

Central Government shall, within 10 working days after the acceptance of the above-mentioned complete documents, submit the documents together with its comments to the Ministry of Communications.

The Ministry of Communications shall, within 30 working days after the acceptance of the above-mentioned documents and comments, complete the examination, verification in accordance with the provisions in Article 9 of the Maritime Transportation Regulations and give a decision of granting or not granting an approval. If an approval is granted, an approval document shall be issued. If no approval is granted, the applicant shall be notified in writing and given the reason therefor.

The applicant who is granted the approval shall go through the approval procedures for setting up a foreign-invested enterprise at relevant authorities in accordance with the laws and regulations on the setting up of a foreign-invested enterprise of the State with the approval document issued by the Ministry of Communications. The applicant shall, after the acquiring the relevant approvals from the authorities, apply for the registration of the services with the Registration for Operation of International Shipping Agency Services to the Ministry of Communications with the approval documents from the relevant authorities in accordance with the provisions of Article 7 of these Rules.

Article 43 If one sets up a foreign-invested enterprise to engage in international ship management services, the application documents provided in Article 8 of these Rules shall be submitted

to the Ministry of Communications via the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprise is registered. The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 10 working days after the acceptance of the above-mentioned complete documents, submit the documents together with the comments to the Ministry of Communications.

The Ministry of Communications shall, within 30 working days after the acceptance of the above-mentioned documents and comments, complete the examination, verification in accordance with the provisions in Article 11 of the Maritime Transportation Regulations and give a decision of granting or not granting an approval. If an approval is granted, an approval document shall be issued. If no approval is granted, the applicant shall be notified in writing and given the reason therefor.

The applicant who is granted the approval shall go through the approval procedures for setting up a foreign-invested enterprise at relevant authorities in accordance with the laws and regulations on the setting up of a foreign-invested enterprise of the State with the approval document issued by the Ministry of Communications. The applicant shall, after the acquiring the relevant approvals from the authorities, apply for the registration of the services with the Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation to the competent communi-

cations department of the people's government of the province, autonomous region or municipality directly under the Central Government with the approval documents from the relevant authorities in accordance with the procedures provided in Article 8 of these Rules.

Article 44 If one engages in the business relating to storage and warehousing of international shipments, the following conditions shall be met:

- (1) having a fixed place of business;
- (2) having the warehouse facilities compatible to the scope of business;
- (3) having at least two senior executives with no less than three years' experience in the relevant business; and
- (4) other conditions provided for in the laws and regulations.

Article 45 If one engages in international maritime container freight station and container yard services, the following conditions shall be met:

- (1) having a fixed place of business;
- (2) having the vehicles, handling facilities, container yards and container checking equipment or facilities compatible to the scope of business;
- (3) having at least two senior executives with no less than three years' experience in the relevant business; and
- (4) other conditions provided in the laws and regulations.

Article 46 If one sets up a foreign-invested enterprise to

engage in the business relating to storage and warehousing of international shipments, or sets up a Chinese-foreign equity joint venture or a Chinese foreign contractual joint venture to engage in international maritime container freight station and container yard services, an application shall be submitted to the Ministry of Communications via the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government, and the following documents shall be attached thereto:

- (1) the letter of application;
- (2) the feasibility study report;
- (3) the agreement of setting up a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture; and
- (4) the business registration documents of the investors, in case of investment by natural persons, the identity documents.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 10 working days after the acceptance of the above-mentioned complete documents, submit the documents together with the comments to the Ministry of Communications.

The Ministry of Communications shall, within 30 working days after the acceptance of the above-mentioned documents and comments, complete the examination, verification in accordance with the provisions in Article 44 and 45 of the these Rules and give a decision of granting or not granting an approval. If an ap-

approval is granted, an approval document shall be issued. If no approval is granted, the applicant shall be notified in writing and given the reason therefor.

The applicant who is granted the approval shall go through the approval procedures for setting up a foreign-invested enterprise at relevant authorities in accordance with the laws and regulations on the setting up of a foreign-invested enterprise of the State with the approval document issued by the Ministry of Communications. The applicant shall, after the acquiring the relevant approvals, apply for the registration of the services with the Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation to Ministry of Communications.

Article 47 The relevant registration procedures shall be gone through with the registration document issued by the Ministry of Communications at the customs authority at the place where the cargoes or containers stored are to be supervised before the cargoes or containers to be supervised by the customs can be stored.

Article 48 In case of setting up a representative office within the Chinese territory by a foreign operator of international shipping services or a operator of the auxiliary business operations relating to international maritime transportation, the following documents shall be submitted to the Ministry of Communications via the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the representative office is to be registered:

(1) the letter of application, in which the name, the place of registration, the duration of service and the main scope of business of the representative office to be set up shall be specified;

(2) the business registration document of such operator;

(3) the introduction of the business of such operator including the time of registration, the main scope of business, the business achievement of recent years, the number of employees, the introduction of overseas branches of such operator;

(4) the letter of authorization for the chief representative signed by the director of board or the general manager of the operator;

(5) the name, the nationality and curriculum vitae and the identity document of the chief representative.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 7 working days after the acceptance of the above-mentioned complete documents, submit the documents together with the comments to the Ministry of Communications.

The Ministry of Communications shall, within 15 working days after the acceptance of the above-mentioned documents and comments, give a decision of granting or not granting an approval. If an approval is granted, a Approval for the Setting up of A Representative Office by a Foreign (Overseas) Enterprise for Waterborne Transportation within Chinese Territory (hereinafter referred to as the Approval) shall be issued by the Ministry of

Communications. If the application documents are incomplete and inauthentic, no approval shall be granted and the applicant shall be notified in writing and given the reasons therefor.

The applicant who is granted an approval shall, within 30 days after the date of granting the approval, go through the procedures for registration at the enterprise registration authority. If the applicant fails to go through the registration procedures within the above-mentioned time limit, the Approval expires automatically.

The approved duration of service of the representative office shall be three years.

Article 49 If there is a change in the name of the representative office or a change of the chief representative, such a change shall be filed with the Ministry of Communications within 15 days after the date of such a change.

If there is a change in the chief representative, the curriculum vitae, the photocopy of the new chief representative and the letter of authorization for the chief representative signed by the director of the board or the general manager of foreign (overseas) enterprise shall be attached at the time of filing.

If there is a change in the name of the representative office, an explanation on the relationship between the old name and the new name of the representative office shall be attached at the time of filing. If the change of name of the representative office arises from the merging, acquisition or separation of enterprises, the relevant legal certifying document shall be attached as well.

The Ministry of Communications shall complete the filing

procedures timely after the acceptance of the filing documents.

Article 50 If the duration of service of the representative office needs to be extended, an application shall be submitted to the Ministry of Communications 60 days before the date of expiration of the duration. The following application documents shall be included:

(1) the letter of application;

(2) the photocopy of the Approval issued by the Ministry of Communications; and

(3) the photocopy of the business registration document of the representative office.

The Ministry of Communications shall, within 15 working days after the acceptance of the complete and authentic documents from the applicant, complete the procedures relating to the registration of the change and issue the certifying document.

Article 51 If a representative office terminates its operation, such an issue shall be reported to the Ministry of Communications within 10 days after the date of termination. The Ministry of Communications shall cancel the qualification of service of the representative office at the request.

If a representative office fails to apply for the extension of duration of service when the duration expires, the qualification of the service of the representative office expires automatically at the time of expiration of the duration.

If a representative office terminates its operation, loses its qualification of service or is cancelled with its qualification of ser-

vice, the Ministry of Communications shall issue a Notice on Cancellation of the Qualification of Service of the Representative Office by a Foreign (Overseas) Enterprise for Waterborne Transportation within Chinese Territory and notify the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government and the enterprise registration authority concerned.

Chapter Five Investigations and Settlement

Article 52 If any interested party considers that an operator of international maritime transportation or auxiliary businesses thereof is involved in the circumstances specified in Article 35 of the Maritime Transportation Regulations or Article 38 of these Rules, it can request the Ministry of Communications to conduct investigations in accordance with the provisions of Article 35 of the Maritime Transportation Regulations. When a request for investigations is lodged, an application in writing with the reason for the investigations and necessary evidence shall be submitted.

The Ministry of Communications shall, within 60 working days after the date of acceptance of the application, conduct an appraisal of the application for investigations and give a decision of conducting or not conducting the investigations.

(1) if the Ministry of Communications considers the reason for the investigations is not enough or the evidence in the applica-

tion is not sufficient, it shall decide not to conduct investigations and notify the applicant thereof. The applicant can make a request for investigations again after adding new reasons or new evidence;
(2) if the Ministry of Communications considers it necessary to conduct investigations after taking into consideration of the appraisal conclusion or at its own discretion in accordance with Article 35 of the Maritime Transportation Regulations, the administrative department of commerce and industry of the State Council and the pricing department of the State Council shall be informed of the relevant documents and appraisal conclusion.

Article 53 The investigations shall be conducted by an investigation group jointly composed by the Ministry of Communications, the administrative department of commerce and industry of the State Council and the pricing department of the State Council (hereinafter referred to as the investigatory authority).

The investigatory authority shall notify the person under investigation of the composition of the investigation group, the reason for investigation and the time limit for the investigation etc. The person under investigation shall, within 30 days after the service of the notice of investigation, reply to the investigations.

If the person under investigation considers that the members of the investigation group have related interests with the investigation applicant, the person under investigation or the issues under investigations, he can request a refusal of such member(s). If the investigatory authority considers the application for refusal tenable, it shall adjust the composition of the investigation group.

Article 54 When the person under investigation is investigated, he shall provide the relevant statistics, documents or papers at the request of the investigation group. If such statistics, documents or papers are commercial secrets, the investigation group shall be made known. The investigation group shall record in writing the confidentiality of such statistics, documents or papers.

The investigatory authority and the members of the investigation group shall keep the commercial secrets of the person under investigation confidential.

If the person under investigation finds the members of the investigation group disclose such commercial secrets and has sufficient evidence to support his assertion, he has the right to make a complaint to the investigatory authority.

Article 55 The following elements shall be considered before the investigatory authority decides that the person under investigation provides service at lower freight rates than normal and reasonable ones:

(1) the freight rates level of most of the operators within the industry who have the same scale of business as the person under investigation;

(2) the reason of the freight rate level fixed by the person under investigation, including the composition of costs, the level of management and the level of profit and loss etc.; or

(3) whether there is a focus on certain competitors for the purpose of repelling the competitors in the same industry.

Article 56 The following elements shall be considered before the investigatory authority decides that there is any act detrimental to fair competition or any act detrimental to the other party of the transaction:

(1) to constitute obstacles to the free choice of carriers by the shippers;

(2) to affect the normal shipment of cargo; or

(3) to solicit cargo by offering secret rebate not being reflected by the bookkeeping, which seriously distorts the market competition rules.

Article 57 Before the investigatory authority makes a conclusion on the investigation, a meeting for consulting the experts shall be held to evaluate the degree of detriment to fair competition or detriment to the other party of the transaction.

The experts invited in the consultative meeting shall not have related interests with the investigation applicant or the person under investigation.

Article 58 When the investigations are completed, the investigatory authority shall make a conclusion on the investigations and notify the investigation applicant and the person under investigation in writing:

(1) if the basic facts are not tenable, the investigatory authority shall decide to terminate the investigations;

(2) if the basic facts are tenable but not in substance detrimental to fair market competition, the investigatory authority shall decide not to take prohibitive or restrictive measures against the

person under investigation;

(3) if the basic facts are clear and in substance detrimental to fair market competition, the investigatory authority shall, in accordance with the provisions in the Maritime Transportation Regulations, take prohibitive and restrictive measures against the person under investigation.

Article 59 The party shall be informed of its right to have a hearing before the investigatory authority make a decision to take prohibitive and restrictive measures. If the party asks for the hearing, it shall apply in writing to the investigatory authority within 10 days after the service of the notice of the investigatory authority. If the party fails to make an application within the time limit, it is considered to have waived its right to have a hearing.

Article 60 If an investigation is conducted on the cases specified in Article 38 of these Rules, the persons from the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the person under investigation registers his qualification of services shall be included in the investigation group.

If there are unlawful practices as specified in subparagraph 3 of Article 38 of these Rules which are in substance detrimental to the other party of the transaction or the competitors in the industry, the investigatory authority can take the restrictive measures of restricting the person under investigation to develop his business within a certain period of time.

Chapter Six Legal Liabilities

Article 61 If there is a violation of the provisions of the Maritime Transportation Regulations or these Rules which shall be penalized, the Ministry of Communications or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall impose the penalty in accordance with the provisions in Chapter VI of the Maritime Transportation Regulations and this Chapter.

Article 62 If a foreign-invested representative office has one of the cases specified in Article 39 of these Rules, the Ministry of Communications or the competent communications department of the province, autonomous region or municipality directly under the Central Government shall inform the relevant administrative department of the commerce and industry to impose the penalty in accordance with the provisions in paragraph 2, Article 52 of the Maritime Transportation Regulations.

Article 63 If a liner conference agreement, a service operation agreement or a freight rate agreement fails to be filed with the Ministry of Communications as provided, the Ministry of Communications shall, in accordance with the provisions in Article 48 of the Maritime Transportation Regulations, impose penalty on the party who shall file in accordance with Article 32 of these Rules. If the liner conference fails to file as provided, a penalty can be

imposed on its members.

Article 64 If the members in the investigation group violate the provisions by disclosing the secret information of the person under investigation, an administrative penalty shall be imposed. If the consequences are so severe as to violate the criminal law, a criminal penalty shall be pursued.

Chapter Seven Supplementary Provisions

Article 65 The applicant can entrust its agent with handling the issues relating to permission or registration as provided in the Maritime Transportation Regulations or these Rules. If the agent is entrusted to handle the issues, a letter of entrustment shall be produced. A notary letter provided by a foreign applicant or investor shall be issued by the notary office or the attorney at the country where the applicant or investor is registered.

The documents in writing specified in these Rules shall be in Chinese. If they are in any of other languages, a Chinese translation shall be attached thereto.

Article 66 The requirements of the filing, the means and ways of filing which are provided in the Maritime Transportation Regulations and these Rules shall be fulfilled in accordance with the rules provided by the Ministry of Communications.

Article 67 The provisions in Chapter IV of the Maritime Transportation Regulations and Chapter Four of these Rules are *mutatis mutandis* applicable to the investment into and operation

of international shipping business and auxiliary businesses relating to international maritime transport in Chinese mainland by investors from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan region.

Article 68 The detailed rules relating to the tariff rate and negotiated rate filing provided in Article 20 of the Maritime Transportation Regulations shall be formulated by the Ministry of Communications.

Article 69 If one engages in loading and unloading, storage and warehousing of international shipments and international maritime container freight station and container yard services within port area, the relevant laws and regulations of the State on port management shall be complied with.

Article 70 These Rules shall take effect as of March 1, 2003. The Measures for Administration of International Shipping Service on April 11th, 1985, the Provisions on International Shipping Agency Services on March 2nd, 1990, the Provisions on International Liner Services on June 20th, 1990, the Provisions on Administration of International Container Transportation at Sea of the People's Republic of China on July 1st, 1992, the Measures for Administration of Representative Offices Established by Foreign Waterborne Transportation Enterprises on October 16th, 1997 by the Ministry of Communications shall be repealed simultaneously.