

## China

### Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (1990)

*Unofficial translation*

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# Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures

Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-owned Enterprises (Revised in 2001)

(Approved on Oct. 28, 1990 by the State Council, promulgated on Dec. 12, 1990 by the Ministry of Foreign Trade and Economic Cooperation, and revised according to the Decision of the State Council on Amendment of the Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-owned Enterprises on April 12, 2001)

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Decree of the State Council of the People's Republic of China No.301.

The Decision of the State Council on Revision of the Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-owned Enterprises is hereby promulgated, which shall come into force on the date of promulgation.

## Chapter I. General provisions

### Article 1

The Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-owned Enterprises ("Detailed Rules") are hereby formulated in accordance with the Law of the People's Republic of China on Wholly Foreign-owned Enterprises.

### Article 2

Wholly foreign-owned enterprises shall be subject to and under the protection of Chinese laws. Wholly foreign-owned enterprises engaging in business in the People's Republic of China ("China") shall abide by Chinese laws and regulations, and shall not cause damages to the social and public interests of China.

### Article 3

A wholly foreign-owned enterprise to be established shall be conducive to the development of China's national economy and able to gain remarkable economic benefits. The state encourages wholly foreign-owned enterprises to employ advanced technologies and equipment, develop new products, upgrade products and conserve energy and raw materials. It also encourages the establishment of export-oriented wholly foreign-owned enterprises.

### Article 4

Industries under the category of prohibition or restriction of establishment of wholly foreign-owned enterprises shall comply with the provisions of the guidance of China for foreign investment and the guiding catalogue of industries for foreign investment.

#### **Article 5**

No application for establishment of a wholly foreign-owned enterprise shall be approved if the enterprise is under any of the following circumstances:

1. Where it may damage China's sovereignty or social and public interest;
2. Where it may endanger national security of China;
3. Where it violates Chinese laws and regulations;
4. Where it is inconsistent with the requirements of national economic development of China; or
5. Where it may pollute environment.

#### **Article 6**

A wholly foreign-owned enterprise shall run its business within the approved scope of business, free from any intervention.

## **Chapter II. Procedures of establishment**

#### **Article 7**

The application for establishment of a wholly foreign-owned enterprise shall be subject to the examination and approval of the Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China (hereinafter referred to as the MOFTEC), which shall issue the certificate of approval after approval.

If any application for the establishment of a wholly foreign-owned enterprise is under any of the following circumstances, the State Council authorizes the people's governments of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities and special economic zones to issue the certificate of approval after examination and approval:

1. Where the total amount of investment is within the limits of power for examination and approval of investment prescribed by the State Council; or
2. Where the enterprise does not need any raw materials to be allocated by the state and will not affect the national comprehensive balance of energy resources, communication and transportation and export quota for foreign trade.

The people's governments of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities and special economic zones that have approved any application of establishment of a wholly foreign-owned enterprise within the authorized scope by the State Council shall, within 15 days upon approval, report to the MOFTEC for filing (the MOFTEC and people's governments of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities and special economic zones, hereinafter referred to as the examination and approval authority).

#### **Article 8**

For a wholly foreign-owned enterprise that applies for establishment, if its products require export license, export quota and import license or the import of them is under the catalogue of restriction of import by the state, a prior consent shall be obtained from the competent authority of foreign trade and economic cooperation in accordance with relevant administrative power.

#### **Article 9**

Before submitting any application for establishment of a wholly foreign-owned enterprise, the foreign investors shall submit to the people's government at county level or above at the place where the wholly foreign-owned enterprise is to be located a report containing the following items: the purpose of establishment of the wholly foreign-owned enterprise; scope and scale of business; products; technologies and equipment employed; use of land and requirements thereof; conditions and quantities of water, power, coal, gas or other energy resources required; and requirements on public facilities.

The local people's governments at county level or above shall, within 30 days upon receipt of the report submitted by the foreign investors, give them a written reply.

#### **Article 10**

Any foreign investor who plans to establish a wholly foreign-owned enterprise shall submit an application to the examination and approval authority through the local people's government at county level or above at the place where the wholly foreign-owned enterprise is to be established, together with the following documents:

1. An application for establishment of the wholly foreign-owned enterprise;
2. A report on feasibility study;
3. The articles of association of the wholly foreign-owned enterprise;
4. The name list of legal representative (or candidates for the future board of directors) of the wholly foreign-owned enterprise;
5. The legal documents and credit certificates of the foreign investor;
6. The written reply of the local people's government at county level or above at the place where the wholly foreign-owned enterprise is to be located;
7. An list of articles and materials that shall be imported; and
8. Other documents required.

Documents of the preceding items (1) and (3) shall be prepared in Chinese, while those of items (2), (4) and (5) may be prepared in foreign language but corresponding Chinese translations shall be attached. If two foreign investors or more jointly apply for establishment of a wholly foreign-owned enterprise, they shall submit a copy of the contract by and between them to the examination and approval authority for filing.

#### **Article 11**

The examination and approval authority shall, within 90 days upon receipt of all documents required for application for establishment of a wholly foreign-owned enterprise, make a decision on whether to approve or disapprove the application. When finding that the above-mentioned documents are not complete or some of them are inappropriate; the examination and approval authority may require supplementation and correction within a prescribed time limit.

#### **Article 12**

Upon approval of the application for establishment of a wholly foreign-owned enterprise by the examination and approval authority, the foreign investor shall apply for registration with and obtain business license from the administration for industry and commerce within 30 days upon the receipt of the approval certificate. The date of issuance of the business license of the wholly foreign-owned enterprise shall be the date of establishment of the enterprise.

If the foreign investor fails to apply to the administration for industry and commerce for registration within 30 days upon receipt of the approval certificate, the approval certificate for establishment of the wholly foreign-owned enterprise shall become invalid automatically.

The wholly foreign-owned enterprise shall go through taxation registration with the taxation authority within 30 days upon establishment.

#### **Article 13**

A foreign investor may entrust a Chinese service agency for wholly foreign-owned enterprises or any other economic organization to handle the matters stipulated in Article 8, the first paragraph of Article 9 and Article 10 herein, provided that a contract of entrustment shall be concluded.

#### **Article 14**

The application for establishment of a wholly foreign-owned enterprise shall contain:

1. The name, domicile and place of registration of the foreign investor and the name, nationality and position of its legal representative;
2. The name and domicile of the wholly foreign-owned enterprise to be established;
3. Scope of business, types of products and production scale;
4. The total investment, registered capital, source of funds, form of investment and term of business of the wholly foreign-owned enterprise to be established;
5. The form and structure of organization and legal representative of the wholly foreign-owned enterprise to be established;

6. The main production equipment to be used and the degree of depreciation thereof, production technologies and level of processes as well as source of them;
7. Directions and areas for sale and sales channels and methods of products;
8. Arrangement for revenues and expenditures of foreign exchange;
9. Establishment of internal departments and staffing and arrangements for such issues as the recruitment, training, salaries and wages, welfare, insurance and labor protection of and for employees;
10. The extent of possible environmental pollution and solutions;
11. Site of the enterprise and use of land;
12. Funds, energy resources and raw materials required by basic construction, production and operation as well as solutions thereof;
13. Schedule of projects; and
14. Term of business of the wholly foreign-owned enterprise to be established.

#### **Article 15**

The articles of association of a wholly foreign-owned enterprise shall include:

1. Name and domicile;
2. Purpose and business scope;
3. Total investment, registered capital and time limit of capital contribution;
4. Form of organization;
5. Establishment of internal departments and their functions and powers and rules of procedures, and duties and limits of authority of the legal representative and other persons such as general manager, chief engineer and chief accountant;
6. Principles and system of finance, accounting and auditing;
7. Labor management;
8. Term of business, termination and liquidation; and
9. Procedures for amending the articles of association.

#### **Article 16**

The articles of association of a wholly foreign-owned enterprise shall enter into effect after approval of the examination and approval authority, and the same to amendment.

#### **Article 17**

Any division and merger of a wholly foreign-owned enterprise or any material changes of its capital due to other causes shall be subject to the approval of the examination and approval authority, and the enterprise shall invite Chinese certified accountants to make verification and present a capital verification report. After approval of the examination and approval authority, the enterprise shall go through procedures for alteration of registration with the administration for industry and commerce.

## **Chapter III. Form of organization and registered capital**

### **Article 18**

The form of organization of a wholly foreign-owned enterprise shall be a limited liability company. Other forms of liability may be adopted after approval.

In case of a limited liability company, the foreign investor shall be liable for the enterprise to the extent of its/his subscribed capital contribution.

In case of any other liability form, the foreign investor shall be liable for the enterprise according to Chinese laws and regulations.

### **Article 19**

The total investment of a wholly foreign-owned enterprise refers to the total amount of funds required for establishing the wholly foreign-owned enterprise, i.e. the sum of the funds for basic construction and operating funds according to the production scale of the enterprise.

### **Article 20**

The registered capital of a wholly foreign-owned enterprise refers to the total amount of capital registered with the administration for industry and commerce for establishment the wholly foreign-owned enterprise, i.e. the total subscribed capital contribution of the foreign investor.

The amount of registered capital of a wholly foreign-owned enterprise shall be consistent with its operation scale, and the ratio between the registered capital and the total investment shall conform to the relevant provisions of China.

### **Article 21**

No wholly foreign-owned enterprise may reduce its registered capital during its operation. However, if such reduction is really needed due to some changes such as the total investment or scale of production, the reduction may be conducted after the approval of the examination and approval authority.

### **Article 22**

Any increase or assignment of the registered capital of a wholly foreign-owned enterprise shall be approved by the examination and approval authority and the alteration of registration shall be handled with the administration for industry and commerce.

### **Article 23**

Where any wholly foreign-owned enterprise intends to mortgage or assign its assets or interests to a third party, it shall gain the approval of the examination and approval authority and go through procedures for alteration of registration with the administration for industry and commerce.

#### **Article 24**

The legal representative of a wholly foreign-owned enterprise shall be the person-in-charge who exercise his/her duties and power on behalf of the enterprise in accordance with the articles of association of the enterprise.

If the legal representative is unable to exercise his/her duties and power, he/she shall entrust a proxy to act on behalf of her/him in written form.

## **Chapter IV. Form of and time limit for capital contribution**

#### **Article 25**

A foreign investor may make its/his investment in convertible foreign currencies or with machinery and equipment, industrial property rights and proprietary technologies by evaluating their values.

Upon the approval by the examination and approval authority, the foreign investor may also make its/his capital contribution with their profits in Renminbi from any other enterprises it/he established in China.

#### **Article 26**

The machinery and equipment to be used as capital contribution by a foreign investor shall be those needed for production of the wholly foreign-owned enterprise.

The evaluation of the aforesaid machinery and equipment shall not be higher than the normal price of the same machinery and equipment in international market at that time.

For any foreign investor making its/his capital contribution with machinery and equipment, it/he shall submit an inventory of the aforesaid machinery and equipment, including their descriptions, types, quantities and evaluation to the examination and approval authority, together with the application for establishment of the wholly foreign-owned enterprise as an attachment.

#### **Article 27**

The industrial property rights and proprietary technologies to be used as capital contribution by the foreign investor shall be owned by the foreign investor.

The aforesaid industrial property rights and proprietary technologies shall be evaluated according to international principles of evaluation and the evaluated value shall not exceed the registered capital of the wholly foreign-owned enterprise by 20%.

Detailed information of the industrial property rights and proprietary technologies evaluated to be used as capital contribution, including copies of certificates of the title, validity of the title, technical performances and basis and standards of evaluation, shall be submitted to the examination and approval authority as an attachment to the application for the establishment of the wholly foreign-owned enterprise.

#### **Article 28**

Upon arrival of the machinery and equipment used as capital contribution at any port of China, the wholly foreign-owned enterprise shall apply for inspection with China's commodity inspection authority, which shall issue an inspection report.

Where the machinery and equipment used as capital contribution are inconsistent with those listed in the inventory submitted by the foreign investor to the examination and approval authority in terms of type, quality and quantity, the examination and approval authority shall require the foreign investor to make correction within a prescribed time limit.

#### **Article 29**

After the implementation of using the industrial property rights and proprietary technologies evaluated as capital contribution, the examination and approval authority is entitled to make an inspection. If the industrial rights and proprietary technologies are inconsistent with those prescribed in the materials submitted by the foreign investor, the examination and approval authority is entitled to require the foreign investor to make correction within a prescribed time limit.

#### **Article 30**

The time limit for a foreign investor to make its/his capital contribution shall be explicitly indicated in both the application for establishment of the wholly foreign-owned enterprise and the articles of association of the enterprise. The foreign investor may make its/his capital contribution by installments, provided that the last installment shall be paid within 3 years since the date of issuance of the business license. Among them, the first installment shall not be less than 15% of the total subscribed capital contribution of the foreign investor and shall be paid within 90 days upon the date of issuance of the business license of the wholly foreign-owned enterprise.

If the foreign investor fails to make the first installment within the time limit prescribed in the preceding paragraph, the approval certificate for the wholly foreign-owned enterprise shall become invalid automatically, and the wholly foreign-owned enterprise shall go through procedures for cancellation of registration and hand in the business license for cancellation with the administration for industry and commerce. If the wholly foreign-owned enterprise fails to go through the procedures for cancellation of registration and hand in the business license, the administration for industry and commerce shall revoke the business license and make an announcement.

#### **Article 31**

The installments other than the first one shall be made by the foreign investor within each prescribed time limit. If an installment has not been made 30 days after the time limit without due reasons, the second paragraph of Article 30 herein shall apply.

If the foreign investor has any due reason for extension of time for payment of installment, it/he shall get the approval of the examination and approval authority and report to the administration for industry and commerce for filing.

#### **Article 32**

For each installment made by the foreign investor, the wholly foreign-owned enterprise shall invite a Chinese certified accountant to make verification and prepare a capital verification report, which shall be submitted to the examination and approval authority and the administration for industry and commerce for filing.

## **Chapter V. Land use and land use fee**

#### **Article 33**

The local people's government at county level or above at the place where the wholly foreign-owned enterprise is to be located shall make arrangements for the land to be used by the wholly foreign-owned enterprise after examination and verification according to local conditions.

#### **Article 34**

The wholly foreign-owned enterprise shall, within 30 days upon the issuance of business license, go through procedures for use of land with and obtain land certificate from the department of land administration under the people's government at county level or above at the place where the wholly foreign-owned enterprises is to be located, by presenting the approval certificate and business license.

#### **Article 35**

The land certificate shall be the legal certificate of a wholly foreign-owned enterprise to use land. No wholly foreign-owned enterprise may assign its right of land use without approval within its period of business.

#### **Article 36**

A wholly foreign-owned enterprise shall pay charge of land to the department of land administration at the place where the enterprise is to be located.

#### **Article 37**

A wholly foreign-owned enterprise that uses a developed land shall pay land development fee. The land development fee mentioned in the preceding paragraph includes the expenses for requisition of the land and demolition and resettlement allowances, as well as expenses for construction of supported infrastructure for the wholly foreign-owned enterprise. The land development fee may be calculated and collected by the land development enterprise once for all or in yearly installments.

#### **Article 38**

Where a wholly foreign-owned enterprise uses undeveloped land, it may either develop the land by itself or entrust any other Chinese entity to make the development. The construction of infrastructure shall be comprehensively arranged by the people's government at county level or above at the place where the wholly foreign-owned enterprise is to be located.

**Article 39**

The standards for calculating and collecting the charge of land and land development fee for wholly foreign-owned enterprises shall conform to relevant provisions of China.

**Article 40**

The term of land use of a wholly foreign-owned enterprise shall be the same as the approved business period of the enterprise.

**Article 41**

A wholly foreign-owned enterprise may obtain the right of land use in accordance with regulations of China other than the provisions of the chapter herein.

## Chapter VI. Purchase and sale

**Article 42**

A wholly foreign-owned enterprise is entitled to decide on purchase of machinery and equipment, raw materials, fuels, parts and components, auxiliaries, elements, means of transportation and office appliance (hereinafter referred to as the materials in general) for its own use.

A wholly foreign-owned enterprise enjoys the same treatment as that enjoyed by Chinese enterprises under the same conditions when purchasing materials in China.

**Article 43**

A wholly foreign-owned enterprise may sell its products in Chinese market. The state encourages wholly foreign-owned enterprises to export their products.

**Article 44**

A wholly foreign-owned enterprise may export their products either by themselves or by entrusting a Chinese foreign trade company or a company outside China for sale.

A wholly foreign-owned enterprise may sell its products in China by itself or by any commercial organization.

**Article 45**

Where any machinery and equipment used by a foreign investor as its/his capital contribution is subject to import license according to Chinese provisions, the wholly foreign-owned enterprise shall apply for import license with the license issuance authority directly or through an agency by presenting the approved inventory of equipment and materials to be imported.

If the wholly foreign-owned enterprise shall import materials, the import of which is subject to import license according to Chinese provisions, for its own use and for its production within the approved business scope, it shall prepare its annual import plan and apply for import license with the license issuance authority every six months.

If the wholly foreign-owned enterprise shall export products, the export of which is subject to export license according to Chinese provisions, it shall prepare its annual export plan and apply for export license with the license issuance authority every six months.

**Article 46**

The prices of materials and technical services imported by a wholly foreign-owned enterprise shall not be higher than the normal prices of materials and technical services of the same kind in international market at that time. The price of exported products of a wholly foreign-owned enterprise shall be determined by the enterprise in light of relevant prices in international market at that time, provided that they shall not be lower than reasonable export prices. If any enterprise evades taxes by importing products at a high price or exporting products at a low price, the taxation authority may prosecute its legal liabilities according to provisions of tax law.

**Article 47**

A wholly foreign-owned enterprise shall provide statistics and submit statistical statements to the departments concerned in accordance with the provisions of the Statistics Law of the People's Republic of China and provisions of China on statistical system for utilization of foreign capital.

## Chapter VII. Taxation

**Article 48**

A wholly foreign-owned enterprise shall pay taxes in accordance with Chinese laws and regulations.

**Article 49**

The employees of a wholly foreign-owned enterprise shall pay individual income tax in accordance with Chinese laws and regulations.

**Article 50**

Import of the following materials by a wholly foreign-owned enterprise shares tax reduction or exemption in accordance with Chinese tax law:

1. Machinery and equipment, parts and components, building materials and materials needed for installment and fixation of machinery, which are used as capital Contribution by a foreign investor;
2. Machinery and equipment, parts and components, means of transportation for production and production management equipment, which are imported for self- use in production by a wholly foreign-owned enterprise with funds within its total investment; and
3. Raw materials, auxiliary materials, elements, components and parts and packing materials imported by a wholly foreign-owned enterprise for production of export products.

Where any import materials mentioned in the preceding paragraph are resold in China or used for production of products to be sold in China, the wholly foreign-owned enterprise shall pay taxes that have been exempted or reduced in accordance with Chinese tax law .

**Article 51**

The export products produced by a wholly foreign-owned enterprise may enjoy tax reduction, exemption or refund according to relevant provisions of Chinese tax law, except those under restriction of export by China.

## Chapter VIII. Foreign exchange control

### Article 52

The issues concerning foreign exchange of a wholly foreign-owned enterprise shall be handled in accordance with Chinese regulations regarding foreign exchange control.

### Article 53

A wholly foreign-owned enterprise shall, against its business license issued by the administration for industry and commerce, open an account at a bank in China that has the qualification to handle foreign exchange business, which shall supervise the transaction of exchange business of the wholly foreign-owned enterprise.

The foreign exchange incomes of a wholly foreign-owned enterprise shall be deposited to its foreign exchange account at the bank where the account has been opened and the foreign exchange expenditures shall be remitted from the said account.

### Article 54

Where any wholly foreign-owned enterprise has to open a foreign exchange account at a bank outside China due to its production and operation, it shall gain approval from the administration of foreign exchange of China and provide reports on its receipts and payments of foreign exchange on a regular basis and bank statements according to provisions of the administration of foreign exchange.

### Article 55

Wages and salaries as well as other legitimate incomes of foreign exchange of employees of a wholly foreign-owned enterprise from foreign countries and Hong Kong, Macao and Taiwan may be remitted outside China freely after the income tax has been paid according to Chinese tax law.

## Chapter IX. Financial accounting

### Article 56

A wholly foreign-owned enterprise shall, according to Chinese laws, regulations and provisions of the financial authority, establish its own financial accounting systems and submit them to local financial and taxation authorities for filing.

### Article 57

The fiscal year of a wholly foreign-owned enterprise is from Jan. 1 to Dec. 31 of Gregorian calendar.

### Article 58

A wholly foreign-owned enterprise shall retain certain amount capital from its profits after payment of income tax in accordance with Chinese tax law for reserve fund and bonus and welfares for employees. The amount retained for reserve fund shall no less than 10% of the profits after tax and shall not withdrawn when the accumulative amount has been up to 50% of the registered capital of the enterprise. The amount retained for bonus and welfare for employees may be determined by the wholly foreign-owned enterprise.

No wholly foreign-owned enterprise shall distribute its profits unless and until its deficits of previous fiscal years have been made up, and the undistributed profits of previous fiscal years may be distributed together with the distributable profits of the current fiscal year.

#### **Article 59**

The accounting vouchers, account books and accounting statements made by a wholly foreign-owned enterprise shall be prepared in Chinese; and if they are written in any foreign language, corresponding Chinese is required.

#### **Article 60. A wholly foreign-owned enterprise shall conduct independent accounting.**

A wholly foreign-owned enterprise shall prepare its annual accounting statements and liquidation accounting statements in accordance with the provisions of Chinese financial and taxation authorities. If an accounting statement is prepared in a foreign currency, a corresponding accounting statement where the foreign currency has been converted into Renminbi shall be prepared at the same time.

A wholly foreign-owned enterprise shall invite Chinese certified accountants to verify its annual accounting statements and liquidation accounting statements, and make verification reports accordingly.

The annual accounting statements and liquidation accounting statements of a wholly foreign-owned enterprise prescribed in the second and third paragraphs herein, well as the reports made by Chinese certified accountants shall be submitted to the financial and taxation authorities within the prescribed time limit and to the examination and approval authority and the administration for industry and commerce for filing.

#### **Article 61**

A foreign investor may invite Chinese or foreign accountants to audit the account books of a wholly foreign-owned enterprise on its/his own expenses.

#### **Article 62**

A wholly foreign-owned enterprise shall submit its annual balance sheet and income sheet to the financial and taxation authorities, and to the examination and approval authority and the administration for industry and commerce for filing.

#### **Article 63**

The wholly foreign-owned enterprise shall set up its account books at the place where it is located and shall be subject to the supervision by the financial and taxation authorities.

If there is any violation of the preceding paragraph, the financial and taxation authorities may impose a fine on the enterprise, and the administration for industry and commerce may order the suspension of business or revoke the business license of the enterprise.

## Chapter X. Employees

### Article 64

Where a wholly foreign-owned enterprise employs its employees in China, it shall conclude labor contracts with its employees according to Chinese laws and regulations. The contract shall contain such issues as employment, dismissal, remuneration, welfare, labor protection and labor insurance.

No wholly foreign-owned enterprise may employ child laborers.

### Article 65

A wholly foreign-owned enterprise shall be responsible for the vocational and technical training of its employees and establishment of appraisal system to enable its employees to meet the requirements of production and development of the enterprise in terms of skills of production and management.

## Chapter XI. Trade Union

### Article 66

The employees of a wholly foreign-owned enterprise is entitled to set up the trade union of the enterprise and conduct activities thereof according to the Trade Union Law of the People's Republic of China.

### Article 67

The trade union of a wholly foreign-owned enterprise represents the interests of relevant employees and shall be entitled to conclude labor contract with the enterprise on behalf of its members and supervise the execution of the labor contract.

### Article 68

The basic tasks of the trade union of a wholly foreign-owned enterprise shall be: to safeguard legitimate rights and interests of the employees in accordance with the provisions of Chinese laws and regulations and assist the enterprise to make proper arrangements and use of the welfare and bonus funds for employees; to organize employees to learn political, scientific and technological and professional knowledge and conduct recreational and sports activities; and to educate employees to observe labor disciplines and fulfill economic tasks of the enterprise.

The representatives of the trade union is entitled to attend the meetings of a wholly foreign-owned enterprise to discuss issues regarding rewards and punishment to employees, salary and wage system, welfares, labor protection and insurance. The wholly foreign-owned enterprise shall pay heed to the opinions of the trade union and win cooperation of the trade union.

### Article 69

The wholly foreign-owned enterprise shall give an active support to the work of the trade union and provide the trade union with housing and facilities necessary for office use, meeting, undertakings of welfare, culture and sport for employees according to the provisions of the Trade Union Law of the People's Republic of China. The wholly foreign-owned enterprise shall appropriate a sum at 2% of the actual total amount of wages and salaries of the employees to the funds of the trade union on a monthly basis, and the trade union shall use the funds in accordance with the relevant measures of the All-China Federation of Trade Unions on the management of funds of trade unions.

## **Chapter XII. Term, termination and liquidation**

### **Article 70**

The term of business of a wholly foreign-owned enterprise shall be proposed by the foreign investor in the application for establishment of the wholly foreign-owned enterprise in light of situations of specific industries and the enterprise, and shall be approved by the examination and approval authority.

### **Article 71**

The term of business of a wholly foreign-owned enterprise shall be calculated from the date of issuance of its business license.

In case the wholly foreign-owned enterprise needs to extend its term of business after expiration, it shall submit an application for extension 180 days prior to expiration of the term to the examination and approval authority, which shall make a decision of approval or disapproval within 30 days upon receipt of the application.

If the application for extension of the term of business is approved, the wholly foreign-owned enterprise shall go through the procedures for alteration of registration with the administration for industry and commerce within 30 days upon receipt of the approval document.

### **Article 72**

A wholly foreign-owned enterprise shall be terminated, if it is under any of the following circumstances:

1. Expiration of its term of business;
2. Decision of the foreign investor to dissolve it due to poor management and heavy losses;
3. Impossibility of operation of the enterprise due to its heavy losses resulting from force majeure such as natural disasters and wars;
4. Insolvency;
5. Cancellation by law due to its violation of Chinese laws and regulations or damages to public interests; or

6. Occurrence of any other cause for dissolution stipulated in the articles of association of the wholly foreign-owned enterprise.

In case of circumstances of items (2), (3) or (4) of the preceding paragraph, the wholly foreign-owned enterprise shall submit an application for termination to the examination and approval authority for approval. The date of approval made by the examination and approval authority shall be the date of termination of the enterprise.

#### **Article 73**

In case of termination under items (1), (2), (3) and (6) of Article 72 herein, the wholly foreign-owned enterprise shall make a public announcement and notify the creditors of the enterprise within 15 days from the date of termination, and put forward liquidation procedures, principles and candidates for the liquidation committee, submit them to the examination and approval authority for approval, and then carry out liquidation.

#### **Article 74**

The liquidation committee shall be composed of the legal representative of the wholly foreign-owned enterprise, representative of creditors and representatives from competent authorities, and Chinese certified accountants and lawyers shall be invited to participate in the liquidation.

The expenses of liquidation shall enjoy the priority to be paid from the existing assets of the enterprise.

#### **Article 75**

The liquidation committee shall exercise functions and powers as follows:

1. Convening the meeting of creditors;
2. Taking over and liquidating the assets of the enterprise and preparing the balance sheet and inventory of the enterprise;
3. Proposing the basis for evaluation and computation of the assets;
4. Drafting up a liquidation plan;
5. Recovering and discharge debts;
6. Recovering payments payable but not yet paid by shareholders;
7. Distributing the residual property; and
8. Filing and responding to law suits on behalf of the wholly foreign-owned enterprise.

#### **Article 76**

The foreign investor shall not remit or carry the capital of the enterprise out of China, or dispose of the assets of the enterprise privately, until the liquidation of the wholly foreign-owned enterprise is completed.

The part of net assets and residual property that exceed the registered capital of the wholly foreign-owned enterprise shall be deemed as profits and subject to income tax in accordance with Chinese tax law after the liquidation is completed.

**Article 77**

After finish of liquidation, the wholly foreign-owned enterprise shall go through procedures for cancellation of registration with and hand in its business license for cancellation to the administration for industry and commerce.

**Article 78**

Chinese enterprises or other economic organizations shall have the right of preemption to assets to be disposed during the liquidation of a wholly foreign-owned enterprise under equal conditions.

**Article 79**

In case of termination under item (4) of Article 72 herein, the liquidation of the wholly foreign-owned enterprise shall be conducted by reference to relevant Chinese laws and regulations.

In case of termination under item (5) of Article 72 herein, the wholly foreign-owned enterprise shall be liquidated according to relevant Chinese provisions.

## Chapter XIII. Supplementary provisions

**Article 80**

Various items of insurance of a wholly foreign-owned enterprise shall be underwritten with an insurance company within the territory of China.

**Article 81**

All contracts made by and between a wholly foreign-owned enterprise and any other company, enterprise or economic organization or an individual shall be governed by the Contract Law of the People's Republic of China.

**Article 82**

Enterprises that are wholly owned by any company, enterprise or other economic organization or an individual from Hong Kong, Macao or Taiwan or by any Chinese citizens living abroad shall be handled by reference to these Rules.

**Article 83**

Foreign employees and the employees from Hong Kong, Macao and Taiwan an of a wholly foreign-owned enterprise may properly carry means of transportation and articles for daily use by themselves and shall go through import procedures according to Chinese provisions.

**Article 84**

The Detailed Rules shall come into force on the date of promulgation.

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