
Measures for the Administration of Foreign Investment in the Commercial Sector

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Measures for The Administration of Foreign Investment in The Commercial Sector

Article 1 These Measures are formulated in accordance with such laws and regulations as <The Law of the People’s Republic of China on Chinese and Foreign Equity Joint Ventures>, <The Law of the People’s Republic of China on Chinese and Foreign Cooperative Joint Ventures>, <The Law of the People’s Republic of China on Wholly Foreign-Owned Enterprises>, and <The Company Law of the People’s Republic of China>.

Article 2 These Measures apply to Commercial foreign-invested enterprises (“Commercial FIES”) established by foreign companies, enterprises, or other economic entities or individuals (“Foreign Investors”) in the PRC.

Article 3 Commercial FIES refers to FIES engaging in:

- (1) Commission agency: Where an agent, broker, auctioneer, or other distributors engage in the sale of goods of others and provide the auxiliary services by agreement and in exchange for fees.
- (2) Wholesaling: Sale of goods to retailers, industrial, commercial, and institutional customers, or other distributors, and provision of the related services.
- (3) Retailing: Sale of goods to individual or group customers at a fixed geographic location, on television, by phone, by mail, on the World Wide Web, through automated vending machines, and provision of the related services.
- (4) Franchising activities: Granting the right to use one’s trademark, trade name or operating model to others by agreement and in exchange for remuneration or franchising fees.

Foreign companies, enterprises, and other foreign economic entities or individuals may only engage in the business activities in Clauses 3(1), 3(2), 3(3) and 3(4) above through the establishment of Foreign Invested Enterprises (“FIES”).

Article 4 Commercial FIES shall abide by the laws, rules, and regulations of the PRC. Their legitimate business activities and legal rights shall be protected by the laws, rules, and regulations of the PRC.

Article 5 The Ministry of Commerce (“MOFCOM”) and its regional departments are the competent approval and supervision authority.

Article 6 Foreign investors must have good standing and credit, and must not have violated Chinese laws, rules, or regulations. Foreign investors that possess comparatively strong economic power, advanced marketing skills and managing experiences, and wide international marketing network are encouraged to establish Commercial FIES in the PRC.

Article 7 Commercial FIES shall meet the following conditions:

- (1) Minimum registered capital under the <Company Law of the People’s Republic of China> and the related regulations;
- (2) Abiding by the relevant regulations on the registered capital, and on the total amount of investment for FIES; and
- (3) In general, the operating period shall not exceed 30 years, 40 years for central and

western regions.

Article 8 Where Commercial FIES seek to open stores, the following conditions shall be met:

- (1) Where the application to establish a Commercial FIE and the application to open a store are submitted at the same time, such arrangement must adapt to the commercial development plans of the cities where they are located.
- (2) Where an approved Commercial FIE applies to open a store, in addition to meeting the condition set out in Clause 8(1), the following conditions shall also be met:
 - (i) The Commercial FIE shall participate in the annual inspection for Commercial FIES in a timely manner, and shall pass the inspection; and
 - (ii) The Commercial FIE's registered capital shall be fully paid up.

Article 9 Subject to approval, Commercial FIES may engage in the following business activities: A retailing Commercial FIE is allowed to engage in the retail of merchandise, to import merchandise for its own use, to procure domestic products for exportation and to carry out other auxiliary activities. A wholesaling Commercial FIE may carry out wholesaling, commission agency (excluding auctions), import and export, and other auxiliary activities.

Commercial FIES may transfer franchising rights to third parties to open stores.

Subject to approval, Commercial FIES may engage in one or more of the sales activities mentioned above. The types of merchandise shall be specified under the business scope in the joint venture contract or the articles of association of the Commercial FIE, as the case may be.

Article 10 The following procedures shall be followed for the establishment of Commercial FIES and the opening of stores:

- (1) The project proposal, feasibility report and application for the establishment of the Commercial FIE shall be examined and approved or rejected after one review;
- (2) Except where Clause 10(3) or Clause 10(4) provides otherwise, investors proposing to establish a Commercial FIE, or established Commercial FIES proposing to open a new store shall submit the documents listed under Article 12 or Article 13 (as the case may be) to the provincial level commercial authority of MOFCOM overseeing the Commercial FIE's place of registration or proposed place of registration. After a preliminary review by the provincial level commercial authority of MOFCOM, all of the application documents would be transferred to MOFCOM within one month of the submission of the application documents. MOFCOM shall make a final decision as to approve or to reject the application within three months of receiving all of the application documents. A "Commercial FIE Approval Certificate" will be issued in respect of an approved application, and MOFCOM will state the reasons for each rejected application.

MOFCOM reserves the right to delegate its approval authority to its provincial level commercial authorities.

- (3) Where a retail Commercial FIE purports to open a store in the provincial jurisdiction where it is located, provided that the following conditions are satisfied, and that its business scope does not include sale of goods on television, by phone, by mail, on the

World Wide Web, through automated vending machines, or any merchandise listed in Article 17 or Article 18 of these Measures; the provincial level commercial authority of MOFCOM could approve the application *in lieu* of MOFCOM. The provincial level commercial authority of MOFCOM should then file records of the application with MOFCOM.

- (i) The business area of any single store of the Commercial FIE is 3,000 square meters or less, and the total number of stores does not exceed 3; furthermore, the total number of stores of the same kind opened by the same foreign investor in China through establishing Commercial FIES does not exceed 30;
 - (ii) The business area of any single store of the Commercial FIE is 300 square meters or less, and the total number of stores does not exceed 30; furthermore, the total number of stores of the same kind opened by the same foreign investor in China through establishing Commercial FIES does not exceed 300.
- (4) Where the trademark or trade name of the Chinese foreign equity joint venture or Chinese foreign cooperative joint venture is owned by domestic enterprises or Chinese natural persons, and where Chinese investor(s) is/are the controlling shareholder(s) of the Commercial FIE, and the Commercial FIE's business scope does not encompass any merchandise listed in Article 17 or Article 18 of these Measures, then an application to establish the Commercial FIE or to open an associated store could be submitted to the provincial level commercial authority of MOFCOM overseeing the place where the Commercial FIE is located. The opinion of the provincial level commercial authority of MOFCOM in the jurisdiction where the store is intended to be located must also be sought for an application to open a store in a province or province equivalent territory other than in the province or territory where the Commercial FIE is located.

Provincial level commercial authorities of MOFCOM must not exercise any of the approval authorities referred to in Clause 10(3) and Clause 10(4) above without first receiving MOFCOM's express delegation of authority in this regard.

Article 11

The investor shall, within ONE month of receiving the approval certificate from the relevant commercial authority, bring the "Commercial FIE Approval Certificate" to proceed with registration at the local Administration of Industry and Commerce.

Article 12 The following documents should be submitted in order to establish a Commercial FIE:

- (1) Application letter;
- (2) Feasibility report compiled by all operators;
- (3) Joint venture contract and articles of association (articles of association only in the case of Wholly Owned Commercial Foreign Invested Enterprises (Commercial WFOES)) and schedules;
- (4) Bank's certification on property and credit, certificate of registration (photocopy), legal representative certificate (photocopy); where the foreign investor is an individual, the individual's identification documents;

- (5) The audited financial reports of all operators for the most recent financial year;
- (6) (If Chinese operator makes investment with State-owned property) the confirmation document of state-owned property managing departments on the assessing report concerning the Chinese operator's investing state-owned property;
- (7) The Commercial FIE's draft import and export merchandise list;
- (8) The list of the members of the board of directors of the Commercial FIE, and letters of appointment of the directors of all operators;
- (9) Business name approval document issued by the relevant local authority of the Administration of Industry and Commerce;
- (10) Land use right certificate (photocopy) and/ or lease agreement (photocopy) for the space where the store to be opened would be located, unless the store's business area is less than 3,000 square meters;
- (11) Documents issued by the local government overseeing the planned location for the store, showing that the project meets the commercial development plans and requirements of the city where the store will be located.

Document not signed by the legal representative must be accompanied by a power of attorney signed by the legal representative.

Article 13

Where an established Commercial FIE applies to open a store, the following documents shall be submitted:

- (1) Application letter;
- (2) Revised joint venture contract or articles of association, if any;
- (3) Feasibility report concerning the opening of the store;
- (4) Board resolution to open the store;
- (5) The Commercial FIE's audited financial report for the most recent financial year;
- (6) The Commercial FIE's asset verification report (photocopy);
- (7) Certificate of registration (photocopy) and legal representative certificate (photocopy) of all operators;
- (8) Land use right certificate (photocopy) and/ or lease agreement (photocopy) for the space where the store to be opened would be located, unless the store's business area is less than 3,000 square meters;
- (9) Documents issued by the local government overseeing the planned location for the store, showing that the project meets the commercial development plans and requirements of the city where the store will be located.

Document not signed by the legal representative must be accompanied by a power of attorney signed by the legal representative.

Article 14 Where the Commercial FIE has entered into an agreement concerning the use of trademark and trade name, technological transfer, management agreements, service agreements, such agreements shall be attached to the joint venture contract (or the articles of association of Commercial WFOE) as a schedule, and be submitted to the relevant commercial authority altogether.

Article 15 Commercial FIES shall acquire the land to be used for the business operations of their stores through public tender, auction or publicly listed sale, in accordance with the relevant laws and regulations on land management.

Article 16 Commercial FIES trading in merchandises that are subject to special regulations, or in import or export merchandises that are subject to state imposed quotas or permits must abide by the relevant state regulations in that regard.

Article 17 Where the business scope of the Commercial FIE encompasses the following merchandises, the following regulations must be followed in addition to these Measures: Where the business scope of a Commercial FIE encompasses books, newspapers, and periodicals, the <Administrative Measures for Foreign Investment in Books, Newspapers, Periodicals Distribution Enterprises> must be followed.

Where a Commercial FIE operates in gas stations that engage in the retail distribution of finished oil products, the Commercial FIE must ensure that it has a stable source of supply of finished oil products, that it respects local regulations on the construction of gas stations, that the facilities and equipment involved respect national standards and regulations, and that the relevant fire and environmental protection requirements have also been met. The detailed implementation measures in this regard will be separately set out by MOFCOM.

Where a Commercial FIE's business scope encompasses pharmaceutical products, the national laws and regulations on the sale of pharmaceutical products must be respected. The detailed implementation measures in this regard will be separately set out by MOFCOM.

Where a Commercial FIE's business scope encompasses motor vehicles, the Commercial FIE shall respect the approved business scope. The detailed implementation measures in this regard will be separately set out by MOFCOM.

Except where this Article or Article 18 of these Measures provides otherwise, Commercial FIES engaging in the trade of agricultural byproducts, agricultural production materials or data will not be subject to any geographic restrictions, or any restrictions with respect to the proportion of shareholding or the amount of investment.

Wholesale Commercial FIES may not engage in the trade of pharmaceuticals, pesticides and mulching films before December 11, 2004, and may not engage in the trade of fertilizers, finished oil products or crude oil before February 11, 2006.

Retail Commercial FIES may not engage in the trade of pharmaceuticals, pesticides, mulching film, or finished oil products before December 11, 2004, and may not engage in the trade of fertilizers before December 11, 2006.

Wholesale Commercial FIES may not engage in the trade of salt or tobacco, and retail Commercial FIES may not engage in the trade of tobacco.

Article 18 A foreign investor that has opened a total of more than 30 stores in the PRC will not be allowed to hold more than 49% equity interests in a joint venture Commercial FIE if the goods it sells include books, newspapers, magazines, motor vehicles (this restriction

will be lifted as of December 11, 2006), pharmaceuticals, pesticides, mulching films, fertilizers, finished oil products, grain, vegetable oil, sugar for human consumption, and cotton, etc which are of various brands and from different suppliers.

Article 19 Commercial FIES that authorize others to open franchise stores must abide by these Measures and other national regulations on franchising activities.

Article 20 Commercial FIES engaging in auction activities must abide by the <Auction Law>, the <Cultural Relic Law> and other relevant laws, and subject to the approval of MOFCOM. The detailed implementation measures in this regard will be set out by MOFCOM.

Article 21 The establishment of Commercial WFOES will be permitted as of December 11, 2004.

Article 22 Before December 11, 2004, retail Commercial FIES and its stores must be established in provincial capitals, capitals of autonomous regions, municipalities directly under the Central Government, municipalities separately listed on the State Plan or special economic zones. As of December 11, 2004, there will no longer be any geographic restrictions on the establishment of retail Commercial FIES and its stores.

Wholesale Commercial FIES will no longer be subject to any geographic restrictions as of the date these Measures come into force.

Article 23

FIES that purport to invest in the domestic commercial sector should abide by the <Provisional Regulations on Domestic Investment by Foreign Invested Enterprises> in addition to abiding by these Measures.

Article 24

FIES other than Commercial FIES that purport to engage in the business activities described in Article 3 shall abide by these Measures, and adjust their business scope accordingly.

Article 25 The establishment of Commercial FIES in the mainland of China by investors from Hong Kong, Macao and Taiwan shall be dealt with in accordance with these Measures, modified as follows:

- (1) As of January 1, 2004, commercial service providers from Hong Kong and Macao may establish Commercial WFOES in the mainland of China;
- (2) Hong Kong and Macao commercial service providers may establish retail Commercial FIES in regional and county level municipalities in the province of Guangdong, and in regional level municipalities in the rest of mainland China.
- (3) As of January 1, 2004, Hong Kong and Macao commercial service providers may apply to establish Commercial FIES in the mainland of China to engage in retail distribution of motor vehicles in accordance with these Measures and the related regulations subject to the following requirements: The average annual sales volume of the applicant Hong Kong or Macao commercial service provider must be at least USD100 million for the three years immediately preceding the application, with total assets of at least USD10 million in the year immediately preceding the application, and the registered capital of the proposed motor vehicle retail distribution FIE must be at least RMB10 million or RMB6 million in central and western regions of the

mainland of China.

- (4) Hong Kong and Macao permanent residents who are Chinese citizens may set up personal businesses to engage in commercial retail activities (except those activities where special business permits are required) in accordance with the laws, regulations, and rules of mainland China, with a business area not exceeding 300 square meters.
- (5) For the purpose of these measures, Hong Kong and Macao service providers shall meet the definition of, and the requirements for, Hong Kong and Macao service providers as set out in the <Closer Economic Partnership Agreement between the Mainland and Hong Kong> or in the <Closer Economic Partnership Agreement between the Mainland and Macao>, as the case may be.

Article 26 Commercial FIES are encouraged to participate in the relevant trade associations to strengthen self-governance.

Article 27 MOFCOM is the competent authority for the interpretation of these Measures.

Article 28 These Measures enter into force on June 1, 2004.

Article 29 These Measures hereby replaces the <Pilot Procedures for Foreign Investment in Commercial Enterprises> promulgated by the former State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation as of the date these Measures enter into force.

外商投资商业领域管理办法

第一条 为进一步扩大对外开放，完善市场流通体系的建设，根据《中华人民共和国中外合资经营企业法》、《中华人民共和国中外合作经营企业法》、《中华人民共和国外资企业法》及《公司法》等法律、行政法规，制定本办法。

第二条 外国公司、企业和其它经济组织或者个人（以下简称“外国投资者”）在中国境内设立外商投资商业企业，从事经营活动，遵守本办法。

第三条 外商投资商业企业是指从事以下经营活动的外商投资企业：

（一）佣金代理：货物的销售代理商、经纪人或拍卖人或其他批发商通过收取费用在合同基础上对他人货物进行的销售及相关附属服务；

（二）批发：对零售商和工业、商业、机构等用户或其他批发商的货物销售及相关附属服务；

（三）零售：在固定地点或通过电视、电话、邮购、互联网络、自动售货机，对于供个人或团体消费使用的货物的销售及相关附属服务；

（四）特许经营：为获取报酬或特许经营费通过签订合同授予他人使用其商标、商号、经营模式等。

外国公司、企业和其它经济组织或者个人必须通过在中国境内设立的外商投资企业从事前款第（一）、（二）、（三）、（四）项所规定的经营活动。

第四条 外商投资商业企业应遵守中华人民共和国法律、行政法规及相关规章，其正当经营活动及合法权益受中国法律的保护。

第五条 国家商务主管部门依法对外商投资商业领域及外商投资商业企业的经营活动进行监督和管理。

第六条 外商投资商业企业的外国投资者应有良好的信誉，无违反中国法律、行政法规及相关规章的行为。鼓励具有较强的经济实力、先进的商业经营管理经验和营销技术、广泛的国际销售网络的外国投资者举办外商投资商业企业。

第七条 外商投资商业企业应当符合下列条件：

(一) 最低注册资本符合《公司法》的有关规定。

(二) 符合外商投资企业注册资本和投资总额的有关规定。

(三) 外商投资商业企业的经营期限一般不超过 30 年，在中西部地区设立外商投资商业企业经营期限一般不超过 40 年。

第八条 外商投资商业企业开设店铺应当符合以下条件：

(一) 在申请设立商业企业的同时申请开设店铺的，应符合城市发展及城市商业发展的有关规定。

(二) 已批准设立的外商投资商业企业申请增设店铺的，除符合第（一）项要求外，还应符合以下条件：

- 1、 按时参加外商投资企业联合年检并年检合格；
- 2、 企业的注册资本全部缴清。

第九条 经批准，外商投资商业企业可以经营下列业务：

(一) 从事零售业务的外商投资商业企业：

- 1、 商品零售；
- 2、 自营商品进口；
- 3、 采购国内产品出口；
- 4、 其它相关配套业务。

(二) 从事批发业务的外商投资商业企业：

- 1、 商品批发；
- 2、 佣金代理（拍卖除外）；
- 3、 商品进出口；
- 4、 其它相关配套业务。

外商投资商业企业可以授予他人以特许经营方式开设店铺。

外商投资商业企业经批准可以从事以上一种或几种销售业务，其经营的商品种类应在合同、章程有关经营范围的内容中注明。

第十条 外商投资商业企业的设立与开设店铺，按照下列程序办理：

(一) 外商投资商业企业的立项、可行性研究报告和企业设立一次性申报和核准。

(二) 除本条第一款第(三)、(四)项另有规定外,拟设立外商投资商业企业的投资者、申请开设店铺的已设立的外商投资商业企业需向外商投资商业企业注册地的省级商务主管部门分别报送第十二条和第十三条所规定的申请文件。省级商务主管部门对报送文件进行初审后,自收到全部申请文件之日起一个月内上报商务部。商务部应自收到全部申请文件之日起三个月内作出是否批准的决定,对于批准设立的,颁发《外商投资企业批准证书》,对于不批准的,应说明原因。

商务部可以依照本办法授权省级商务主管部门审批上述申请。

(三) 从事零售业务的外商投资商业企业在其所在地省级行政区域内开设店铺,如符合以下条件且经营范围不涉及电视、电话、邮购、互联网络、自动售货机销售及本办法第十七条、十八条所列商品的,由该省级商务主管部门在其审批权限内审批并报商务部备案。

1、单一店铺营业面积不超过 3000 平方米,且店铺数量不超过 3 家,其外国投资者通过设立的外商投资商业企业在中国开设同类店铺总数不超过 30 家;

2、单一店铺营业面积不超过 300 平方米,店铺数量不超过 30 家,其外国投资者通过设立的外商投资商业企业在中国开设同类店铺总数不超过 300 家。

(四) 中外合资、合作商业企业的商标、商号所有者为内资企业、中国自然人,且中国投资者在外商投资商业企业中控股、该外商投资商业企业的经营范围不涉及本办法第十七、十八条所列商品的,其设立及开店申请由企业所在地省级商务主管部门在其审批权限内审批。如跨省开设店铺,还应征求拟开设店铺所在地省级商务主管部门的意见。

未经商务部授权,省级商务主管部门不得自行下放本条第一款第(三)、(四)项所规定的审批权。

第十一条 投资者应当自收到批准证书之日起一个月内,凭《外商投资企业批准证书》,向工商行政管理机关办理登记手续。

第十二条 申请设立外商投资商业企业,应当报送下列文件:

- (一) 申请书;
- (二) 投资各方共同签署的可行性研究报告;
- (三) 合同、章程(外资商业企业只报送章程)及其附件;
- (四) 投资各方的银行资信证明、登记注册证明(复印件)、法定代表人证明(复印件),外国投资者为个人的,应提供身份证明;
- (五) 投资各方经会计师事务所审计的最近一年的审计报告;
- (六) 对中国投资者拟投入到中外合资、合作商业企业的国有资产的评估报告;
- (七) 拟设立外商投资商业企业的进出口商品目录;
- (八) 拟设立外商投资商业企业董事会成员名单及投资各方董事委派书;
- (九) 工商行政管理部门出具的企业名称预先核准通知书;

(十) 拟开设店铺所用土地的使用权证明文件(复印件)及(或)房屋租赁协议(复印件),但开设营业面积在3000平方米以下店铺的除外;

(十一) 拟开设店铺所在地政府商务主管部门出具的符合城市发展及城市商业发展要求的说明文件。

非法定代表人签署文件的,应当出具法定代表人委托授权书。

第十三条 已设立的外商投资商业企业申请开设店铺,应当报送下列文件:

(一) 申请书;

(二) 涉及合同、章程修改的,应报送修改后的合同、章程;

(三) 有关开设店铺的可行性研究报告;

(四) 有关开设店铺的董事会决议;

(五) 企业最近一年的审计报告;

(六) 企业验资报告(复印件);

(七) 投资各方的登记注册证明(复印件)、法定代表人证明(复印件);

(八) 拟开设店铺所用土地的使用权证明文件(复印件)及(或)房屋租赁协议(复印件),但开设营业面积在3000平方米以下的店铺除外;

(九) 拟开设店铺所在地政府出具的符合城市发展及城市商业发展要求的说明文件。

非法定代表人签署文件的,应当出具法定代表人委托授权书。

第十四条 外商投资商业企业签订的商标、商号使用许可合同、技术转让合同、管理合同、服务合同等法律文件,应作为合同附件(外资商业企业应作为章程附件)一并报送。

第十五条 外商投资商业企业开设店铺所用土地,应当按照国家有关土地管理的法律、行政法规的规定,以公开招标、拍卖、挂牌等方式取得商业用地。

第十六条 外商投资商业企业经营国家有特殊规定的商品以及涉及配额、许可证管理的进出口商品,应当按照国家有关规定办理手续。

第十七条 外商投资商业企业经营下列商品,除必须符合本办法规定外,还应符合下列规定:

外商投资商业企业经营图书、报纸、期刊的,应符合《外商投资图书、报纸、期刊分销企业管理办法》。

外商投资商业企业经营加油站从事成品油零售的,应具有稳定的成品油供应渠道,符合当地加油站建设规划,经营设施符合现有国家标准和计量检定规程的

规定，符合消防、环保等要求，具体实施办法由商务部另行制定。
外商投资商业企业经营药品的，应符合国家有关药品销售的管理规范。具体实施办法由商务部另行制定。

外商投资商业企业经营汽车的，应在批准的经营范围内经营。具体实施办法由商务部另行制定。

除本办法第十八条和本条另有规定外，外商投资设立农副产品、农业生产资料商业企业不受地域、股比和投资金额的限制。

从事批发的外商投资商业企业，2004年12月11日前不得经营药品、农药和农膜。2006年2月11日前不得经营化肥、成品油和原油。

从事零售的外商投资商业企业，2004年12月11日前不得经营药品、农药、农膜和成品油。2006年12月11日前不得经营化肥。

从事批发的外商投资商业企业不得经营盐、烟草，从事零售的外商投资商业企业不得经营烟草。

第十八条 同一外国投资者在境内累计开设店铺超过30家以上的，如经营商品包括图书、报纸、杂志、汽车（2006年12月11日起取消本限制）、药品、农药、农膜、化肥、成品油、粮食、植物油、食糖、棉花等商品，且上述商品属于不同品牌，来自不同供应商的，外国投资者的出资比例不得超过49%。

第十九条 外商投资商业企业授予他人以特许经营方式开设店铺的，除应遵守本办法规定外，国家对特许经营活动另有规定的，还应遵守其规定。

第二十条 外商投资商业企业经营拍卖业务，应符合《拍卖法》、《文物法》等有关法律，由商务部予以审批，具体实施办法另行制定。

第二十一条 2004年12月11日起，允许设立外资商业企业。

第二十二条 从事零售的外商投资商业企业及其店铺的设立地域在2004年12月11日前限于省会城市、自治区首府、直辖市、计划单列市和经济特区。自2004年12月11日以后，取消地域限制。

从事批发的外商投资商业企业自本办法实施之日起取消地域限制。

第二十三条 外商投资企业在境内投资商业领域的，应符合《关于外商投资

企业境内投资的暂行规定》，并参照本办法办理。

第二十四条 外商投资商业企业以外的其它外商投资企业，从事本办法第三条所列经营活动的，应符合本办法的规定，并依法变更相应的经营范围。

第二十五条 香港特别行政区、澳门特别行政区的投资者、台湾地区的投资者在中国其他省、自治区、直辖市投资设立商业企业，除下述规定外，参照本办法执行：

（一）自 2004 年 1 月 1 日起，香港、澳门商业服务提供者可以在内地设立外资商业企业。

（二）香港、澳门商业服务提供者在内地设立零售企业的地域范围扩大到地级市，在广东省扩大到县级市。

（三）自 2004 年 1 月 1 日起，香港、澳门商业服务提供者可依据本办法的相关条款申请在内地设立从事汽车零售业务的商业企业，但其申请前三年的年均销售额不得低于 1 亿美元；申请前一年的资产额不得低于 1000 万美元；在内地设立的汽车零售企业的注册资本最低限额为 1000 万元人民币，在中西部地区设立的汽车零售企业注册资本最低限额为 600 万元人民币。

（四）允许香港、澳门永久性居民中的中国公民依照内地有关法律、法规和规章设立个体工商户从事商业零售活动（除特许经营外），其营业面积不超过 300 平方米。

（五）本条所规定的香港、澳门商业服务提供者应分别符合《内地与香港关于建立更紧密经贸关系的安排》和《内地与澳门关于建立更紧密经贸关系的安排》中关于“服务提供者”的定义及相关规定的要求。

第二十六条 鼓励外商投资商业企业加入有关行业协会，加强企业自律。

第二十七条 本办法由商务部负责解释。

第二十八条 本办法自 2004 年 6 月 1 日起施行。

第二十九条 原国家经济贸易委员会、对外贸易经济合作部联合发布的《外商投资商业企业试点办法》自本办法施行之日起废止。

http://tfs.mofcom.gov.cn/article/200404/20040400209979_1.xml