

**Guiding Manual on Applications
Regarding Foreign Invested
Commercial (Distribution) Enterprises**

Ministry of Commerce

September 2005

Preface

In accordance with China's WTO accession commitments to opening its commercial (distribution) sector and based on wide solicitation of opinions and suggestions from the business community including foreign invested enterprises (FIEs), Chinese and foreign investors and government agencies at various levels, relevant departments of the Chinese government made comprehensive amendments to the Measures on Pilot Foreign Invested Commercial Enterprises of 1999. Upon the endorsement of the State Council, the Ministry of Commerce promulgated the Administrative Measures on Foreign Investment in Commercial Fields on April 16, 2004, which fulfilled the liberalization of commercial services (distribution) right on the timetable China was committed to during its WTO accession.

To facilitate overseas investors and already existing FIEs to better understand Chinese regulations on foreign investment in commercial fields (distribution), we have developed this Guiding Manual on Applications Regarding Foreign Invested Commercial (Distribution) Enterprises (hereinafter referred to as the Guiding Manual) based on existing laws and regulations. As a reference for investors, this Guiding Manual devotes separate sections to articulating on the approval authorities, application procedures, submissions and the time limits for approval.

The Ministry of Commerce (MOFCOM) already published this Guiding Manual on its official website (<http://www.mofcom.gov.cn>) on September 1, 2005. Investors are welcome to use this to bring themselves up to speed with the regulations governing foreign investment in commercial fields (distribution) and the information relating to applications and submissions.

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I. Approval/Administrative Authorities and Their Mandates

(I) Approval/Administrative Authorities

The Ministry of Commerce (MOFCOM) is the competent authority overseeing foreign investment in commercial fields (distribution).

MOFCOM and competent provincial commerce authorities are the approval/administrative authorities for foreign investment in commercial fields (distribution).

(II) Mandates

1. Mandates of Review and Approval of a Competent Provincial Commerce Authority

(1) The application for a foreign invested commercial enterprise which opens outlets to engage in retailing shall be reviewed and approved by the competent provincial commerce authority of where the enterprise is located, with a notification made to MOFCOM for file-keeping, provided the following conditions are met.

a. The business scope of the enterprise does not cover the distribution of TVs, telephones, mail order, Internet, automatic vender machines and special commodities (listed in Articles 17 and 18 of this Administrative Measures on Foreign Investment in Commercial Fields, applicable hereinafter);

b. The operating area of a single outlet does not exceed 3,000 square meters and the total number of outlets not over 3. The number of outlets in China of the same nature opened by its foreign investor via an already existing commercial FIE shall not exceed 30; or the operating area of a single outlet does not exceed 300 square meters and the total number of outlets not over 30. The number of outlets in China of the same nature opened by its foreign investor via an already existing commercial FIE

shall not exceed 300.

(2) The application for a Chinese-foreign joint-equity or contractual commercial (distribution) enterprise where the Chinese side holds majority shares and owns the trademark and trade name and whose business scope does not cover special commodities and the application for the opening of outlets by such commercial enterprise shall be reviewed and approved by the competent provincial commerce authority of where the proposed enterprise is located;

(3) Distribution of audiovisual products (excluding wholesaling)

Applications in this category are subject to MOFCOM review and approval. They may also be approved by a competent provincial commerce authority in the presence of an authorization from MOFCOM.

2. Mandates of MOFCOM

(1) Any application other than those described in the preceding paragraph, which is subject to the review and approval of a competent provincial commerce authority, shall be reviewed and approved by MOFCOM.

(2) Applications for the distribution of autos, processed oil, drugs, books, newspapers and periodicals and for the wholesaling of audiovisual products shall be reviewed and approved by MOFCOM.

Note: please refer to relevant regulations in the annexes for details

Listing of Approval/Administrative Authorities

	Name	Telephone	Fax
1	MOFCOM (Foreign Investment Administration Department)	010-65197330	65197322
2	Beijing Commerce Bureau (Foreign Investment Division)	010-65236688-21 22	65130181
3	Shanghai Commerce Bureau	021-62755189	62755924

	(Foreign Investment Division)		
4	Tianjin Commerce Bureau (Foreign Investment Division)	022-23201755	23317232
5	Chongqing Commerce Bureau (Foreign Investment Division)	023-89018561	89019537
6	Commerce Office (Foreign Investment Division) of Hebei Province	0311-7909319	7909376
7	Commerce Office (Foreign Investment Division) of Shanxi Province	0351-4042185	4040270
8	Commerce Office (Foreign Investment Division) of Inner Mongolia Autonomous Region	0471-6946795	6610893
9	Commerce Office (Foreign Investment Division) of Liaoning Province	024-81996136	86893858
10	Foreign Economic Bureau (Foreign Investment Division) of Dalian City	0411-83686575	83686426
11	Commerce Office (Foreign Investment Division) of Jilin Province	0431-5678644	
12	Commerce Office (Foreign Investment Division) of Heilongjiang Province	0451-82604034	82621345
13	Foreign Trade and Economic Office (Foreign Investment Division) of Jiangsu Province	025-27710219	

Listing of Approval/Administrative Authorities (Continued)

	Name	Telephone	Fax
14	Foreign Trade and Economic Office (Foreign Investment Division) of Zhejiang Province	0571-87706166	87706168-6 183
15	Commerce Office (Foreign Investment Division) of Anhui Province	0551-2831219	2831221
16	Foreign Trade and Economic Office (Foreign Investment Division) of Fujian Province	0591-7270208	7270197
17	Foreign Trade and Economic Office (Foreign Investment Division) of Jiangxi Province	0791-6246240/41/ 42	6246235
18	Foreign Trade and Economic Office (Foreign Investment Division) of Shandong Province	0531-86163570	86912793
19	Foreign Trade and Economic Bureau (Foreign Investment Division) of Qingdao City	0532-85910271	85918112
20	Commerce Office (Foreign Investment Division) of Henan Province	0371-3927968	3939134
21	Commerce Office (Foreign Investment Division) of Hubei Province	027-85792753-80 04	85792753-8 007
22	Commerce Office (Foreign Investment Division) of Hunan	0731-2287060	2287160

	Province		
23	Foreign Trade and Economic Office (Foreign Investment Division) of Guangdong Province	020-38819907	87363687
24	Trade and Industry Bureau (Foreign Investment Division) of Shenzhen City	0755-82107646	82002057
25	Commerce Office (Foreign Investment Division) of Guangxi Autonomous Region	0771-2109462	5332632
26	Commerce Office (Foreign Investment Division) of Sichuan Province	028-83220713	83224675
27	Commerce Office (Foreign Investment Division) of Guizhou Province	0851-6901145	6901154
28	Commerce Office (Foreign Investment Division) of Yunnan Province	0871-3123542	3149574
29	Commerce Office (Foreign Investment Division) of Shaanxi Province	029-85393179	85392345
30	Commerce Office (Foreign Investment Division) of Gansu Province	0931-8619723	8618083
31	Commerce Office (Foreign Investment Division) of Ningxia Autonomous Region	0951-5044277	5044239
32	Commerce Office (Foreign Investment Division) of Qinghai	0971-6321730	6321712

	Province		
33	Foreign Trade and Economic Office (Foreign Investment Division) of Xinjiang Autonomous Region	0991-2850407	2866142
34	Commerce Bureau (Foreign Investment Division) of Xinjiang Construction Corps	0991-5866427	5584981
35	Commerce Office (Foreign Investment Division) of Tibet Autonomous Region	0891-6839337	6835733
36	Commerce Office (Foreign Investment Division) of Hainan Province	0898-65342064	65338762
37	Foreign Trade and Economic Bureau(Foreign Investment Division) of Ningbo City	0574-87327847	87328288
38	Foreign Investment Bureau (Foreign Investment Division) of Xiamen City	0592-5054865	5054859

II. Application Procedures and Time Limits for Review and Approval

(I) Application Procedures and Time Limits for Review and Approval (Provincial Approval)

1. General Commodity Distribution

Application Procedures

- 1) In cases where a new commercial (distribution) enterprise is applied

for, or an already existing enterprise applies for additions to distribution scope, or an enterprise reinvests to become a commercial (distribution) enterprise, the applicant shall make the required submissions to a competent commerce authority of where the FIE is registered;

- 2) The competent commerce authority of where the FIE is registered shall conduct a preliminary review of the submissions before forwarding them to a provincial commerce authority;
- 3) The provincial commerce authority examines and reviews the contract of a Chinese-foreign joint-equity or contractual enterprise and its articles of association (only the articles of association is needed in the case of a foreign invested commercial enterprise) and the submissions, and whether the proposed enterprise or outlets comply with the urban commercial network planning;
- 4) In the event that the location of where the enterprise operates and where the FIE is registered do not fall under the jurisdiction of the same province, autonomous region, municipality or city under direct state planning, the competent provincial commerce authority of where the FIE is registered shall seek the consent of its counterpart of where the FIE operates whilst examining the submissions;
- 5) In the case of a centrally managed enterprise intends to establish a commercial FIE with a foreign investor (foreign investors) in the form of a joint equity or contractual venture, the application which is within provincial approval mandate, shall be reviewed and approved by a competent provincial commerce authority in accordance with the preceding procedures, with a notification made to the Ministry of Commerce for record-keeping.

Time Limit for the Review and Approval

Within 3 months of receipt of the complete set of application submissions,

a competent provincial commerce authority shall reach a decision as to whether or not approved the application. In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

II. Special Commodity Distribution

Application Procedures

Distribution of Audiovisual Products (Excluding Wholesaling)

- 1) The Chinese partner shall make an application to a competent provincial cultural authority, requesting approval to file the application;
- 2) Within 6 months of the approval of the competent provincial cultural authority of the filing of the application, the Chinese partner shall make an application to a competent provincial commerce authority for approving the establishment of an enterprise.
- 3) Within 30 days of receipt of the FIE Approval Certificate from a competent commerce authority, the Chinese partner shall claim the Permit for Distribution of Audiovisual Products for the proposed China-foreign contractual audiovisual product distribution enterprise from the competent cultural authority against the acceptance document issued by a competent cultural authority and the FIE Approval Certificate.
- 4) Within 30 days of receipt of the Permit for Distribution of Audiovisual Products from a competent cultural authority, the Chinese partner shall proceed to registration against the Permit and FIE Approval Certificate.

Time Limit for the Review and Approval

Within 30 working days of receipt of the complete set of application

submissions, a competent provincial commerce authority shall reach a decision as to whether or not approved the application. In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

(II) Application Procedures and Time Limits for Review and Approval (MOFCOM Approval)

1. General Commodity Distribution

Application Procedures

- 1) In cases where a new commercial (distribution) enterprise is applied for, or an already existing enterprise applies for additions to distribution scope, or an enterprise reinvests to become a commercial (distribution) enterprise, the applicant shall make the required submissions to a competent commerce authority of where the FIE is registered;
- 2) The competent commerce authority of where the FIE is registered shall conduct a preliminary review of the submissions before forwarding them to a provincial commerce authority;
- 3) The provincial commerce authority examines and reviews the contract of a Chinese-foreign joint-equity or contractual enterprise and its articles of association (only the articles of association is needed in the case of a foreign invested commercial enterprise) and the submissions, and whether the proposed enterprise or outlets comply with the urban commercial network planning;
- 4) In the event that the location of where the enterprise operates and where the FIE is registered do not fall under the jurisdiction of the same province, autonomous region, municipality or city under direct state planning, the competent provincial commerce authority of where

the FIE is registered shall seek the consent of its counterpart of where the FIE operates whilst examining the submissions;

- 5) Upon an affirmative preliminary review result, the competent provincial commerce authority shall forward the submissions to MOFCOM for one-off approval;
- 6) In the case of a centrally managed enterprise intends to establish a commercial FIE with a foreign investor (foreign investors) in the form of a joint equity or contractual venture, the application submissions may be directly made to MOFCOM for approval provided the application is within the approval mandate of MOFCOM.

Time Limit for the Review and Approval

After a preliminary review of the submissions, a competent provincial commerce authority shall forward the whole set of submissions within one month of receipt. MOFCOM, within 3 months of receipt of the complete set of application submissions, MOFCOM shall reach a decision as to whether or not approved the application. In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

II. Special Commodity Distribution

Application Procedures

(1) Auto Distribution

Pursuant to the Implementing Measures on the Management of Auto Brand Distribution, applications of FIEs whose business scope relates to auto distribution, including general dealership and brand dealership, shall be forwarded to the Ministry of Commerce after a preliminary review is conducted by a competent provincial commerce authority or centrally managed company. The Ministry of Commerce shall further examine

the application and approve after seeking the opinion of the State Administration for Industry and Commerce.

In the case that a domestic auto producer farms out the distribution side of its business to other legal entities, not only the approval from the Ministry of Commerce but also a further examination and approval from the former approval authority of the project is needed.

(2) Distribution of Processed Oil

In the case that the business scope of an FIE relates to the distribution of processed oil, the application shall be forwarded to the Ministry of Commerce for approval after a preliminary review is conducted by a competent provincial commerce authority or centrally managed company.

(3) Distribution of drugs

In the case of an application whereby the business scope of an FIE relates to the distribution of drugs, the competent provincial commerce authority shall seek the opinion of the drug supervisory administration of the same level or the enterprise applicant shall present an opinion issued by a competent drug supervisory administration endorsing the establishment of the enterprise or a drug distribution license. The application shall be forwarded to the Ministry of Commerce for approval after a preliminary review is conducted by a competent provincial commerce authority.

(4) Distribution of audiovisual products

a. An application for a Chinese-foreign contractual wholesaling enterprise for audiovisual products shall be filed with the Ministry of Culture for acceptance review after a competent provincial cultural authority concedes to accepting the application upon an examination.

b. Upon the acceptance of the Ministry of Culture to file the application,

the Chinese partner shall make an application to the competent provincial commerce authority for the establishment of the enterprise. The application shall be forwarded to MOFCOM for approval after the provincial authority examines and approves it.

(5) Distribution of books, newspapers and periodicals

The applicant shall first make an application with a provincial press and publication administration, which, within 15 working days of receipt of the application, shall produce a review opinion, to be notified to the press and publication administration of the State Council for approval. The press and publication administration of the State Council shall, within 30 working days of receipt of the application with the review opinion, make a decision as to whether or not accept the application. The decision will be notified to the applicant via a press and publication administration of a province, autonomous region or municipality in writing. If an application is rejected, a statement justifying the decision has to be provided. Upon receipt of the acceptance notice from the press and publication administration of the State Council, the applicant shall make a formal application with a provincial commerce authority, which shall form a review opinion within 15 working days of receipt of the application, to be submitted to the commerce authority of the State Council for approval. Once the approval comes through, the applicant shall, within 90 days of receipt of the approval notice, claim the Permit for Distribution of Publications from a provincial press and publication administration against the approval documents and the FIE Approval Certificate. The applicant shall then claim its business license from the local administration for industry and commerce against the Permit and FIE Approval Certificate.

Time Limit for the Review and Approval

(1) Auto Distribution

After a preliminary review of the submissions, a competent provincial commerce authority shall forward the whole set of submissions within one month of receipt. MOFCOM, within 3 months of receipt of the complete set of application submissions, MOFCOM shall reach a decision as to whether or not approved the application jointly with the State Administration for Industry and Commerce (SAIC). In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

(2) Distribution of Processed Oil

After a preliminary review of the submissions, a competent provincial commerce authority shall forward the whole set of submissions within one month of receipt. MOFCOM, within 3 months of receipt of the complete set of application submissions, MOFCOM shall reach a decision as to whether or not approved the application. In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

(3) Distribution of Drugs

After a preliminary review of the submissions, a competent provincial commerce authority shall forward the whole set of submissions within one month of receipt. MOFCOM, within 3 months of receipt of the complete set of application submissions, MOFCOM shall reach a decision as to whether or not approved the application. In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

(4) Distribution of Audiovisual Products

Within 60 working days of receipt of the complete set of application submissions, MOFCOM shall reach a decision as to whether or not approved the application. In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

(5) Distribution of Books, Newspapers and Periodicals

Within 30 working days of receipt of the complete set of application submissions, MOFCOM shall reach a decision as to whether or not approved the application. In the case of an affirmative decision, the FIE Approval Certificate will be issued. In the case of a negative decision, a statement justifying the decision shall be provided.

Note: please refer to relevant regulations in the annexes for details

III. Application Submissions

(I) Submissions for a General Commodity Distribution Application

1. Establishment of a new commercial (distribution) enterprise
 - 1) Application form
 - 2) Feasibility study report signed by all investing parties
 - 3) Contract and Articles of Association (only the latter is needed in the case of a commercial FIE application, applicable hereinafter) and their attachments
 - 4) Bank-issued credit standing certificates for all investing parties,

registration documents (copies) and paper of the legal representative (copies). If the foreign investor is an individual, a valid ID shall also be provided.

- 5) Auditing reports of all investing parties by accounting firms for the most recent year. (Enterprises established less than one year ago may skip this requirement).
- 6) Appraisal report for state-owned assets proposed to be invested by the Chinese investor into a China-foreign joint equity or contractual commercial enterprise
- 7) Catalogue of import and export commodities for the proposed commercial FIE
- 8) Listing of directors on the board of the proposed commercial FIE and letters from various investing parties to appoint the directors
- 9) A prior review and approval notice on the name of the enterprise provided by the competent administration of commerce and industry
- 10) Land use right documents (copies) for the premise of the proposed outlet and/or rental agreements (copies), with the exclusion of outlets which operate on less than 3,000 square meters (the active operating area of the outlet does not include the office area, storage area and communal area of the enterprise, applicable hereinafter)
- 11) Documents issued by the competent local commerce authority of where the proposed outlet is to be located which demonstrates the compliance with urban development and urban commercial development requirements (in the case that the proposed outlet is in a city of prefecture level or below, the document demonstrating the compliance with local commercial planning is unnecessary, applicable hereinafter)

In the event that the documents are signed by parties other than the legal representative, the power of attorney from the legal representative must

be presented (applicable hereinafter)

2. Merger or acquisition with a domestic commercial (distribution) enterprise

- 1) Application form
- 2) Consensual decision of the shareholders, or a decision from the shareholders' meeting of the target domestic corporate entity of limited liabilities endorsing the equity merger or acquisition with the foreign investor
- 3) Contract and Articles of Association of the new FIE as a result of the merger or acquisition (only the latter is needed in the case of a commercial FIE application, applicable hereinafter) and their attachments
- 4) Bank-issued credit standing certificates for all investing parties, registration documents (copies) and paper of the legal representative (copies). If the foreign investor is an individual, a valid ID shall also be provided.
- 5) Agreement on the foreign investor's purchase of shareholders' equity from the domestic enterprise or capital injection subscription to the target domestic firm
- 6) Financial auditing report of the target domestic firm for the most recent fiscal year; auditing reports of all investing parties by accounting firms for the most recent year. (Enterprises established less than one year ago may skip this requirement).
- 7) A state-owned assets appraisal report and documentation shall be provided for a target domestic firm in possession of state-owned assets
- 8) Catalogue of import and export commodities of the new enterprise as a result of the merger/acquisition

- 9) Listing of directors on the board of the new FIE and letters from various investing parties to appoint the directors
- 10) Land use right documents (copies) for the premise of the proposed outlet and/or rental agreements (copies), with the exclusion of outlets which operate on less than 3,000 square meters
- 11) Documents issued by the competent local commerce authority of where the outlet is to be located which demonstrates the compliance with urban development and urban commercial development requirements
- 12) Factual statements of enterprises with investment from the target domestic firm
- 13) Business licenses (duplicate) of the target domestic firm and of the enterprises receiving investment from the domestic firm
- 14) Displacement plan for employees of the target domestic firm

3. An already established enterprise applying for additions to its distribution scope

- 1) Application form
- 2) A consensual decision reached by the board of directors of the FIE on the addition to the distribution scope
- 3) Agreement on the amendment to the contract and Articles of Association of the FIE
- 4) Catalogue of import and export commodities for the FIE
- 5) Certificate for the approval of the FIE and the business license (copies)
- 6) Copies of the original contract and Articles of Association of the FIE
- 7) A registered capital review report issued by a legally authorized capital review body showing full capitalization

4. An enterprise applying for reinvestment in establishing a commercial

(distribution) enterprise

1. Application form
2. Bank-issued credit standing certificates for all investing parties, registration documents (copies) and paper of the legal representative (copies). If the foreign investor is an individual, a valid ID shall also be provided.
3. Auditing reports of all investing parties by accounting firms for the most recent year. (Enterprises established less than one year ago may skip this requirement).
4. A prior review and approval notice on the name of the enterprise provided by the competent administration of commerce and industry
5. Land use right documents (copies) for the premise of the proposed outlet and/or rental agreements (copies), with the exclusion of outlets which operate on less than 3,000 square meters
6. Documents issued by the competent local commerce authority of where the proposed outlet is to be located which demonstrates the compliance with urban development and urban commercial development requirements
7. A consensual decision reached by the board of directors of the FIE on the investment plan
8. Certificate for the approval of the FIE and the business license (copies)
9. A registered capital review report issued by a legally authorized capital review body showing full capitalization
10. Documents on income tax status of the FIE including tax reductions or exemption
11. Articles of Association of the company receiving the investment
12. Certificate for the approval of the FIE and the business license (copies)

(II) Submissions regarding the distribution of special commodities

1. Auto distribution

For a general dealer:

- 1) An official notification document from the competent provincial commerce authority of where the proposed enterprise is located or a business group under direct state planning
- 2) Application document signed by all investing parties for the establishment of the enterprise. It mainly covers:
 - A. Project profile: name of the enterprise and where it is registered, addresses of its subsidiaries, total investment, registered capital, profiles of the investing parties, shareholding structure and form, business scope, size and term of the enterprise
 - B. Construction and related information: major facilities, sources of the distributed commodities, mode of purchasing and delivery, environmental friendliness and fire prevention and security contingencies.
 - C. Professional auto marketing capability analysis: market research, marketing plan, advertising and promotion, network building and guidance, product related services, technical training and consulting, accessory supply, logistics management, organizational structure, staffing and type of employees.
In particular, the layout, scale and progress of the network building shall be clearly indicated in the network building section.
- 3) The General Auto Dealer Authorization Letter issued by the auto producer (see Annex 1 for a sample). In the case that the auto producer is an overseas company, its registration documents (copies) and the paper of the legal representative (copies) shall be provided.
- 4) Bank-issued credit standing certificates for all investing parties,

registration documents (copies) and paper of the legal representative (copies). If the foreign investor is an individual, a valid ID shall also be provided;

Auditing reports of all investing parties by accounting firms for the most recent year

- 5) Appraisal report for state-owned assets proposed to be invested by the Chinese investor into a China-foreign joint equity or contractual commercial enterprise
- 6) Listing of directors on the board of the proposed commercial FIE and letters from various investing parties to appoint the directors
- 7) A prior review and approval notice on the name of the enterprise provided by the competent administration of commerce and industry

For a brand dealer:

- 1) An official notification document from the competent provincial commerce authority of where the proposed enterprise is located or a business group under direct state planning
- 8) Application document signed by all investing parties for the establishment of the enterprise. It mainly covers:
 - A. Project profile: name of the enterprise and where it is registered, addresses of its subsidiaries, total investment, registered capital, profiles of the investing parties, shareholding structure and form, business scope, size and term of the enterprise
 - B. Construction and related information: number of subsidiaries (including outlets), operating area, opinion issued by the competent local commerce authority on the compliance of a proposed outlet with urban commercial development planning, major facilities, sources of the distributed commodities, mode of purchasing and delivery, environmental friendliness and fire prevention and security contingencies.

- C. Analysis relating to the scope, scale and location of the auto distribution, facilities and professional technical staff
- 2) Auto Brand Dealership Authorization Letter (see Annex 2 for a sample) issued by an auto supplier (auto producer or general auto dealer, applicable hereinafter). In the case the distributed autos are imported, an Auto Brand Dealership Authorization Letter issued by the domestic general dealer of the auto supplier shall be provided.
 - 3) Contract and Articles of Association (only the latter is needed in the case of a commercial FIE application) and their attachments
 - 4) Bank-issued credit standing certificates for all investing parties, registration documents (copies) and paper of the legal representative (copies). If the foreign investor is an individual, a valid ID shall also be provided;
Auditing reports of all investing parties by accounting firms for the most recent year
 - 5) Appraisal report for state-owned assets proposed to be invested by the Chinese investor into a China-foreign joint equity or contractual commercial enterprise
 - 6) Listing of directors on the board of the proposed commercial FIE and letters from various investing parties to appoint the directors
 - 7) A prior review and approval notice on the name of the enterprise provided by the competent administration of commerce and industry
 - 8) Land use right documents (copies) for the premise of the proposed outlet and/or rental agreements (copies), with the exclusion of outlets which operate on less than 3,000 square meters

2. Distribution of processed oil

Besides submissions required in a general commodity distribution application, the following shall also be submitted for an application of a

processed oil wholesaling enterprises:

- 1) Documents demonstrating stable channels of supply of processed oil;
- 2) Documents demonstrating the possession of a wholly foreign-owned or majority foreign-held processed oil storage with a capacity of no less than 4,000 cubic meters and that the storage was constructed in accordance with the Oil Storage Design Specifications (GBJ74—84);
- 3) Documents demonstrating the existence of facilities such as transmission pipelines, special rail lines or water transport docks for receiving or unloading processed oil;
- 4) Documents demonstrating that the storage and other facilities comply with the national standards for safe production and environmental protection;
- 5) Documents demonstrating the availability of professional technical staff for processed oil testing, measuring, storage and fire prevention operations;
- 6) Documents demonstrating the compliance with the development of network for processed oil wholesaling;
- 7) Miscellaneous documents on managerial affairs.

Besides submissions required in a general commodity distribution application, the following shall also be submitted for an application of a processed oil retailing enterprises:

- 1) Stable channels of supply of processed oil and an oil supply agreement with a processed oil distributor with wholesaling qualifications;
- 2) Documents demonstrating the compliance with the development of local gas stations
- 3) Documents demonstrating the compliance of the design and construction of the gas station with relevant state standard requirements.

- 4) Documents demonstrating the compliance of the construction of the gas station with relevant station regulations on land management, fire prevention and security and environmental protection;
- 5) Documents demonstrating the availability of professional technical staff for processed oil testing, measuring, storage and fire prevention operations;
- 6) In the case of an on-water gas station (supply vessel) supplying processed oil to ships, documents demonstrating the compliance with port and water transport safety and water pollution prevention regulations shall also be provided in addition to the above-mentioned documents.

3. Distribution of pharmaceuticals

Besides submissions required in a general commodity distribution application, a consent referral from a provincial drug supervisory administration, or consent on the establishment of the enterprise or drug distribution license has to be provided.

4. Distribution of audiovisual products

To apply for an enterprise wholesaling audiovisual products, the following submissions have to be prepared.

- 1) Application for the establishment
- 2) A project proposal or feasibility study prepared or endorsed by the parties to the enterprise and approved by the Ministry of Culture
- 3) Acceptance document issued by the Ministry of Culture for the project
- 4) Contract and Articles of Association of the proposed China-foreign contractual audiovisual product distribution enterprise signed by authorized representatives of the parties to the enterprise

- 5) In the case that the Chinese partner predicates the partnership on state-owned assets, a confirmation issued by a state-owned assets administrator of the appraisal report on the proposed input of state-owned assets by the Chinese investor has to be provided.
- 6) Business licenses or registration documents, credit standing certificates of all investing parties and a valid paper of the legal representative
- 7) A prior review and approval notice on the name of the contractual joint venture provided by the competent administration of commerce and industry
- 8) Listing of the chairman, vice chairman, directors or joint management committee director, vice director and members of the contractual joint venture appointed by the parties to the enterprise after consultation.
- 9) Other documents requested by the Ministry of Commerce

To apply for an enterprise retailing audiovisual products, the following submissions have to be prepared.

- 1) Application for the establishment
- 2) A project proposal or feasibility study prepared or endorsed by the parties to the enterprise and approved by the Ministry of Culture
- 3) Acceptance document for the project issued by a competent provincial cultural authority
- 4) Contract and Articles of Association of the proposed China-foreign contractual audiovisual product distribution enterprise signed by authorized representatives of the parties to the enterprise
- 5) In the case that the Chinese partner predicates the partnership on state-owned assets, a confirmation issued by a state-owned assets administrator of the appraisal report on the proposed input of state-owned assets by the Chinese investor has to be provided.
- 6) Business license or registration documents, credit standing documents

and a valid paper of the legal representative of the parties to the enterprise

- 7) A prior review and approval notice on the name of the contractual joint venture provided by the competent administration of commerce and industry
- 8) Listing of the chairman, vice chairman, directors or joint management committee director, vice director and members of the contractual joint venture appointed by the parties to the enterprise after consultation.
- 9) Other documents requested by the competent provincial commerce authority.

5. Distribution of books, newspapers and periodicals

- 1) Application documents requested in Article 11 of this Measures and approval documents from the press and publication administration of the State Council;
- 2) Contract and Articles of Association of the foreign invested distributor of books, newspapers and periodicals signed by the various investing parties or their authorized representatives;
- 3) Listing of the directors on the board of the proposed foreign-invested distributor of books, newspapers and periodicals and their credentials;
- 4) A prior review and approval notice on the name of the enterprise provided by the competent administration of commerce and industry;
- 5) Other documents required by the laws and regulations

6. Distribution of commodities subject to quota licensing and specific administration

Besides submissions required in a general commodity distribution application, the business scope of the enterprise shall specify “in the event that the commodities to be distributed are subject to quota licensing and specific administration, the application shall be processed in

accordance with relevant state regulations”.

Note: please refer to relevant regulations in the annexes for details

IV. Others

(I) Taxation for Foreign Invested Commercial (Distribution) Enterprises

According to the Notice of the State Taxation Administration of 1994 Regarding Tax Incentives to FIEs Engaged in Both Production and Non-production Activities and the Notice of the Ministry of Commerce on Matters Relating to Additions to Distribution Business Scope of Foreign Invested Non-commercial Enterprises, after an already existing production FIE is approved to make additions to its distribution business scope and within the period for tax reduction and exemption starting from the year in which the FIE profits, provided its operating revenues from productive activities exceed 50% of its total business revenues, it may apply for and enjoy tax reduction or exemption for the year upon the approval of a competent taxation authority.

In the event that a newly-established FIE has a business scope encompassing both production and distribution, it may apply for tax reduction and exemption to a competent taxation authority provided it complies with the Notice of the State Taxation Administration Regarding Tax Incentives to FIEs Engaged in Both Production and Non-production Activities.

(II) Applications by FIEs in Bonded Zones for Distribution Business

An FIE in a bonded zone may apply for distribution right in accordance

with relevant laws. Once approved and the distribution right is gained, the FIE may proceed with customs declaration and foreign exchange check-out on its own and distribute its commodities out of the zone but within the Chinese territory in the capacity of a foreign trade operator.

Upon the approval of a competent commerce authority, an FIE in a bonded zone may set up an operational subsidiary outside the zone.

In the case that an FIE in a bonded zone makes an application to its initial approval authority for changing the registration location (outside the zone), its business scope has to be changed accordingly (the business activities which are only allowed in a bonded zone have to be removed). After the initial approval authority seeks the opinion of the competent commerce authority of where the enterprise is to be relocated and concedes to the change, the FIE may then change its registration location outside the bonded zone.

(III) Franchise Outlets

Upon approval, an FIE authorizing the outlets of another party to conduct commercial activities in the form of franchise is not subject to the restrictions set forth in Article 18 of Decree No.8 provided the accumulative number of authorized outlets is over 30.

Note: please refer to relevant regulations in the annexes for details

Annexes: Policies and Regulations on Foreign Investment in Commercial Fields (Distribution)

- I. Administrative Measures on Foreign Investment in Commercial Fields
- II. Notice of the Ministry of Commerce on Matters Relating to Registration and Documentation of Foreign Trading Rights for Foreign Invested Enterprises
- III. Notice of the Ministry of Commerce on Matters Relating to Additions to Distribution Business Scope of Foreign Invested Non-commercial Enterprises
- IV. Notice of the General Office of the Ministry of Commerce on Further Clarification of Procedures for the Application and Registration of Foreign Invested Enterprises and Related Review and Approval
- V. Regulations on the Establishment of Foreign Funded Companies of Investment Nature
- VI. Notice of the State Administration of Taxation on Matters Relating to the Entitlement of Tax Incentives to Foreign Invested Enterprises Engaged in Both Production and Non-production Businesses
- VII. Notice of the General Offices of the Ministry of Commerce and Customs General Administration on Matters Relating to Trade Administration in Bonded Zones and Bonded Logistics Parks
- VIII. Interim Measures on the Regulation of the Processed Oil Market
- IX. Implementing Measures on the Administration of Auto Brand Distribution

- X. Submissions for Applications and Filing of Projects under the Implementing Measures on the Administration of Auto Brand Distribution
- XI. Regulations on Commercial Franchising
- XII. Regulations on China-foreign Contractual Distribution Enterprises of Audiovisual Products
- XIII. Regulations on Foreign Invested Distribution Enterprises for Books, Newspapers and Periodicals