attached below) that its/his application submitted complies with the requirements of relevant laws and regulations and relevant materials and the signature of the legal representative or his attorney are true, accurate, complete and valid.

**Article 5** The investment scope of any investment company is not allowed to involve any industry under restriction and prohibition of foreign investment or macro-regulation. If the investment scope involves any industry under the category where foreign investment is allowed by special provisions, the competent commercial department at provincial level shall obtain the consent of national competent department of the industry according to relevant procedures.

**Article 6** The investment projects of an investment company shall conform to relevant laws, regulations and industrial policies and specific investment projects shall be separately applied for approval according to relevant procedures of the state. The enterprise invested by an investment company or jointly invested with other investors, for example, an enterprise with the percentage of foreign exchange investment by the foreign party (an investment company and other overseas investors) no less than 25% of the registered capital of the enterprise, may enjoy the treatment for foreign investment enterprises.

**Article 7** Upon approving the application of foreign investors, the competent commercial department at provincial level shall fill the filing form of investment company information (including three forms for newly-established enterprise, alteration and enterprise invested with format attached below respectively) through the “Administration System for Examination and Approval of Foreign-Invested Enterprises” in a timely manner, and submit the printed filing form (with official stamp of local commercial department), approval documents (with format attached below) and approval certificates (copy) to the MOFCOM (Foreign Investment Department) in written form for filing.

**Article 8** Upon approval of the competent commercial department at provincial level, an investment company shall report the situations of its operation and invested enterprise through the “Network for Administration of Foreign-Invested Enterprise” ( <http://fic.wzs.mofcom.gov.cn/> ) in a timely manner at the meantime and go through network access procedures when receiving the approval certificate. It is encouraged to join the Executive Committee of Foreign Investment Companies of China Association of Enterprises with Foreign Investment.

**Article 9** The Circular shall be implemented on the date of promulgation.

**Annexes: 1.** Investment Company Approval Document Format (omitted)

2. Written Commitment of Foreign Investor (Legal Representative) (format) (omitted)

3. Filing Form for Establishment of Investment Company, Filing Form for Alteration and Filing Form for the Enterprise Invested

**Ministry of Commerce**

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