



# CHINA LEGAL BRIEFING\* 137

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## **Provisions of the Supreme People's Court on Some Issues Concerning the Trial of Cases of Disputes Over Letter of Credit** 最高人民法院关于审理信用证纠纷案件若干问题的规定

**Issued By** Supreme People's Court  
**Subject** Others Provisions  
**Promulgated on** November 14<sup>th</sup> 2005  
**Effective from** January 1<sup>st</sup> 2006  
**Source** [www.china.com.cn](http://www.china.com.cn)

With regard to the issues concerning the trial of cases concerning disputes over letter of credit, Supreme People's Court issued Provisions of the Supreme People's Court on Some Issues Concerning the Trial of Cases of Disputes over Letter of Credit (hereinafter referred to as "the Provisions") on November 14<sup>th</sup> 2005. According to the Provisions, cases of disputes over the letter of credit refer to the cases of disputes arising in the links such as issuance, notification, revision, revocation, confirmation, negotiation and acceptance of letter of credit.

When the people's court hears a case of disputes over letter of credit, if any stipulation is made by the parties concerned on applying the relevant international practices or other provisions that should be applicable to such case, this stipulation shall prevail; if no stipulation is made by the parties concerned, the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce and other relevant international practices shall be applied to it.

According to the Provisions, after the issuing bank makes a commitment on the payment or acceptance of a letter of credit or performance of other obligations under the letter of credit, as long as the documents conform to the clauses of the letter of credit and the documents conform to each other on the surface, the issuing bank shall perform the obligation to make a payment within the time limit as provided for by the letter of credit. If any party initiates a protest for the reason of the basic transaction between the applicant and the beneficiary, the people's court shall not support it, except for the circumstances as mentioned otherwise in the Provisions.

When the people's court hears a case of disputes over letter of credit, if it needs to check the documents, it shall comply with the stipulation made by the parties concerned on applying the relevant applicable international practices or other provisions. If the parties concerned fail to make any stipulation, it shall, according to the Uniform Customs and Practice for Documentary Credits and other relevant standards provided for by the International Chamber of Commerce, determine whether or not the documents conform to

the clauses of the letter of credit and whether or not the documents conform to each other on the surface. If the documents under a letter of credit incompletely conform to the clauses of the letter of credit, or if the documents incompletely conform to each other on the surface, but if no different meaning is caused between them, the people's court shall not deem that any discrepancy has constituted.

As to the frauds of letter of credit, the Provisions list the following circumstances:

1. The beneficiary counterfeits any documents or submits any documents containing false information.
2. The beneficiary maliciously refuses to deliver the goods, or delivers goods of no value.
3. The beneficiary submits any false documents by colluding with the applicant or a third party and there isn't any true basic transaction; or
4. Other circumstances of letter of credit fraud. After the applicant, issuing bank or any other interested party finds any of the circumstances, if it believes that any unrecoverable injury will be caused to it, it may file an application with the jurisdictional people's court for suspending the payment under the letter of credit.

If the people's court determines that there exists any letter of credit fraud, it shall make a ruling on suspending the payment or make a judgment on terminating the payment under the letter of credit, except for any of the following circumstances:

1. The designating or entrusting party of the issuing bank, in bona fide, has made a payment according to the instructions of the issuing bank.
2. The issuing bank or the designating or entrusting party, in bona fide, has honoured the instrument under the letter of credit.
3. The confirmed bank, in bona fide, has performed the obligation to make the payment; or
4. The negotiating bank, in bona fide, has negotiated the payment.

It is for the first time PRC laws make any explicit and detailed rules on the issue of the letter of credit and the Provisions shall take effect on January 1<sup>st</sup> 2006.

## **Interim Measures for the Administration of Processing Trade in Export Processing Zones**

出口加工区加工贸易管理暂行办法

**Issued By** Ministry of Commerce  
**Subject** Others Provisions  
**Promulgated on** November 22<sup>nd</sup> 2005  
**Effective from** January 1<sup>st</sup> 2006  
**Source** [www.mofcom.gov.cn](http://www.mofcom.gov.cn)

With a view to promote the healthy development of the processing trade, lead to the upgrading of the processing trade, and further regulate the administration of the export processing zones, the Ministry of Commerce promulgated Interim Measures for the Administration of Processing Trade in Export Processing Zones (hereinafter referred to as “the Measures”) on November 22<sup>nd</sup> 2005.

An export processing zone is a certain area under closed supervision of the customs, which was established upon the approval of the State Council, and Processing trade in an export processing zone shall refer to the production and business operation activities that the enterprises inside the zone purchase raw materials, parts and components, elements, packing materials, etc. from the outside or inside the territory of China, and transport the finished products processed or assembled to outside the territory of China. An export processing zone shall follow the relevant industrial policy guidance of the state, make great efforts to attract processing trade enterprises of high technical level and large value-added content, and large downstream enterprises that have a strong capacity for driving auxiliary industries to enter into the zone. The processing trade business failing to meet the requirements of the industrial policy development of the state, such as the processing trade business of high consumption or heavy pollution, etc. is prohibited from being carried out inside the export processing zones.

Where an enterprise inside an export processing zone intends to engage in the processing trade business, it must, upon strength of the effective approval document for its establishment, submit to the administrative committee a written application report on carrying out the processing trade business, and must, in the case of a particularly prescribed project, provide in addition the relevant approval document issued by the relevant department. The administrative committee shall, after receipt of the enterprise’s application, verify it in accordance with the relevant provisions of the state, and shall, within 10 working days, issue an “Approval Certificate for Processing Trade Business in the Export Processing Zone”.

According to the Measures, unless it is otherwise prescribed by the State, the import and export quota administration or permit administration shall not apply to the goods carried between an export processing zone and the outside of the territory. No dismantling or revamping business shall be carried out inside an export processing zone, but the business of after-sale maintenance of electromechanical products exported from China is allowed to be carried out inside an export processing zone. The goods carried between the enterprises in an export processing zone and the domestic enterprises outside the zone (including domestic sale of goods from the export processing zone), shall be handled in accordance with the relevant provisions on the import and export of goods.

The Measures shall come into force on January 1<sup>st</sup> 2006. The former “Notice of the Ministry of Foreign Trade and Economic Cooperation on Printing and Distributing the Interim Measures for the Administration of Processing Trade in Export Processing Zones” shall be repealed as of the date.

## **Interim Measures for the Administration of Startup Investment Enterprises**

创业投资企业管理暂行办法

Issued By	<b>National Development and Reform Commission etc.</b>
Subject	<b>Others Provisions</b>
Promulgated on	<b>November 15<sup>th</sup> 2005</b>
Effective from	<b>March 1<sup>st</sup> 2006</b>
Source	<a href="http://www.china.com.cn">www.china.com.cn</a>

For the purpose of promoting the development of startup investment enterprises, regulating their investment operations and encouraging them to make more investments into small and medium-sized enterprises, especially the medium and small high and new tech enterprises, the Interim Measures for the Administration of Startup Investment Enterprises (hereinafter referred to as “the Measures”) have been deliberated and adopted by the National Development and Reform Commission, Ministry of Science and Technology, Ministry of Finance, Ministry of Commerce, People’s Bank of China, State Administration of Taxation, State Administration for Industry and Commerce, China Banking Regulatory Commission, China Securities Regulatory Commission, and State Administration for Foreign Exchange on November 15<sup>th</sup> 2005.

According to the Measures, the state adopts archival filing management of startup investment enterprises, and the archival filing administrative departments are classified into two levels, i.e. administrative department of the State Council and administrative departments of the provinces.

To go through the archival filing formalities, a startup investment enterprise shall meet the following conditions:

1. It has been registered in the administrative department for industry and commerce.
2. Its business scope conforms to the provisions The Measures.
3. The amount of its actual capital contributions is less than RMB 30 million Yuan, or the amount of the down payment of its capital contributions is not less than RMB 10 million Yuan, and all investors make a commitment to pay the balance of actual capital contributions in a sum of not less than RMB 30 million Yuan within five years after the registration.
4. The number of investors shall not exceed 200 persons.
5. It shall have at least three senior managers who have two or more years of startup investment experience or other relevant business experience to take charge of the investment management.

The business scope of a startup investment enterprise is limited to:

1. Making startup investments;
2. Acting as an agent in the startup investment business of other startup investment enterprises or individuals;
3. Providing startup investment consulting services;
4. Providing startup enterprises with startup management services; and
5. Participating in the establishment of startup investment enterprises and startup investment management consulting institutions.

A startup investment enterprise may withdraw its investments by transfer of listed equities, transfer of equities by agreement, repurchase by the invested enterprise or by other means.

Upon approval of the State Council, The Measures come into force as of March 1<sup>st</sup> 2006.

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