

**Provisions on the Administration of Foreign-Invested Telecommunications Enterprises (the "FITE Provisions")
- Summary and Preliminary Analysis -**

- The FITE Provisions were promulgated by the State Council on December 11, 2001 and will become effective on January 1, 2002. They were first published on the website of the Xinhua News Agency (www.xinhuanet.com) on December 20, 2001.
- The FITE Provisions provide that foreign¹ investment in the telecoms sector is permitted only in the form of a Chinese-foreign equity joint venture, i.e., no cooperative joint venture or wholly foreign-owned enterprise may be established.
- The FITE Provisions set out two categories of equity joint ventures providing telecoms services ("Telecoms JVs"):
 - those engaged in providing basic telecoms services; and
 - those engaged in providing value-added telecoms services

The categorization of services is set forth in the Catalog of Classes of Telecommunications Businesses published by the Ministry of Information Industry ("MII") in June 2001 (the "Catalog").

- **Minimum Requirements for Registered Capital of a Telecoms JV**

Geographic Scope Service Category	National or Interprovincial	Limited to One Province
Basic	RMB 2 billion	RMB 200 million
VAS	RMB 10 million	RMB 1 million

- **Compliance with WTO Requirements**

The FITE Provisions state that the geographical scope for foreign telecoms investment will be determined by MII. This provision allows MII to gradually lift geographic restrictions in accordance with the PRC's schedule to the General Agreement on Trade in Services (the "Service Schedule").

¹ Hong Kong, Macao and Taiwanese investments are treated as foreign investments.

The FITE Provision also provide that the maximum percentage foreign investment will "eventually" (i.e. after gradual liberalization in accordance with the Service Schedule) be 49% in Telecoms JVs operating basic services other than wireless paging and 50% for value-added services and wireless paging 50%².

The PRC's commitments under the Service Schedule are as follows:

Type of Service	Percentage Foreign Investment Permitted					
	Upon WTO Accession	One Year from Accession	Two Years from Accession	Three Years from Accession	Five Years from Accession	Six Years from Accession
Value-Added Services	30% in Beijing, Shanghai and Guangzhou	49% in 17 Cities	50% with no geographic restrictions	No change	No change	No change
Basic Telecoms Services - Mobile	25% in Beijing, Shanghai and Guangzhou	35% in 17 Cities	No change	49% with no geographic restrictions	No change	No change
Basic Telecoms Services – Fixed	0%	0%	0%	25% in Beijing, Shanghai and Guangzhou	35% in 17 Cities	49% with no geographic restrictions

- **Qualification Criteria for the Investors in a Telecoms JV**

Basic Services

A basic service Telecoms JV must have a principal Chinese investor whose investment is the largest among the Chinese investors and must be more than 30% of the total Chinese investment³. This investor must satisfy the following requirements:

² Under the Catalog, large region wireless mobile communications, wireless paging, VSAT and resale of basic services are classified as basic services, but administered like value-added services. The FITE Provisions make this distinction only regarding the ultimate ratio of foreign investment in paging Telecoms JVs. MII will have to clarify the import of this difference in classification between the Catalog and the FITE Provisions.

2. The FITE Provisions state only obliquely that there must be one principal investor among the Chinese investors whose investment is more than 30% of the total Chinese investment. MII

1. be a legally incorporated company;
2. have funds and professional personnel appropriate to the business activities to be engaged in; and
3. meet the industry specific requirements set forth by the MII.

There is no requirement that the Chinese investors have to be telecoms operators. However, for Chinese investors, their investment is restricted by the PRC Company Law requirement that Chinese companies cannot invest more than 50% of their net assets.

A basic service Telecoms JV must also have a principal foreign investor whose investment is the largest among the foreign investors and must be more than 30% of the total foreign investment. This investor must satisfy the following requirements:

1. be a legal person;
2. have been granted a basic service operating permit in its country/territory of incorporation;
3. have funds and professional personnel appropriate to the business activities to be engaged in; and
4. meet the industry specific requirements set forth by the MII.

Value-Added Services

The FITE Provisions only require the principal foreign investor to have a good record and operating experience. There are no requirements applicable to the Chinese investors.

Requirements under the Telecoms Regulations

The requirements of the FITE Provisions are additional to those in the Telecommunications Regulations promulgated on September 25, 2000 (the "Telecoms Regulations"). In particular, under the Telecoms Regulations, a basic service provider must be 51% state-owned. Therefore, state-owned entities among the investors of a Telecoms JV must hold a percentage equity interest in a basic services Telecoms JV that allows the Telecoms JV to satisfy this requirement.

- **Approval Procedures**

The FITE Provisions provide a four-step establishment procedure for Telecoms JVs.

officials have confirmed that this is indeed required, and that there also must be one principal foreign investor.

MII Approval

For a basic service Telecoms JV or a Telecoms JV engaging in interprovincial provision of value-added services, the principal Chinese investor shall submit to the MII:

1. a project proposal;
2. a feasibility study⁴;
3. qualification documents of the investors; and
4. other documents stipulated by the Telecoms Regulations.

When submitting the documents, the principal Chinese investor may file all the documents excluding the feasibility study which can be filed after the MII has reviewed the documents and sent a written approval (the "Preliminary Approval") to the principal Chinese investor. The feasibility study must be filed within one year after the issuance of the Preliminary Approval.

The MII should complete the examination of a basic service Telecoms JV within 180 days and of a Telecoms JV for interprovincial value-added services within 90 days of receipt of the application. If the application is approved, an Examination and Approval Opinion for Operation of Telecommunications Businesses with Foreign Investment ("Approval Opinion") will be issued.

For a Telecoms JV engaging in value-added services within one province, the principal Chinese investor must submit the documents mentioned above except for the project proposal. The local telecommunications authority should provide a written opinion within 60 days of the application and, in case of a positive opinion, transmit the application to the MII which should make its decision within 30 days and, if the application is approved, issue an Approval Opinion.

For a Telecoms JV that invests in a project requiring approval by the State Development and Planning Commission ("SDPC") or the State Economic and Trade Commission ("SETC"), the MII should transmit the application documents to the SDPC or the SETC for approval before issuing the Approval Opinion. In such cases, the period for examination will be extended by 30 days.

MOFTEC Approval

After MII issues the Approval Opinion, the principal Chinese investor shall apply for approval of the joint venture contract and articles of association of

⁴ The Feasibility Study should contain information such as the services to be provided, business projects, development scale, investment benefits analysis and launch of services. According to MII officials, if there are any changes to the Feasibility Study after its submission, the principal Chinese investor has to resubmit the revised Feasibility Study and the application process has to start again.

the Telecoms JV. For a basic services Telecoms JV or a Telecoms JV engaging in interprovincial value-added services, the application is submitted to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC"). For a Telecoms JV engaging in value-added services within a single province, the application is submitted to the provincial level Commission of Foreign Trade and Economic Cooperation ("COFTEC").

MOFTEC or COFTEC shall complete its review of the contract and articles of association within 90 days of receiving the application documents and issue its approval in the form of a Foreign-Invested Enterprise Approval Certificate ("Approval Certificate").

Issuance of the Operating Permit

The principal Chinese investor shall apply to MII for the Permit for Operating Telecommunications Businesses on the basis of the Approval Certificate.

SAIC Registration

After obtaining the operating permit, the principal Chinese investor is responsible for registration of the Telecoms JV with the administration for industry and commerce.

- **International Gateway**

The FITE Provisions reiterate the requirement that international services must be provided through the international gateway set up with MII approval.

- **Overseas Listing**

The FITE Provisions address IPO issues only to clarify that for overseas listings of PRC telecoms enterprises (whether these were previously organised as Telecoms JVs or as companies with only domestic investment), MII consent is required in addition to regulatory approvals provided elsewhere.